# Lee, Stanley

## APPLICATION FOR BENEFITS

### Application to reopen treated as accident report

An application to reopen a claim for a prior injury, filed within one year of a new injury, may properly be considered as a claim for that new injury where information concerning the new incident has been supplied to the Department. **….*In re Stanley Lee*, BIIA Dec., 09,425 (1959)** [*Editor's Note*: *See also In re John Svicarovich*, BIIA Dec., 08,205 (1957), **APPLICATION TO REOPEN CLAIM.**]

Scroll down for order.

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

| | | |
|---|---|---|
| **IN RE: STANLEY LEE** | **)** | **DOCKET NO. 9425** |
| | **)** | |
| **CLAIM NO. C-189871** | **)** | **DECISION AND ORDER** |

APPEARANCES:

Claimant, Stanley Lee, by
Walthew, Warner & Keefe, per
R. H. Thompson, Charles F. Warner, and Thomas P. Keefe

Employer, Weyerhaeuser Timber Company, by
Huntington and Huntington, per
Lester Huntington, and E. A. Roles, Safety Engineer

Department of Labor and Industries,
The Attorney General, per
James E. Nelson, Assistant

Appeal filed by the employer, Weyerhaeuser Timber Company, on November 27, 1957, from an order of the supervisor of industrial insurance dated October 2, 1957, reopening this claim for authorized treatment and action as indicated. **REVERSED AND REMANDED**.

## DECISION

The claimant, Stanley Lee, sustained an industrial injury to his back in the course of his employment with the Weyerhaeuser Timber Company on October 7, 1954. The claim was allowed, medical treatment provided, time-loss compensation paid, and on March 15, 1956, the claim was closed with a permanent partial disability award of 30% of the maximum allowable for unspecified disabilities. On March 26, 1956, the claimant appealed to this board from the closing order and on September 10, 1956, the board entered an order dismissing the appeal. On August 16, 1957, the claimant applied to reopen his claim for aggravation and on October 2, 1957, the supervisor of industrial insurance entered an order reopening the claim for further treatment and action as indicated.

It is undisputed in this case that the claimant suffered an acute exacerbation of his back condition which required medical treatment while he was engaged in falling a tree with a power saw On August 7, 1957, in the course of his employment with one Vincent Aiken, and the only issue presented by this appeal is whether this was a spontaneous exacerbation attributable to his 1954 injury while working for the Weyerhaeuser Timber Company or whether the acute condition which necessitated further medical treatment on August 7, 1957, was due to a new injury on that date. In

other words, the claimant's right to additional relief under the act, either on the theory of aggravation due to his 1954 injury or an aggravation resulting from a new industrial injury, is definitely established by the testimony in the record and the real dispute involved, if any, is between two employers, one of whom, unfortunately, is not a party to these proceedings. The claimant, however, rested his case on the theory that the aggravation of his condition occurring on August 7, 1957, was attributable to his 1954 injury while working for the Weyerhaeuser Timber Company and this issue, therefore, must be determined from the record before us.

The claimant described his 1954 injury as follows:

> "A Well, as I recall it was around 10:00 or 10:30 in the morning and this particular instance I ran out on the log to take the tongs off, and when you reach the part where you go down there, you have to either catch onto something or go on down without any warning whatsoever. Something just tore loose in the small of my back and there I was."

The medical evidence in the record establishes that the claimant has a congenital low back defect known as a spondylolisthesis which made his back "more prone to be injured than someone else's back perhaps which is considered normal," and that he should not have engaged in heavy work. However, the record also indicates that the claimant had worked in the woods since he was sixteen years old and had never had any back difficulties prior to his injury on October 7, 1954. He did not return to work following that injury until sometime in August, 1956, when he worked for several weeks driving a logging truck. Thereafter, in October, 1956, he started to work for Vincent Aiken "making shakes and boards," which, he stated, "consists of hard work." Although the claimant had some back pain during this period, he worked regularly and apparently had no serious difficulty until August 7, 1956, when "My back went haywire in the same place."

He explained what occurred at that time as follows:

> "A I was falling a tree and on one side it was too far up to reach and on the other I was bent over in a forward position. When I went to straighten up, the pain was so great I felt the pain and let out a bellow and there I was. I couldn't straighten up again."

Following this incident he was taken by ambulance to Portland where he came under the care of Dr. Harley B. Hiestand, an orthopedic surgeon.

Dr. Hiestand, who was called as a witness by the claimant, had previously examined the claimant on December 28, 1955, in connection with his 1954 injury and he filled out the application

to reopen the claimant's claim based on that injury, which was filed on August 16, 1957. In this connection, the doctor stated:

> "A He gave a history of having had episodes of recurring pain and stiffness in the low back and I felt that he had another acute exacerbation of what he described, this was probably the worst he had had, and that is essentially an acute exacerbation of a chronic low back disability."

