

Gramelt, Richard

[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.]

Scroll down for order.

**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
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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.

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

Dated: July 14, 2011.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____ Chairperson
DAVID E. THREEDY

/s/_____ Member
FRANK E. FENNERTY, JR.