

Houlihan, Kathleen

PERMANENT TOTAL DISABILITY (RCW 51.08.160)

Availability of work in a geographic area

Where a worker is qualified to perform telehealth nurse services, the job is not constrained by geographic boundaries like most jobs. ...*In re Kathleen Houlihan*, BIIA Dec., 19 26282 (2021) [dissent] [Editor's Note: The Board's decision was appealed to superior court under Spokane County Cause No. 21-2-02535-32]

Scroll down for order.

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

1 **IN RE: KATHLEEN A. HOULIHAN**) **DOCKET NO. 19 26282**
2)
3 **CLAIM NO. SK-27855**) **DECISION AND ORDER**
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5 The Department closed Ms. Houlihan's claim with time-loss compensation as paid and directed
6 the self-insured employer to pay an award for permanent partial disability. Ms. Houlihan contends
7 that although she could perform the essential physical demands of a telephonic/online (telehealth)
8 triage nurse on a full-time and reasonably continuous basis she does not possess the necessary
9 transferrable skills and training to obtain and successfully perform this particular position. She
10 maintained that she was permanently and totally disabled. Our industrial appeals judge reversed the
11 Department's closing order and remanded the matter to the Department with direction to order the
12 self-insured employer to pay Ms. Houlihan time-loss compensation benefits and then place her on
13 the pension rolls. The self-insured employer asks us to affirm the Department's closing order arguing
14 that Ms. Houlihan has the necessary skills and experience in her 42 years as a registered nurse to
15 obtain and perform the telehealth nurse position and that there is a positive labor market for this job
16 that would allow Ms. Houlihan to work from home on a full-time basis given that she is not restricted
17 geographically in accessing employers. We find that Ms. Houlihan is qualified to work as a telehealth
18 nurse based on her extensive education, training, and demonstrated abilities developed during her
19 lengthy and successful career as a registered nurse. The Department order dated October 18, 2019,
20 is **AFFIRMED**.
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DISCUSSION

