

## Gramelt, Richard

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### [TIME-LOSS COMPENSATION \(RCW 51.32.090\)](#)

#### **Certification for available light work (RCW 51.32.090(4))**

To constitute a valid light duty job offer, the offered employment must be within the worker's relevant labor market, which requires the job be within a reasonable commuting distance. A job offer that required a roundtrip commute of 136 miles with the worker required to pull to the side of the road six times and walk for five minutes during the drive because of physical limitations imposed by the industrial injury, was not a valid light duty job offer because it was not within a reasonable commuting distance. ....*In re Richard Gramelt, BIIA Dec., 09 21629 (2011)* [Editor's Note: The Board's decision was appealed to superior court under Klickitat County Cause No. 11-2-00221-2.]

#### **Wages (RCW 51.08.178) - Compensation**

Where the worker was paid an additional \$9.00 per hour for 'zone pay' due to a remote work site, the Department should have included the 'zone pay' in the wage calculation because the 'zone pay' compensated the worker for housing and boarding. ....*In re Richard Gramelt, BIIA Dec., 09 21619 (2011)* [Editor's Note: The Board's decision was appealed to superior court under Klickitat County Cause No. 11-2-00221-2.]

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

1 **IN RE: RICHARD M. GRAMELT** ) **DOCKET NOS. 09 21629, 09 21630, 09 21726,**  
2 ) **09 23363, 10 10725, 10 10726, 10 11821,**  
3 ) **10 12125 & 10 12524**  
4 **CLAIM NO. AH-68269** ) **DECISION AND ORDER**

5 **APPEARANCES:**

6 Claimant, Richard M. Gramelt, by  
7 Parham, Hall & Karmy, per  
8 Jill A. Karmy

9 Employer, Christenson Electric, Inc., by  
10 Comprehensive Risk Management, per  
11 Terry D. Peterson

12 Department of Labor and Industries, by  
13 The Office of the Attorney General, per  
14 Robert Hatfield, Assistant

15 In Docket No. 09 21629, the claimant, Richard M. Gramelt, filed an appeal with the Board of  
16 Industrial Insurance Appeals on November 13, 2009, from an order of the Department of Labor and  
17 Industries dated September 14, 2009. In this order, the Department affirmed the provisions of an  
18 order dated July 9, 2009, in which it paid time loss compensation benefits to Mr. Gramelt for July 7,  
19 2009, and ended payment of such benefits for the stated reason that the claimant was able to work.  
20 The Department order is **AFFIRMED**.

21 In Docket No. 09 21630, the claimant, Richard M. Gramelt, filed an appeal with the Board of  
22 Industrial Insurance Appeals on November 13, 2009, from a decision of the Department of Labor  
23 and Industries dated November 2, 2009. In this decision, the Department declared the light duty  
24 job which Christenson Electric, Inc., offered to Mr. Gramelt was a valid job offer. The Department  
25 decision is **REVERSED AND REMANDED**.

26 In Docket No. 09 21726, the claimant, Richard M. Gramelt, filed an appeal with the Board of  
27 Industrial Insurance Appeals on November 16, 2009, from a decision of the Department of Labor  
28 and Industries dated October 16, 2009. In this decision the Department declared that fees that  
29 Mr. Gramelt paid for parking could not be taken into account in the Department's calculation of loss  
30 of earning power benefits for which the claimant was eligible. The Department decision is  
31 **AFFIRMED**.

1 In Docket No. 09 23363, the claimant, Richard M. Gramelt, filed an appeal with the Board of  
2 Industrial Insurance Appeals on December 23, 2009, from an order of the Department of Labor and  
3 Industries dated October 30, 2009. In this order, the Department affirmed the provisions of an  
4 order dated April 13, 2009, in which it established Mr. Gramelt's monthly rate of time loss  
5 compensation benefits based on his status as a married individual who had one dependent, who  
6 worked 8 hours per day, 5 days per week, whose hourly earnings were \$34.15, and for whom  
7 Christenson Electric, Inc. paid \$1,240.80 per month for health care benefits. The Department order  
8 is **REVERSED AND REMANDED**.

9 In Docket No. 10 10725, the claimant, Richard M. Gramelt, filed an appeal with the Board of  
10 Industrial Insurance Appeals on January 22, 2010, from an order of the Department of Labor and  
11 Industries dated November 25, 2009. In this order, the Department affirmed the provisions of an  
12 order dated September 11, 2009, in which it paid loss of earning power benefits to Mr. Gramelt for  
13 the period from August 17, 2009, through August 30, 2009. The Department order is **REVERSED**  
14 **AND REMANDED**.