Although Dr. Hiestand originally expressed the opinion that the condition which he observed in August, 1957, was a direct result of the claimant's injury on October 7, 1954, "based on the history given," it was developed on cross examination that he had not received a history of the incident occurring on August 7, 1957, and, when asked to assume the circumstances surrounding that incident as testified to by the claimant, Dr. Hiestand stated "I think if he had no pain at the time and this occurred immediately following the incident, it would in my opinion probably be the cause." When further asked to assume that the claimant had some back pain prior to the incident on August 7, 1957, but that he suffered the severe acute pain as testified to by the claimant at that time, Dr. Hiestand expressed the opinion that the incident on August 7, 1957, was a "contributing factor" to the condition which he treated.

Dr. Edward Davis, a neurosurgeon, who had examined the claimant on June 11, 1956, and again on September 18, 1957, also testified when called as a witness by the claimant, that the claimant "apparently had an aggravation of his back complaints since I had seen him previously" and that "I thought that this whole thing dated back to his initial injury" in October, 1954. However, on cross examination with reference to the effect of the incident on August 7, 1957, Dr. Davis testified that "Certainly, whatever happened at that time exacerbated his pain." Dr. Davis also stated that his examination disclosed no true neurological findings and that the claimant's difficulties were all within the field of orthopedics and that "I may have been overstepping my bounds" in stating in a letter to the Department that "I thought he had suffered an aggravation of his low back complaints."

The board is convinced after a study of the record in this case that the claimant's low back disability resulting from his 1954 injury was aggravated by the incident occurring in the course of his employment while falling a tree on August 7, 1957. If this case had come to the board on an appeal from an order rejecting a claim based on the August 7, 1957, incident, the board, on the evidence in the present record, would have had to allow the claim in view of the decision of our supreme court

in the case of Dayton v. Department of Labor and Industries, 45 Wn. (2d) 797, and similar cases. In order to sustain the supervisor's order from which this appeal was taken, the board would have to find that the claimant did not sustain a new injury on August 7, 1957, and that he suffered a spontaneous exacerbation of his low back condition due entirely to his 1954 injury. This we cannot do on the record before us.

Although more than a year has now elapsed since the claimant's injury on August 7, 1957, it appears to the board, in light of the decisions of our supreme court in the cases of Nelson v. Department of Labor and Industries, 9 Wn. (2d) 621, Kralevich v. Department of Labor and Industries, 23 Wn. (2d) 640, and Georgia Pacific Plywood Company v. Department of Labor and Industries, 47 Wn. (2d) 893, that the department may properly consider the application which the claimant filed to reopen his claim based on his 1954 injury, as a claim for a new injury, particularly if it was supplemented by information received by the department concerning the incident on August 7, 1957, prior to one year from that date. In the board's opinion, therefore, this claim should be remanded to the department of labor and industries with direction to set aside its order of October 2, 1957, and to determine whether or not the claimant's application to reopen this claim ate action in connection therewith.

## FINDINGS

In view of the foregoing, and after reviewing the entire record herein, the board finds as follows:

1. The claimant, Stanley Lee, sustained an industrial injury to his back in the course of his employment with the Weyerhaeuser Timber Company on October 7, 1954. His claim based on this injury was allowed, medical treatment provided, time-loss compensation paid, and on March 15, 1956, the supervisor of industrial insurance issued an order closing the claim with a permanent partial disability award of 30% of the maximum allowable for unspecified disabilities. On March 26, 1956, the claimant appealed to this board from the closing order and on September 10, 1956, the board issued an order dismissing the appeal. On August 16, 1957, the claimant filed an application to reopen his claim for aggravation of his condition, and on October 2, 1957, the supervisor issued an order reopening the claim for further treatment and action as indicated. The employer, Weyerhaeuser Timber Company, filed an appeal from the last-mentioned order to this board on November 27, 1957.

2. While bent forward in an awkward position falling a tree with a power saw in the course of his employment with Vincent Aiken on August 7, 1957, the claimant suffered a sudden severe back pain when he

attempted to straighten up and he was taken to a hospital by ambulance and subsequently received medical care and treatment.

3. The acute exacerbation of the claimant's low back disability on August 7, 1957, occurred as a result of the above-described incident, and said aggravation was not due to the claimant's 1954 injury.

## CONCLUSIONS

Based on the foregoing findings of fact, the board concludes:

1. The above-numbered claim should be remanded to the department of labor and industries with direction to cancel and set aside the order of October 2, 1957, reopening said claim and to determine if the claimant's application to reopen the claim filed on August 16, 1957, together with such further information as the department received concerning the circumstances surrounding the acute exacerbation of the claimant's low back condition on August 7, 1957, may properly be considered as a claim based on a new injury occurring on that date and, if so, to take appropriate action in connection therewith.

## ORDER

Now, therefore, it is hereby ORDERED that the supervisor's order issued herein on October 2, 1957, be, the same is hereby, reversed and the above-numbered claim is remanded to the department of labor and industries with direction to deny the claimant's application to reopen said claim, but to determine if said application filed on August 16, 1957, together with such further information as the department received concerning the circumstances surrounding the acute exacerbation of the claimant's low back condition on August 7, 1957, may properly be considered as a claim based on a new injury occurring on that date and, if so, to take appropriate action in connection therewith.

Dated this 3rd day of June, 1959.

BOARD OF INDUSTRIAL INSURANCE APPEALS

_____

J. HARRIS LYNCH Chairman

_____

ARTHUR BORCHER Member

_____

HAROLD J. PETRIE Member