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31 In assessing Ms. Houlihan's ability to work, we need not address her medical status as the
32 parties have stipulated that she is physically capable of performing the sedentary job of call nurse/
33 telephonic triage nurse. Instead, the issue of employability in this case turns squarely on whether
34 Ms. Houlihan has the necessary transferrable skills and training to obtain and perform this particular
35 job.
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38 As a threshold matter, we disagree with Judge Jarmon's determination that the telehealth
39 nurse position is not within Ms. Houlihan's established geographic labor market. Given that the
40 telehealth nurse position allows Ms. Houlihan to work remotely and from the comfort of her own home,
41 the job is not one that is constrained by geographic boundaries as is typically the case. Simply stated,
42 we do not interpret WAC 296-19A-010(4) so narrowly as to say that Ms. Houlihan's labor market is
43 limited to the Spokane and Missoula environs. Moreover, we disagree with Ms. Houlihan's argument
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1 that there must be some showing that jobs are specifically available in Spokane and Missoula,
2 Montana. Instead, the realities of remote working allows Ms. Houlihan to expand her labor market to
3 a nationwide market place and in particular, to the 25 states that currently participate in the enhanced
4 nursing license compact. When considering the testimony of Julie M. Busch, Vocational
5 Rehabilitation Counselor, that the demand for nurses is so high that organizations recruit from other
6 states; offer signing bonuses; and that the five employers she contacted in her labor market survey
7 affirmatively indicated that they would pay for the licensure for the particular state the employee was
8 being asked to cover, we are persuaded by the self-insured employer's contention that Ms. Houlihan's
9 labor market is anywhere the phone or internet can take her. As such, we give no weight to
10 Ms. Houlihan's argument that Ms. Busch's positive labor market survey should be discounted on the
11 basis that her labor market contacts were for employers not located in Washington or Montana.
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18 Turning to the issue of Ms. Houlihan's transferrable skills, we conclude that she is more than
19 qualified to perform the job duties of a telehealth nurse. In weighing the diametrically opposed
20 vocational evidence presented, Judge Jarmon found the testimony of Lori Allen, Certified
21 Rehabilitation Counselor, on this subject to be more persuasive. We come to a different result. Even
22 though Ms. Houlihan downplayed her computer and diagnostic assessment abilities and Ms. Allen
23 cited to these factors in concluding that the telehealth nurse position was contraindicated, we find
24 Ms. Busch's discussion on this matter to be more persuasive.
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28 With regard to the computer skills competency issue, Ms. Busch's opinion differs from that of
29 Ms. Allen in that she does not believe Ms. Houlihan has low computer skills because of her extensive
30 charting experience as a nurse and the fact that she used Epic, a visual interface data base and
31 proprietary health care software system during her time at Providence Sacred Heart. Ms. Busch
32 explained that because this system is one of the two that most hospitals use around the nation and
33 that other data bases for telephonic nurse installations share similar attributes, it was her opinion that
34 Ms. Houlihan was perfectly capable of working and handling cases or individuals via telephone.
35 Given Ms. Houlihan's experience using computers and in particular her use of the Epic interface data
36 base computer system as a charge nurse, and in the operating room at Providence Sacred Heart,
37 we are not persuaded by Ms. Allen's testimony that Ms. Houlihan is somehow a neophyte when it
38 comes to computers and incapable of doing the job of a telehealth nurse. We note from
39 Ms. Houlihan's testimony that she was provided computer training by Providence Sacred Heart to
40 use the Epic system and that this system was different from that used by Community Medical Center.
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1 She also testified that she was provided training to use the computer system used during her time as
2 a home health care nurse. Given that there is no suggestion in the record that Ms. Houlihan struggled
3 in using and/or comprehending any of the two hospitals' computer systems or the home health care
4 providers' system, we find it difficult to conclude that she will now be unable to use her computer
5 while performing the job of telehealth nurse. Instead, we are persuaded that with appropriate training,
6 as is customary with any new job, Ms. Houlihan will most certainly be able to navigate and use
7 whatever computer system any given employer utilizes in its organization.
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11 The self-insured employer also argues in their Petition for Review that the question of
12 transferable skills is not a test of whether Ms. Houlihan can do the exact same tasks as the job of
13 injury, but rather, does she have the skill set to perform the job of a telehealth nurse. Their point is
14 well taken and we conclude that the preponderance of the evidence establishes that she does. To
15 suggest that because Ms. Houlihan has left the hospital operating room setting, she somehow now
16 lacks the education and medical acumen to perform the tasks necessary of a telehealth nurse, is in
17 our opinion, disingenuous. It is well established that Ms. Houlihan has 42 years of experience as a
18 registered nurse. During this time, she worked as a home health care nurse for Partners in Home
19 Care (1984-1995), where she went into people's homes and set up medical services; maintained
20 records for the home health provider; performed medication management; coordinated outside
21 vendors; and provided other routine nursing services. As a staff nurse in the operating room at
22 Community Medical Center (1995-2012) and Providence Sacred Heart Medical Center (2012-2016),
23 she performed the job duties of scrub nurse (the nurse who hands the equipment to the operating
24 physician) and circulator (the nurse who ensures that the equipment is there and sterile; charting;
25 and attending as needed to the needs of the scrub nurse). Although no specific dates were given,
26 Ms. Houlihan testified that she served as a team leader and/or head in neurology, orthopedics, and
27 pediatrics for a "number of years"¹ while working at Community Medical Center. She explained that
28 if you were "experienced enough,"² you could perform the job duties of team leader. When
29 considering this wealth of experience and education which is well established in the record, we find
30 Ms. Busch's appraisal of Ms. Houlihan's transferable skills to be more accurate overall when
31 compared to Ms. Allen's employability assessment. It is for these reasons that we grant review and
32 **AFFIRM** the Department's closing order.
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46 ¹ 10/19/20 Tr. at 22.

47 ² 10/19/20 Tr. at 21.