15 In Docket No. 10 10726, the claimant, Richard M. Gramelt, filed an appeal with the Board of  
16 Industrial Insurance Appeals on January 22, 2010, from an order of the Department of Labor and  
17 Industries dated November 30, 2009. In this order, the Department affirmed the provisions of an  
18 order dated September 25, 2009, in which it paid loss of earning power benefits to Mr. Gramelt for  
19 the period from August 31, 2009, through September 13, 2009. The Department order is  
20 **REVERSED AND REMANDED**.

21 In Docket No. 10 11821, the claimant, Richard M. Gramelt, filed an appeal with the Board of  
22 Industrial Insurance Appeals on February 17, 2010, from an order of the Department of Labor and  
23 Industries dated December 29, 2009. In this order, the Department affirmed the provisions of an  
24 order dated October 28, 2009, in which it paid loss of earning power benefits to Mr. Gramelt for the  
25 period from September 28, 2009, through October 11, 2009. The Department order is **REVERSED**  
26 **AND REMANDED**.

27 In Docket No. 10 12125, the claimant, Richard M. Gramelt, filed an appeal with the Board of  
28 Industrial Insurance Appeals on February 26, 2010, from an order of the Department of Labor and  
29 Industries dated January 15, 2010. In this order, the Department closed Mr. Gramelt's claim with  
30 compensation for permanent partial disability consistent with the degree of disability represented by  
31 Category 2 of WAC 296-20-280, but declared that Mr. Gramelt had the same degree of impairment  
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1 prior to his industrial injury and did not pay any monetary compensation. The Department order is  
2 **REVERSED AND REMANDED.**

3 In Docket No. 10 12524, the claimant, Richard M. Gramelt, filed an appeal with the Board of  
4 Industrial Insurance Appeals on March 4, 2010, from an order of the Department of Labor and  
5 Industries dated January 29, 2010. In this order, the Department affirmed the provisions of an  
6 order dated November 23, 2009, in which it paid loss of earning power benefits to Mr. Gramelt for  
7 the period from October 26, 2009, through November 8, 2009. The Department order is  
8 **REVERSED AND REMANDED.**

9 **DECISION**

10 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for  
11 review and decision. The claimant filed a timely Petition for Review of a Proposed Decision and  
12 Order issued on May 10, 2011, in which the industrial appeals judge affirmed the orders of the  
13 Department dated September 14, 2009, November 2, 2009, October 16, 2009, November 25, 2009,  
14 November 30, 2009, December 29, 2009, and January 29, 2010, and reversed and remanded the  
15 orders of the Department dated October 30, 2009, and January 15, 2010.

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

18 **ISSUES**

19 In these appeals, the Board resolves the following issues:

- 20 1. Was Mr. Gramelt no longer eligible for time loss compensation benefits  
21 as of July 8, 2009, because he was no longer temporarily, totally  
22 disabled within the meaning of RCW 51.32.090?
- 23 2. Was the light duty job which Christenson offered Mr. Gramelt a valid job  
24 offer within the meaning of WAC 296-19A-010(4)?
- 25 3. Did the Department have to take into account the amount of money  
26 Mr. Gramelt paid for parking while he performed the light duty job  
27 Christenson offered him when it calculated his loss of earning power  
28 benefits?
- 29 4. Did the Department incorrectly calculate Mr. Gramelt's monthly rate of  
30 time loss compensation benefits because it did not include the sum of  
31 \$9 per hour which Christenson paid him as and for "zone pay" and it did  
32 not include an accurate number of Mr. Gramelt's dependents?
5. Did the Department incorrectly calculate the amount of the loss of  
earning power benefits to which Mr. Gramelt was entitled during the  
inclusive periods from August 17, 2009, through September 13, 2009,  
September 28, 2009, through October 11, 2009, and October 26, 2009,  
through November 8, 2009, because the calculation was based on an

1 incorrect calculation of his monthly rate of time loss compensation  
2 benefits?

3 6. Did Mr. Gramelt develop a mental health disorder because of the  
4 conditions his industrial injury proximately caused and which required  
5 proper and necessary treatment as of January 15, 2010?

6 7. As of January 15, 2010, did Mr. Gramelt require further proper and  
7 necessary treatment for any condition his industrial injury proximately  
8 caused?

### 7 **RELEVANT FACTS**

8 The industrial appeals judge accurately summarized the evidence in the Board's record in  
9 the Proposed Decision and Order. We will reiterate some of the evidence in order to clearly explain  
10 our conclusions.

11 Mr. Gramelt's entire relevant work history has been as an electrician. On the date he was  
12 injured, November 7, 2008, the claimant was married and he had three dependents, two of whom  
13 were over the age of 18 but were college students. At all times relevant to this decision,  
14 Mr. Gramelt resided in Dallas, Oregon, which is due west of Salem, Oregon.

