

## **Bowers, Carolyn**

---

### **SCOPE OF REVIEW**

#### **Ultimate issue**

In an appeal from a closing order where the ultimate issue which resolved the appeal was coverage of the worker's mental health condition and the determination that the condition was in need of treatment, it is error to enter findings and conclusions regarding fixity of other conditions, permanent partial disability, permanent total disability, and temporary total disability. ...*In re Carolyn Bowers, BIIA Dec., 10 18398 (2011)*

Scroll down for order.

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

1 **IN RE: CAROLYN M. BOWERS** ) **DOCKET NO. 10 18398 & 10 18398-A**  
2 **CLAIM NO. W-302825** ) **DECISION AND ORDER**  
3

4 **APPEARANCES:**

5 Claimant, Carolyn M. Bowers, by  
6 Law Office of James Rolland, P.S., per  
7 T. J. Martin

8 Self-Insured Employer, Weyerhaeuser Co. & Subsidiaries, by  
9 Reinisch Mackenzie, P.C., per  
10 Michael H. Weier

11 Department of Labor and Industries, by  
12 The Office of the Attorney General, per  
13 Sean M. Davis, Assistant

14 The claimant, Carolyn M. Bowers, filed an appeal (Docket No. 10 18398) with the Board of  
15 Industrial Insurance Appeals on August 11, 2010, from an order of the Department of Labor and  
16 Industries dated August 2, 2010. In this order, the Department closed the claim with no award for  
17 permanent partial disabilities, and with time-loss compensation benefits as paid through April 21,  
18 2010.

19 The self-insured employer, Weyerhaeuser Co. & Subsidiaries, filed a cross-appeal (Docket  
20 No. 10 18398-A) with the Board of Industrial Insurance Appeals on September 30, 2010, from the  
21 order of the Department dated August 2, 2010. The Department order is **REVERSED AND**  
22 **REMANDED.**

**DECISION**

23 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for  
24 review and decision. The claimant and employer filed timely Petitions for Review of a Proposed  
25 Decision and Order issued on June 9, 2011, in which the industrial appeals judge reversed and  
26 remanded the Department order dated August 2, 2010.

27 The Board has reviewed the evidentiary rulings in the record of proceedings and the  
28 Proposed Decision and Order and finds that no prejudicial error was committed. The rulings are  
29 affirmed.

30 The issues presented by this appeal and the evidence presented by the parties are  
31 adequately set forth in the Proposed Decision and Order. Finding of Fact No. 6 of the Proposed  
32 Decision and Order determined that "[a]s of August 2, 2010, Ms. Bowers' bilateral epicondylitis had

1 reached maximum medical improvement and was not in need of further medical treatment."  
2 Findings of Fact Nos. 5, and 7, and Conclusions of Law Nos. 2, and 6 of the Proposed Decision  
3 and Order determine that Ms. Bowers' mental health conditions, diagnosed as major depressive  
4 disorder and pain disorder, were proximately caused by the industrial injury, have not reached  
5 maximum medical improvement, and require the claim be held open for treatment and other action  
6 as indicated. We have previously held that it is error to enter findings regarding fixity of one  
7 condition while directing the Department to provide treatment on a separate condition. A claim is  
8 either open or closed; it cannot be open with respect to some conditions and closed with respect to  
9 others. *In re Bette Pike*, BIIA Dec., 88 3366 (1990) and *In re Lulu M. Anderson*, Dckt. No. 09 19941  
10 (November 5, 2010).

11 We have granted review because the determination by our industrial appeals judge that  
12 Ms. Bowers has a condition proximately caused by the industrial injury that is in need of further  
13 proper and necessary medical treatment is inconsistent with other determinations made in the  
14 Proposed Decision and Order. Our industrial appeals judge's decision to relate Ms. Bowers' mental  
15 health condition to the industrial injury and to find that the condition required further proper and  
16 necessary treatment, removes from our consideration issues regarding fixity of other conditions  
17 proximately caused by the industrial injury. This also precludes us from determining whether  
18 Ms. Bowers was total temporary disabled from April 22, 2010, through August 2, 2010, because the  
19 Department has not addressed the mental health conditions in making the administrative decision  
20 to deny time loss compensation benefits for this period.

21 In our recent Decision and Order, *In re Olander Frazier*, Dckt. No.09 21221 (July 11, 2011),  
22 we addressed the issue presented by this appeal.

23 Finding of Fact No. 11 and Conclusion of Law No. 3 of the Proposed Decision and  
24 Order determine that Mr. Frazier's accepted bilateral shoulder condition was fixed  
25 and stable and not in need of further medical treatment, while Finding of Fact No. 13  
26 and Conclusion of Law No. 4 determine that Mr. Frazier's mental health conditions  
27 have not reached maximum medical improvement and require the claim be held  
28 open for treatment and other action as indicated. We have previously held that it is  
29 error to enter findings regarding fixity of one condition while directing the Department  
30 to provide treatment on a separate condition. A claim is either open or closed; it  
31 cannot be open with respect to some conditions and closed with respect to others.  
32 *In re Bette Pike*, BIIA Dec., 88 3366 (1990) and *In re Lulu M. Anderson*, Dckt. No.  
09 19941 (November 5, 2010).

