

## Lee, Stanley

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### 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**

1 <b>IN RE: STANLEY LEE</b>	)	<b>DOCKET NO. 9425</b>
2	)	
3 <u><b>CLAIM NO. C-189871</b></u>	)	<b>DECISION AND ORDER</b>
4		

5 APPEARANCES:

6  
7 Claimant, Stanley Lee, by  
8 Walthew, Warner & Keefe, per  
9 R. H. Thompson, Charles F. Warner, and Thomas P. Keefe

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

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

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

22 **DECISION**

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25 The claimant, Stanley Lee, sustained an industrial injury to his back in the course of his  
26 employment with the Weyerhaeuser Timber Company on October 7, 1954. The claim was  
27 allowed, medical treatment provided, time-loss compensation paid, and on March 15, 1956, the  
28 claim was closed with a permanent partial disability award of 30% of the maximum allowable for  
29 unspecified disabilities. On March 26, 1956, the claimant appealed to this board from the closing  
30 order and on September 10, 1956, the board entered an order dismissing the appeal. On August  
31 16, 1957, the claimant applied to reopen his claim for aggravation and on October 2, 1957, the  
32 supervisor of industrial insurance entered an order reopening the claim for further treatment and  
33 action as indicated.

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35 It is undisputed in this case that the claimant suffered an acute exacerbation of his back  
36 condition which required medical treatment while he was engaged in falling a tree with a power saw  
37 On August 7, 1957, in the course of his employment with one Vincent Aiken, and the only issue  
38 presented by this appeal is whether this was a spontaneous exacerbation attributable to his 1954  
39 injury while working for the Weyerhaeuser Timber Company or whether the acute condition which  
40 necessitated further medical treatment on August 7, 1957, was due to a new injury on that date. In  
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1 other words, the claimant's right to additional relief under the act, either on the theory of  
2 aggravation due to his 1954 injury or an aggravation resulting from a new industrial injury, is  
3 definitely established by the testimony in the record and the real dispute involved, if any, is between  
4 two employers, one of whom, unfortunately, is not a party to these proceedings. The claimant,  
5 however, rested his case on the theory that the aggravation of his condition occurring on August 7,  
6 1957, was attributable to his 1954 injury while working for the Weyerhaeuser Timber Company and  
7 this issue, therefore, must be determined from the record before us.

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11 The claimant described his 1954 injury as follows:

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13 "A Well, as I recall it was around 10:00 or 10:30 in the morning and  
14 this particular instance I ran out on the log to take the tongs off, and  
15 when you reach the part where you go down there, you have to either  
16 catch onto something or go on down without any warning whatsoever.  
17 Something just tore loose in the small of my back and there I was."  
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19 The medical evidence in the record establishes that the claimant has a congenital low back defect  
20 known as a spondylolisthesis which made his back "more prone to be injured than someone else's  
21 back perhaps which is considered normal," and that he should not have engaged in heavy work.  
22 However, the record also indicates that the claimant had worked in the woods since he was sixteen  
23 years old and had never had any back difficulties prior to his injury on October 7, 1954. He did not  
24 return to work following that injury until sometime in August, 1956, when he worked for several  
25 weeks driving a logging truck. Thereafter, in October, 1956, he started to work for Vincent Aiken  
26 "making shakes and boards," which, he stated, "consists of hard work." Although the claimant had  
27 some back pain during this period, he worked regularly and apparently had no serious difficulty until  
28 August 7, 1956, when "My back went haywire in the same place."  
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34 He explained what occurred at that time as follows:

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36 "A I was falling a tree and on one side it was too far up to reach and  
37 on the other I was bent over in a forward position. When I went to  
38 straighten up, the pain was so great I felt the pain and let out a bellow  
39 and there I was. I couldn't straighten up again."  
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41 Following this incident he was taken by ambulance to Portland where he came under the care of  
42 Dr. Harley B. Hiestand, an orthopedic surgeon.

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44 Dr. Hiestand, who was called as a witness by the claimant, had previously examined the  
45 claimant on December 28, 1955, in connection with his 1954 injury and he filled out the application  
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1 to reopen the claimant's claim based on that injury, which was filed on August 16, 1957. In this  
2 connection, the doctor stated:

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4 "A He gave a history of having had episodes of recurring pain and  
5 stiffness in the low back and I felt that he had another acute  
6 exacerbation of what he described, this was probably the worst he had  
7 had, and that is essentially an acute exacerbation of a chronic low back  
8 disability."  
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10 Although Dr. Hiestand originally expressed the opinion that the condition which he observed in  
11 August, 1957, was a direct result of the claimant's injury on October 7, 1954, "based on the history  
12 given," it was developed on cross examination that he had not received a history of the incident  
13 occurring on August 7, 1957, and, when asked to assume the circumstances surrounding that  
14 incident as testified to by the claimant, Dr. Hiestand stated "I think if he had no pain at the time and  
15 this occurred immediately following the incident, it would in my opinion probably be the cause."  
16 When further asked to assume that the claimant had some back pain prior to the incident on August  
17 7, 1957, but that he suffered the severe acute pain as testified to by the claimant at that time, Dr.  
18 Hiestand expressed the opinion that the incident on August 7, 1957, was a "contributing factor" to  
19 the condition which he treated.  
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25 Dr. Edward Davis, a neurosurgeon, who had examined the claimant on June 11, 1956, and  
26 again on September 18, 1957, also testified when called as a witness by the claimant, that the  
27 claimant "apparently had an aggravation of his back complaints since I had seen him previously"  
28 and that "I thought that this whole thing dated back to his initial injury" in October, 1954. However,  
29 on cross examination with reference to the effect of the incident on August 7, 1957, Dr. Davis  
30 testified that "Certainly, whatever happened at that time exacerbated his pain." Dr. Davis also  
31 stated that his examination disclosed no true neurological findings and that the claimant's difficulties  
32 were all within the field of orthopedics and that "I may have been overstepping my bounds" in  
33 stating in a letter to the Department that "I thought he had suffered an aggravation of his low back  
34 complaints."  
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40 The board is convinced after a study of the record in this case that the claimant's low back  
41 disability resulting from his 1954 injury was aggravated by the incident occurring in the course of his  
42 employment while falling a tree on August 7, 1957. If this case had come to the board on an appeal  
43 from an order rejecting a claim based on the August 7, 1957, incident, the board, on the evidence in  
44 the present record, would have had to allow the claim in view of the decision of our supreme court  
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1 in the case of Dayton v. Department of Labor and Industries, 45 Wn. (2d) 797, and similar cases.  
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3 In order to sustain the supervisor's order from which this appeal was taken, the board would have  
4 to find that the claimant did not sustain a new injury on August 7, 1957, and that he suffered a  
5 spontaneous exacerbation of his low back condition due entirely to his 1954 injury. This we cannot  
6 do on the record before us.  
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9 Although more than a year has now elapsed since the claimant's injury on August 7, 1957, it  
10 appears to the board, in light of the decisions of our supreme court in the cases of Nelson v.  
11 Department of Labor and Industries, 9 Wn. (2d) 621, Kraleovich v. Department of Labor and  
12 Industries, 23 Wn. (2d) 640, and Georgia Pacific Plywood Company v. Department of Labor and  
13 Industries, 47 Wn. (2d) 893, that the department may properly consider the application which the  
14 claimant filed to reopen his claim based on his 1954 injury, as a claim for a new injury, particularly if  
15 it was supplemented by information received by the department concerning the incident on August  
16 7, 1957, prior to one year from that date. In the board's opinion, therefore, this claim should be  
17 remanded to the department of labor and industries with direction to set aside its order of October  
18 2, 1957, and to determine whether or not the claimant's application to reopen this claim ate action  
19 in connection therewith.  
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### 25 **FINDINGS**

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27 In view of the foregoing, and after reviewing the entire record herein, the board finds as  
28 follows:  
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- 30 1. The claimant, Stanley Lee, sustained an industrial injury to his back in  
31 the course of his employment with the Weyerhaeuser Timber Company  
32 on October 7, 1954. His claim based on this injury was allowed, medical  
33 treatment provided, time-loss compensation paid, and on March 15,  
34 1956, the supervisor of industrial insurance issued an order closing the  
35 claim with a permanent partial disability award of 30% of the maximum  
36 allowable for unspecified disabilities. On March 26, 1956, the claimant  
37 appealed to this board from the closing order and on September 10,  
38 1956, the board issued an order dismissing the appeal. On August 16,  
39 1957, the claimant filed an application to reopen his claim for  
40 aggravation of his condition, and on October 2, 1957, the supervisor  
41 issued an order reopening the claim for further treatment and action as  
42 indicated. The employer, Weyerhaeuser Timber Company, filed an  
43 appeal from the last-mentioned order to this board on November 27,  
44 1957.
- 45 2. While bent forward in an awkward position falling a tree with a power  
46 saw in the course of his employment with Vincent Aiken on August 7,  
47 1957, the claimant suffered a sudden severe back pain when he

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

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4 3. The acute exacerbation of the claimant's low back disability on August 7,  
5 1957, occurred as a result of the above-described incident, and said  
6 aggravation was not due to the claimant's 1954 injury.

7 **CONCLUSIONS**

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

19 **ORDER**

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21 Now, therefore, it is hereby ORDERED that the supervisor's order issued herein on October  
22 2, 1957, be, the same is hereby, reversed and the above-numbered claim is remanded to the  
23 department of labor and industries with direction to deny the claimant's application to reopen said  
24 claim, but to determine if said application filed on August 16, 1957, together with such further  
25 information as the department received concerning the circumstances surrounding the acute  
26 exacerbation of the claimant's low back condition on August 7, 1957, may properly be considered  
27 as a claim based on a new injury occurring on that date and, if so, to take appropriate action in  
28 connection therewith.  
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33 Dated this 3rd day of June, 1959.

34 BOARD OF INDUSTRIAL INSURANCE APPEALS

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37 J. HARRIS LYNCH Chairman

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40 ARTHUR BORCHER Member

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43 HAROLD J. PETRIE Member  
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