15 The lumbar injury that is the subject of this appeal happened during the course of  
16 Mr. Gramelt's employment as a journeyman electrician with Christenson Electric, Inc. (hereafter  
17 Christenson). Mr. Gramelt's job was to help erect a windmill farm that Christenson was building in  
18 the Goldendale, Washington area. Because the work site was remote, Christenson paid the  
19 claimant \$9.00 per hour for "zone pay" as well as his usual wages of \$34.15 an hour. The  
20 employer also contributed \$1,240.80 per month for Mr. Gramelt's health care benefits.

21 As a result of Mr. Gramelt's industrial injury, Darrell Brett, M.D., a neurosurgeon, operated  
22 on the claimant on January 30, 2009, and performed a left-sided laminectomy and discectomy for a  
23 recurrent disc herniation at the L4-5 level of the claimant's spine, and he explored the L5-S1 spinal  
24 level. Mr. Gramelt had previously undergone laminectomy surgery at his L4-5 spinal level as the  
25 result of an injury that occurred in Oregon.

26 In July 2009, Christenson offered Mr. Gramelt a light-duty job as an administrative assistant  
27 in its Portland office. He accepted the offer and Christenson paid Mr. Gramelt \$10.00 per hour.  
28 The claimant stated that he had to pay \$12.95 per day to park at the only location that was close to  
29 Christenson's office building.

30 The distance between the claimant's home and Portland is 68 miles. Dr. Brett understood  
31 that Mr. Gramelt had limitations on his ability to sit, so he approved the job offer so long as the  
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1 claimant stopped three times and walked about for five minutes each time during his commutes to  
2 and from Portland. The claimant followed Dr. Brett's recommendation.

3 Even though he had "[v]ery little" (10/1/10 Tr. at 43) experience or knowledge about  
4 computer systems, Mr. Gramelt's primary light-duty job at Christenson was to scan paper  
5 documents into the computer system of the business in its effort to become paperless. The  
6 claimant performed the work until late November 2009, when he was unable to work because of  
7 foot surgery for a condition that is not related to the claim before us. Because of what he called  
8 mental stress associated with the job at Christenson, Mr. Gramelt did not return to work after his  
9 foot operation.

10 Todd Martin is a vocational rehabilitation counselor who, beginning on May 6, 2010,  
11 evaluated Mr. Gramelt's ability to work. He characterized the Portland office job the claimant  
12 performed as one that is not generally available in the labor market, in part because while the job  
13 was clerical in nature, Mr. Gramelt did not type, did not have any skills in working with Windows,  
14 Word, or Excel computer programs, and had no experience at answering telephones in an office  
15 setting. Mr. Martin declared that the lack of computer skills ruled out the possibility that Mr. Gramelt  
16 could work as a construction estimator. Mr. Martin said the claimant was not employable in the  
17 competitive labor market as a customer service worker because he had no skills or experience in,  
18 among other things, sales, cashiering, computers, or inventory control. The vocational expert  
19 declared that it was unreasonable to expect Mr. Gramelt to commute 68 miles each way to Portland  
20 in view of his need to stop and walk three times for five minutes each way.

21 On September 2, 2009, two months before Mr. Gramelt ended his light duty job, William  
22 Peffley, D.O. who was Mr. Gramelt's primary care physician, diagnosed the claimant as suffering  
23 from severe depression. The doctor thereafter treated Mr. Gramelt with anti-depressant and sleep  
24 aid medications.

25 Dr. Peffley determined that the claimant's industrial injury was a proximate cause of the  
26 depression. He elaborated on his reasoning as follows:

27 Well, I think probably three things. Two I can substantiate well because  
28 it's documented, and one is just a gut feeling. First is that, you know, he  
29 had family members die, which is always depressing. Well, it's usually  
30 depressing, I should say. And number two, he was suffering from the  
31 chronic pain which is mentioned throughout the notes, very  
32 disheartening for him. Those are the two I can substantiate well.

The third I see very commonly with patients who get—have pain and  
can't work, can't provide for their families. It seems to be very  
disheartening to them, they're somewhat emasculated and can't provide

1 for their family, the sense of worth goes down, and that's where those  
2 questions about feeling guilty come in. They just feel like they're a  
3 burden on people, and I would bet that that was playing into how he was  
feeling.

4 Peffley Dep. at 18 and 19.

5 In October 2009, a little over one month after Dr. Peffley first diagnosed Mr. Gramelt as  
6 having a mental health disorder, Stephen Voris, a social worker, began counseling Mr. Gramelt for  
7 what the witness concluded was an adjustment disorder with a depressed mood and anxiety. Mr.  
8 Voris concluded that the considerable stress Mr. Gramelt experienced because of his inability to  
9 work at his usual job and frustration over the circumstances surrounding his performance of the  
10 light-duty job at Christenson were causes of the mental health disorder. Mr. Voris averred that as  
11 of January 15, 2010, Mr. Gramelt was "still having a lot of problems with his mood and his sleep"  
12 (Voris Dep. at 19) and that the claimant continued to require counseling for the problems.