1 While the *Pike* and *Anderson* decisions stand for the proposition stated, we are also  
2 mindful that RCW 51.52.104 states that the industrial appeals judge "shall" make  
3 findings and conclusions as to "each contested" issue of fact and law "as well as the  
4 order" based thereon. See also WAC 263-12-140. The critical concerns in the *Pike*  
5 and *Anderson* directive are that we should not give the Department contradictory  
6 directives and that we should not make findings or conclusions that might  
7 reasonably be interpreted to usurp the Department's original jurisdiction to  
8 adjudicate the claim further once the matter is returned to the Department. In  
9 *Anderson*, we addressed the issue of the scope of findings on issues presented in  
10 an appeal. In *Anderson*, the issue was whether any condition caused by the  
11 industrial injury had worsened between the terminal dates. We found that the  
12 claimant established worsening of her cervical condition. While the evidence also  
13 established that the claimant's right shoulder condition had not worsened, we held  
14 that a finding regarding the fixity of the right shoulder was superfluous. The ultimate  
15 issue presented in the appeal was whether any worsening of the conditions caused  
16 by the industrial injury had worsened. Finding that the cervical condition had  
17 worsened decided the ultimate issue in that appeal.

18 *Frazier*, at 2.

19 The same rule applies in Ms. Bowers appeal. The ultimate issues resolved in this appeal  
20 were the allowance of Ms. Bowers' mental health conditions of major depressive disorder and pain  
21 disorder, and the determination that these conditions were in need of further proper and necessary  
22 treatment. Allowance of the mental health conditions and a determination that they are in need of  
23 treatment precludes further findings and conclusions regarding; fixity of other conditions, permanent  
24 partial disability, permanent total disability, and total temporary disability. Accordingly, we revise  
25 the findings of fact and conclusions of law.

26 After consideration of the Proposed Decision and Order and the Petitions for Review, and a  
27 careful review of the entire record before us, we are persuaded that the preponderance of the  
28 evidence supports allowance of Ms. Bowers' mental health conditions diagnosed as major  
29 depressive disorder and pain disorder, and supports the need for further proper and necessary  
30 treatment.

### 31 **FINDINGS OF FACT**

- 32
1. The claimant, Carolyn M. Bowers, suffered an industrial injury to her elbows on February 27, 2000. The Application for Benefits in Claim No. W-302825 was filed with the self-insured employer, Pacific Veneer, Ltd., on April 11, 2000, and with the Department of Labor and Industries on June 8, 2001. On June 19, 2001, the Department issued an order in which it allowed the claim.

1 On August 2, 2010, the Department issued an order in which it closed the  
2 claim with time-loss compensation benefits as paid through April 21, 2010,  
3 and with no award for permanent partial disabilities. The claimant filed an  
4 appeal with the Board on August 11, 2010, to the order dated August 2,  
5 2010. The appeal was assigned Docket No. 10 18398, and was granted  
6 by an order of the Board dated September 10, 2010.

7 On September 30, 2010, the self-insured employer filed a cross-appeal  
8 with the Board to the order dated August 2, 2010. The appeal was  
9 assigned Docket No. 10 18398-A, and was granted by an order of the  
10 Board dated October 13, 2010.

- 11 2. The claimant, Carolyn M. Bowers, was injured on February 27, 2000,  
12 while in the course of her employment with Pacific Veneer, Ltd., a  
13 Weyerhaeuser owned company, when she injured both her left and right  
14 elbows.
- 15 3. As a result of Ms. Bowers' industrial injury, she developed bilateral  
16 epicondylitis, and mental health conditions diagnosed as major depressive  
17 disorder and pain disorder, all of which were proximately caused or  
18 aggravated by the industrial injury of February 27, 2000.
- 19 4. As of August 2, 2010, Ms. Bowers' major depressive disorder and pain  
20 disorder had not reached maximum medical improvement, and were in  
21 need of further proper and necessary treatment.

#### CONCLUSIONS OF LAW

- 22 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties  
23 to and the subject matter of this appeal.
- 24 2. Pursuant to RCW 51.36.010, Carolyn M. Bowers' mental health conditions  
25 diagnosed as major depressive disorder and pain disorder, proximately  
26 caused by the industrial injury, had not reached maximum medical  
27 improvement as of August 2, 2010, and she is entitled to further proper  
28 and necessary medical treatment.
- 29 3. The order of the Department of Labor and Injuries dated August 2, 2010,  
30 in which it closed the claim with time-loss compensation benefits as paid  
31 through April 21, 2010, and with no award for permanent partial disability,  
32 is incorrect and is reversed. This claim is remanded to the Department to  
enter an order in which it allows Ms. Bowers' industrially related mental  
health conditions diagnosed as major depressive disorder and pain  
disorder, and directs the self-insured employer to provide further proper

1 and necessary treatment for these conditions, and to take such other and  
2 further action as is necessary and proper under the facts and the law.

3 DATED: September 9, 2011.

4 BOARD OF INDUSTRIAL INSURANCE APPEALS

5  
6 /s/ \_\_\_\_\_  
7 DAVID E. THREEDY Chairperson

8  
9  
10 /s/ \_\_\_\_\_  
11 FRANK E. FENNERTY, JR. Member

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32