13 Russel Vandebelt, M.D., is a psychiatrist who examined Mr. Gramelt on July 19, 2010. As  
14 the result of his interview of the claimant and review of his medical records, Dr. Vandebelt  
15 ascertained that Mr. Gramelt suffered from major depression. The one-time examining physician  
16 determined, however, that there was insufficient information to causally relate the condition to  
17 Mr. Gramelt's industrial injury. The psychiatrist knew that the claimant's mother had recently died  
18 and that his cousin and the cousin's family had been killed in a motor vehicle accident.  
19 Dr. Vandebelt determined that those circumstances, as well as difficulties with his marriage and  
20 finances, and the fact that he was not working and he had uncertainty about his occupational future  
21 probably caused Mr. Gramelt's severe depression. The doctor acknowledged that Mr. Gramelt  
22 denied having any financial, marital, or health stressors before he was hurt at Christenson.  
23 Dr. Vandebelt asserted that Mr. Gramelt's 2008 injury was not a factor in the back pain that the  
24 claimant experienced. It appears the doctor believed Mr. Gramelt's prior injury in Oregon caused  
25 the pain.

### 26 **DECISION**

27 The Industrial Insurance Act does not specifically define temporary total disability. Its  
28 meaning is derived from RCW 51.08.160 and the holdings in *Leeper v. Department of Labor &*  
29 *Indus.*, 123 Wn.2d 803 (1994), and *Bonko v. Department of Labor & Indus.*, 2 Wn. App. 22 (1970).  
30 Those authorities establish that a worker is temporarily, totally disabled when he or she is unable to  
31 obtain or perform any form of gainful occupation in the competitive labor market on a reasonably  
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1 continuous basis because of conditions proximately caused by the worker's industrial injury or  
2 occupational disease.

3 Mr. Gramelt was no longer eligible for time loss compensation benefits after July 7, 2009,  
4 because he began performing the job Christenson offered him the next day. Mr. Gramelt's earning  
5 capacity at that time was limited to the light-duty kinds of work he performed for the employer.  
6 Pursuant to RCW 51.32.090(3), the Department properly determined that the claimant was eligible  
7 for loss of earning power benefits after he began that job.

8 In the appeal assigned Docket No. 09 21629, the September 14, 2009 Department order in  
9 which the Department terminated Mr. Gramelt's time loss compensation benefits after July 7, 2009,  
10 is correct and is affirmed.

11 Mr. Gramelt's Time Loss Compensation and Loss of Earning Power Benefits

12 RCW 51.08.178 declares the wages a worker received from all employment at the time he  
13 or she was injured is one basis for the worker's rate of time loss compensation benefits. In relevant  
14 part, the statute specifies that the reasonable value of boarding and housing an employer pays a  
15 worker shall be included in the calculation. We are convinced that the zone pay Christenson paid  
16 to Mr. Gramelt was intended to compensate him for housing and boarding, and it should have been  
17 included in the Department's wage replacement benefit formula.

18 The Department should also have included Mr. Gramelt's two children who were over the  
19 age of 18 but attending college as his dependents. In RCW 51.08.030, the Washington Legislature  
20 defined "child" as including children who are less than 23 years old and who are permanently  
21 enrolled at a full time course in an accredited school.

22 No authority in statute, regulation, or case law exists for us to agree with Mr. Gramelt's  
23 argument that the Department should have taken into account the parking costs he incurred in  
24 order to work at Christenson's Portland office when it calculated his loss of earning power benefits.  
25 In the appeal assigned Docket No. 09 21726, the Department decision dated October 16, 2009, is  
26 affirmed.

27 Based on the evidence before us, we are persuaded that when it established Mr. Gramelt's  
28 monthly rate of time loss compensation benefits, the Department should have taken into  
29 consideration that he had three dependents and that his earnings were \$43.15 per hour on the date  
30 he was injured. The October 30, 2009 Department order on appeal under Docket No. 09 23363, is  
31 reversed and this matter is remanded to the Department with direction to take those factors into  
32



1 account when it recalculates Mr. Gramelt's monthly rate of time loss compensation benefits, and to  
2 take such other and further action as follow from the recalculation.

3 Because the Department erroneously established Mr. Gramelt's monthly rate of time loss  
4 compensation benefits, it follows that the loss of earning power orders it issued on appeal under  
5 Docket Nos. 10 10725, 10 10726, 10 11821, and 10 12524 are incorrect and must be reversed.  
6 The matters are remanded to the Department with direction to recalculate Mr. Gramelt's loss of  
7 earning power benefits in accordance with the recalculation it makes regarding his rate of time loss  
8 compensation benefits, and to take such other and action as the law and the facts dictate.

### 9 The Mental Health Condition

10 The evidence unambiguously establishes that Mr. Gramelt suffered from major depression  
11 on the date when the Department closed his claim. The only truly contested issue relevant to the  
12 claimant's mental health condition was whether his injury at Christenson was a proximate cause of  
13 the disorder.

14 A worker's industrial injury or occupational disease need be only one proximate cause of a  
15 condition in order for him or her to receive workers' compensation coverage for the condition.  
16 *Wendt v. Department of Labor & Indus.*, 18 Wn. App. 674 (1977); WPI 155.06. In this appeal,  
17 Dr. Peffley, who was Mr. Gramelt's attending physician, identified three probable proximate causes  
18 of the claimant's depression, two of which were the chronic pain generated by his industrial injury  
19 and his inability to work.

20 Dr. Vandebelt, who examined Mr. Gramelt only once, declared that the claimant's injury at  
21 Christenson and its consequences were not proximate causes of the major depression that he  
22 diagnosed. The psychiatrist decided that Mr. Gramelt's industrial injury did not play any causative  
23 role in the claimant's chronic pain. Dr. Vandebelt testified: "I said that his back problems were not  
24 new and that they did not arise as a result of an occupational injury." Vandebelt Dep. at 36. The  
25 record clearly established that after he recovered from the surgery he had in Oregon, Mr. Gramelt  
26 returned to work as a journeyman electrician without any restrictions and without any need for  
27 treatment up to the date when he was injured at Goldendale.

28 Dr. Vandebelt explained that the real proximate causes of Mr. Gramelt's major depression  
29 were his "current difficulties with marital distress, that he was currently not working, that he had  
30 financial stress, and that he had uncertainty about his occupational future; in other words, what he  
31 was going to do occupationally in the future." Vandebelt Dep. at 22. Mr. Gramelt maintained that  
32 he did not experience any of those problems before he was injured at Christenson and no evidence

1 in the record suggests otherwise. Indeed, as a journeyman electrician, Mr. Gramelt's usual hourly  
2 wage was \$34.15, and it does not appear that he had any extended periods of unemployment.

3 We find Dr. Vandenberg's opinion regarding the proximate cause of Mr. Gramelt's  
4 depression to be unpersuasive because it is probable that the claimant's chronic pain and financial  
5 difficulties were generated by his industrial injury. A clear proximate cause connection between  
6 Mr. Gramelt's industrial injury and his uncertainty about his occupational future exists.

7 The psychiatrist recommended that Mr. Gramelt be treated for his depression by means of  
8 administration of antidepressant and antipsychotic medications and resumption of  
9 counseling/psychotherapy. Dr. Peffley also recommended that the claimant be treated for his  
10 depression.

11 For the foregoing reasons, we reverse the January 15, 2010 Department order on appeal  
12 under Docket No. 10 12125, and remand the matter to the Department with directions to issue an  
13 order in which it accepts responsibility for Mr. Gramelt's major depression, keeps the claim open for  
14 further proper and necessary treatment, and to thereafter take such other and further indicated  
15 action.

#### 16 Validity of Christenson's Job Offer

17 Dr. Brett determined that Mr. Gramelt was able to perform the job Christenson offered him  
18 so long as he stopped and walked three times each way during his commute. Even though the  
19 claimant viewed the job as make-work that was not a permanent employment opportunity, the  
20 record as a whole was persuasive that Christenson employed people to perform the functions it had  
21 Mr. Gramelt do before it put the claimant in the light-duty position, and that the job was more  
22 probably than not permanent in nature.

23 Nevertheless, we are convinced that the clerical job was not valid as that word is used  
24 regarding vocational matters in industrial insurance claims. To be valid the employment had to be  
25 within Mr. Gramelt's relevant labor market. As WAC 296-19A-010(4) states in relevant part: "The  
26 labor market must be within a reasonable commuting distance and be consistent with the  
27 industrially injured or ill worker's physical and mental capacities."

28 "Reasonable" means: "Governed by or in accordance with reason or sound thinking;" "within  
29 the bounds of common sense;" "not extreme or excessive." *Webster's II New Riverside University*  
30 *Dictionary*, 980 (1994).

31 Mr. Gramelt's necessary round trip commute to and from Portland was 136 miles and unless  
32 he could find a more suitable spot for doing so, he had to pull to the side of the road six times and

1 walk for a total of 30 minutes each day during his drive. Under the circumstances, the commute  
2 was not reasonable because in view of Mr. Gramelt's work-related physical limitations, it was  
3 beyond the bounds of common sense, and was extreme and excessive.

4 In the appeal assigned Docket No. 09 21630, the November 13, 2009 Department order is  
5 reversed and the matter is remanded to the Department with direction to issue an order in which  
6 declares that Christenson's offer to Mr. Gramelt of clerical work in its Portland office is not valid and  
7 to thereupon take such other and further action as the law and the facts dictate.

### 8 **FINDINGS OF FACT**

- 9 1. On December 29, 2008, the claimant, Richard M. Gramelt, filed an  
10 Application for Benefits with the Department of Labor and Industries, in  
11 which he alleged that he had been injured on December 2, 2008 [*sic*  
12 November 7, 2008], during the course of his employment with  
13 Christenson Electric, Inc. (Christenson). On February 6, 2009, the  
14 Department allowed the claim for the injury of November 7, 2008.  
15 Christenson protested the order on February 17, 2009, but the  
16 Department affirmed the provisions of the order on February 24, 2009.

17 On July 9, 2009, the Department ended payment of time loss  
18 compensation benefits to Mr. Gramelt as paid through July 7, 2009, for  
19 the stated reason that he was released to return to work. The order was  
20 communicated to Mr. Gramelt on July 13, 2009. The claimant protested  
21 the order on September 8, 2009. The Department affirmed the  
22 provisions of the order on September 14, 2009. On November 13,  
23 2009, Mr. Gramelt filed a Notice of Appeal with the Board of Industrial  
24 Insurance Appeals from the Department order dated September 14,  
25 2009. The Board agreed to hear the appeal and on January 4, 2010,  
26 under Docket No. 09 21629, it issued Order Granting Appeal.

27 On April 13, 2009, the Department established the rate of Mr. Gramelt's  
28 monthly time loss compensation benefits based on his status as a  
29 married individual with one dependent and whose wages were in the  
30 monthly sum of \$6,010.40 because he worked 8 hours per day, 5 days  
31 per week, and he was paid \$34.15 per hour and because Christenson  
32 contributed the sum of \$1,240.80 per month for health care benefits.  
Mr. Gramelt protested the order on April 17, 2009. The Department  
affirmed the provisions of the order on October 30, 2009. On  
December 23, 2009, Mr. Gramelt filed a Notice of Appeal with the Board  
from the order. The Board agreed to hear the appeal and on  
January 25, 2010, it issued Order Granting Appeal under Docket  
No. 09 23363.

On September 11, 2009, the Department paid loss of earning power  
benefits to Mr. Gramelt for the period from August 17, 2009, through  
August 30, 2009. The order was communicated to the claimant on  
September 14, 2009. Mr. Gramelt protested the order on November 12,  
2009, but the Department affirmed the provisions of the order on

1 November 25, 2009. On January 22, 2010, Mr. Gramelt filed a Notice of  
2 Appeal from the order with the Board. The Board agreed to hear the  
3 appeal and on February 4, 2010, under Docket No. 10 10725, it issued  
4 Order Granting Appeal.

5 On October 16, 2009, the Department issued a decision which advised  
6 Mr. Gramelt that parking fees could not be taken into consideration in  
7 setting his rate of loss of earning power benefits. On November 16,  
8 2009, the claimant filed a Notice of Appeal with this Board from the  
9 decision and the Board agreed to hear the appeal. On January 4, 2010,  
10 the Board issued Order Granting Appeal under Docket No. 09 21726.

11 On November 2, 2009, the Department issued a decision in which it  
12 declared that the light duty job which Christenson offered to Mr. Gramelt  
13 was a valid job offer. On November 13, 2009, the claimant filed a Notice  
14 of Appeal with the Board from the Department decision. The Board  
15 agreed to hear the appeal and on January 4, 2010, under Docket  
16 No. 09 21630, it issued Order Granting Appeal.

17 On September 25, 2009, the Department paid loss of earning power  
18 benefits to the claimant for the period from August 31, 2009, through  
19 September 13, 2009. The claimant protested the order on  
20 November 24, 2009. The Department affirmed the provisions of the  
21 order on November 30, 2009. On January 22, 2010, Mr. Gramelt filed a  
22 Notice of Appeal with the Board, which agreed to hear the appeal and  
23 under Docket No. 10 10726, issued Order Granting Appeal on  
24 February 4, 2010.

25 On October 28, 2009, the Department paid loss of earning power  
26 benefits to Mr. Gramelt for the period from September 28, 2009, through  
27 October 11, 2009. Mr. Gramelt protested the order on December 23,  
28 2009. The Department affirmed the provisions of the order on  
29 December 29, 2009. The claimant filed a Notice of Appeal with the  
30 Board from the December 29, 2009 order on February 17, 2010. On  
31 March 8, 2010, the Board agreed to hear the appeal and it issued Order  
32 Granting Appeal under Docket No. 10 11821.

On November 23, 2009, the Department paid loss of earning power  
benefits to the claimant for the period from October 26, 2009, through  
November 8, 2009. Mr. Gramelt protested the order on January 21,  
2010, but on January 29, 2010, the Department affirmed the provisions  
of the November 23, 2009 order. Mr. Gramelt filed a Notice of Appeal  
with the Board from the order on March 4, 2010. Under Docket  
No. 10 12524, the Board agreed to hear the appeal and it issued Order  
Granting Appeal on March 15, 2010.

On January 15, 2010, the Department closed Mr. Gramelt's claim with  
compensation for permanent partial disability consistent with the degree  
of disability represented by Category 2 of WAC 296-20-280, but it did  
not issue any warrant because the Department determined that  
Mr. Gramelt suffered from the same degree of low back impairment prior

1 to November 7, 2008. The claimant filed a Notice of Appeal with the  
2 Board from the Department order on February 26, 2010. On April 6,  
3 2010, under Docket No. 10 12125, the Board agreed to hear the appeal  
and it issued Order Granting Appeal.

- 4 2. Mr. Gramelt was born on May 4, 1960. He graduated from high school  
5 and attended college for less than two years. The claimant's only  
6 relevant work experience has been as a journeyman electrician. He has  
lived in Dallas, Oregon for many years.
- 7 3. In 2007, Mr. Gramelt underwent laminectomy surgery at the L4-5 level  
8 of his spine. He recovered fully from the operation and approximately  
9 six months after the surgery, he returned to journeyman electrician work  
without restrictions.
- 10 4. On and before November 7, 2008, Christenson Electric, Inc. (hereafter  
11 Christenson), employed Mr. Gramelt to assist in erecting a windmill farm  
12 in the Goldendale, Washington area. The claimant's job required him to  
climb steps inside the body of windmills to a height of 300 feet and to  
13 work while suspended from a harness.
- 14 5. Because Christenson's work site was remote, the business paid the  
15 claimant \$9.00 per hour for "zone pay" as well as his usual wages of  
\$34.15 an hour. The employer also contributed \$1,240.80 per month for  
16 Mr. Gramelt's health care benefits.
- 17 6. Mr. Gramelt sustained a low back injury during the course of his  
18 employment with Christenson on November 7, 2008, when a co-worker  
lowered him to the ground during an exercise in which the workers  
19 practiced rescuing co-workers from windmills. As Mr. Gramelt reached  
the ground, the impact pushed his knees to his chest and the claimant  
20 experienced the immediate onset of low back and buttock pain.
- 21 7. Mr. Gramelt's industrial injury proximately caused a herniated disc at the  
22 L4-5 level of his spine for which on January 30, 2009, Darrell Brett,  
M.D., performed a left-sided laminectomy and discectomy for a recurrent  
23 disc herniation at the L4-5 level of the claimant's spine and he explored  
the L5-S1 spinal level. The industrial injury also caused Mr. Gramelt to  
24 develop chronic pain and major depression.
- 25 8. On November 7, 2008, Mr. Gramelt was married, one dependent lived  
26 with him and his wife, and two of his children, who were over the age of  
18 but less than 23 years old, were attending an accredited college on a  
27 full-time basis.
- 28 9. As of July 8, 2009, Mr. Gramelt began working as a light duty job for  
29 Christenson in its Portland, Oregon office at the hourly wage of \$10.  
Other than temporarily performing this job, he was unable to obtain or  
30 perform any form of gainful occupation on a reasonably continuous  
basis.
- 31 10. The difference in Mr. Gramelt's earning capacity when he performed  
32 light duty work for Christenson as compared to the wages he earned

1 when he was employed as a journeyman electrician exceeded 5 percent  
2 and the loss of earning power existed during the periods from  
3 August 17, 2009, through September 13, 2009, September 28, 2009,  
4 through October 11, 2009, and October 26, 2009, through November 8,  
5 2009.

- 6 11. The light-duty job Christenson offered to Mr. Gramelt was permanent in  
7 nature, and Christenson employed other people to do the job before the  
8 claimant began doing so.
- 9 12. The distance between Dallas and Portland, Oregon is 68 miles.
- 10 13. In order to commute between Dallas and Portland, Oregon, Mr. Gramelt  
11 had to stop and walk about for five minutes three times during each leg  
12 of his commute because of the low back condition his injury at  
13 Christenson proximately caused.
- 14 14. Mr. Gramelt paid \$12.95 per day for parking during the time when he  
15 performed light duty work for Christenson at its Portland office.
- 16 15. Portland was not within Mr. Gramelt's relevant labor market in view of  
17 the physical effects his industrial injury proximately caused.
- 18 16. As of January 15, 2010, the conditions which Mr. Gramelt's November 7,  
19 2008 industrial injury proximately caused were not fixed and stable and  
20 the conditions required further proper and necessary treatment.

#### CONCLUSIONS OF LAW

- 21 1. The Board of Industrial Insurance Appeals has jurisdiction over the  
22 parties to and the subject matters of these appeals.
- 23 2. In its order dated October 30, 2009, the Department incorrectly  
24 calculated Mr. Gramelt's monthly wages as that term is defined in  
25 RCW 51.08.178. The Department correctly determined that parking  
26 fees could not be used as a factor in establishing Mr. Gramelt's rate of  
27 loss of earning power benefits, as that term is used in RCW 51.32.090.  
28 Christenson's job offer to Mr. Gramelt was not valid because the job was  
29 not located within Mr. Gramelt's labor market as that term is defined in  
30 WAC296-19A-010(4).
- 31 3. As of July 8, 2009, other than temporarily performing a light-duty job at  
32 Christenson, Mr. Gramelt was a temporarily, totally disabled within the  
meaning of RCW 51.32.090.
4. The Department incorrectly calculated Mr. Gramelt's rate of loss of  
earning power benefits, as that term is used in RCW 51.32.090, for the  
period from August 17, 2009, through August 30, 2009.
5. The Department incorrectly calculated Mr. Gramelt's rate of loss of  
earning power benefits, as that term is used in RCW 51.32.090, during  
the period from August 31, 2009, through September 13, 2009.

- 1 6. The Department incorrectly calculated Mr. Gramelt's rate of loss of  
2 earning power benefits, as that term is used in RCW 51.32.090 during  
3 the period from October 26, 2009, through November 8, 2009.
- 4 7. As of January 15, 2010, the conditions that Mr. Gramelt's November 7,  
5 2008, industrial injury proximately caused were not fixed and stable and  
6 they required further proper and necessary treatment within the meaning  
7 of RCW 51.36.010.
- 8 8. **Docket No. 09 21629:** The Department order dated September 14,  
9 2009, is correct and is affirmed.
- 10 9. **Docket No. 09 21630:** The Department decision dated November 2,  
11 2009, is incorrect and is reversed. This matter is remanded to the  
12 Department with directions to declare that Christenson's job offer to  
13 Mr. Gramelt was not valid and to thereafter take such other and further  
14 action as the law and the facts dictate.
- 15 10. **Docket No. 09 21726:** The Department order dated October 16, 2009,  
16 is correct and is affirmed.
- 17 11. **Docket No. 09 23363:** The October 30, 2009 order of the Department of  
18 Labor and Industries is incorrect and is reversed. This matter is  
19 remanded to the Department with directions to recalculate Mr. Gramelt's  
20 monthly rate of time loss compensation benefits, based on the facts that  
21 on November 7, 2008, Mr. Gramelt was married, he had three  
22 dependents, his earnings were \$43.15 per hour, and Christenson paid  
23 the monthly sum of \$1,240.80 for his health care benefits. The  
24 Department shall thereafter take such other and further action as the law  
25 and the facts dictate.
- 26 12. **Docket No. 10 10725:** The Department order dated November 25,  
27 2009, is incorrect and is reversed. This matter is remanded to the  
28 Department with directions to recalculate Mr. Gramelt's rate of loss of  
29 earning power benefits from August 17, 2009, through August 30, 2009,  
30 and to take such other and further action as the law and the facts  
31 dictate.
- 32 13. **Docket No. 10 10726:** The Department order dated November 30, 2009  
is incorrect and is reversed. This matter is remanded to the Department  
with directions to recalculate Mr. Gramelt's rate of loss of earning power  
benefits from August 31, 2009, through September 13, 2009, and to  
take such other and further action as the law and the facts dictate.
14. **Docket No. 10 11821:** The Department order dated December 29,  
2009, is incorrect and is reversed. This matter is remanded to the  
Department with directions to recalculate Mr. Gramelt's rate of loss of  
earning power benefits from September 28, 2009, through October 11,  
2009, and to take such other and further action as the law and the facts  
dictate.

- 1 15. **Docket No. 10 12125:** The Department order dated January 15, 2010,  
2 is incorrect and is reversed. This matter is remanded to the Department  
3 with directions to accept responsibility for major depression and keep  
4 the claim open for further proper and necessary treatment; to pay  
5 temporary total disability benefits for periods of time when Mr. Gramelt  
6 was not performing light duty work for Christenson; and to thereafter  
7 take such other and further action as the law and the facts dictate.  
8  
9 16. **Docket No. 10 12524:** The Department order dated January 29, 2010,  
10 is incorrect and is reversed. This matter is remanded to the Department  
11 with directions to recalculate Mr. Gramelt's rate of loss of earning power  
12 benefits from October 26, 2009, through November 8, 2009, and to take  
13 such other and further action as the law and the facts dictate.

14 Dated: July 14, 2011.

15 BOARD OF INDUSTRIAL INSURANCE APPEALS

16 /s/ \_\_\_\_\_  
17 DAVID E. THREEDY Chairperson

18 /s/ \_\_\_\_\_  
19 FRANK E. FENNERTY, JR. Member