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DECISION

In Docket No. 19 26282, the claimant, Kathleen A. Houlihan, filed an appeal with the Board of Industrial Insurance Appeals on December 9, 2019, from an order of the Department of Labor and Industries dated October 18, 2019. In this order, the Department affirmed as correct a previous order dated July 30, 2019. In that order, the Department closed Ms. Houlihan's claim with time-loss compensation benefits ended as paid through May 4, 2019, and directed the self-insured employer to pay a permanent partial disability impairment award equivalent to 24 percent of the amputation value of the left upper extremity. This order is correct and is **AFFIRMED**.

FINDINGS OF FACT

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1. On February 11, 2020, an industrial appeals judge certified that the parties agreed to include the Jurisdictional History in the Board record solely for jurisdictional purposes.
 2. Kathleen A. Houlihan has 42 years of experience as a registered nurse. During this time, she worked as a home health care nurse for Partners in Home Care and as a staff nurse in the OR at both Community Medical Center and Providence Sacred Heart Medical Center. She also served as a team leader and/or head in neurology, orthopedics, and pediatrics during her years working at Community Medical Center.
 3. As a proximate result of her July 24, 2016 industrial injury, Ms. Houlihan sustained a left shoulder strain and primary osteoarthritis of the left shoulder that was lit up and rendered symptomatic. Proper and necessary treatment for the industrial injury included a total left shoulder replacement (later left shoulder arthroplasty), which was performed on July 26, 2017. Unrelated to and not aggravated by the industrial injury were the conditions of arthritis of her hands and knees bilaterally, neither of which precluded the performance of her nursing job as of the date of her industrial injury.
 4. As of October 18, 2019, Ms. Houlihan's conditions proximately caused by the July 24, 2016 industrial injury were fixed and stable and did not need further proper and necessary treatment.
 5. As of October 18, 2019, Ms. Houlihan had a permanent partial disability proximately caused by the July 24, 2016 industrial injury equal to 24 percent of the amputation value of the left arm at or above the deltoid insertion or by disarticulation at the shoulder.
 6. As of May 4, 2019, the date time-loss compensation benefits ended, and as of October 18, 2019, the date the Department closed the claim, Ms. Houlihan could perform the essential physical demands of a telephonic/online (telehealth) triage nurse on a full-time and reasonably continuous basis.

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7. The telephonic/online (telehealth) triage nurse position is not a job which is limited to the geographic labor markets in the states of Washington and Montana. Given the realities of remote working and the fact that Ms. Houlihan can perform the job from the comfort of her home, her labor market is expanded nationwide.
 8. Given her extensive education and demonstrated abilities during her lengthy and successful career as a registered nurse, Ms. Houlihan has the necessary transferrable skills and training to obtain and successfully perform the job of telephonic/online (telehealth) triage nurse.
 9. Kathleen A. Houlihan was able to perform and obtain gainful employment on a reasonably continuous basis from May 5, 2019, through October 17, 2019.
 10. Kathleen A. Houlihan was able to perform and obtain gainful employment on a reasonably continuous basis as of October 18, 2019.

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CONCLUSIONS OF LAW


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1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in this appeal.
 2. Kathleen A. Houlihan was not a temporarily totally disabled worker within the meaning of RCW 51.32.090 from May 5, 2019 through October 17, 2019.
 3. Kathleen A. Houlihan's conditions proximately caused by the July 24, 2016 industrial injury were fixed and stable as of October 18, 2019, and are not entitled to further treatment. RCW 51.36.010.
 4. On October 18, 2019, Ms. Houlihan had a permanent partial disability, within the meaning of RCW 51.32.080, proximately caused by the July 24, 2016 industrial injury.
 5. Kathleen A. Houlihan was not a permanently totally disabled worker within the meaning of RCW 51.08.160, as of October 18, 2019.
 6. The Department order dated October 18, 2019, is correct and is affirmed.

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Dated: August 16, 2021.

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BOARD OF INDUSTRIAL INSURANCE APPEALS


LINDA L. WILLIAMS, Chairperson


JACK S. ENG, Member

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DISSENT

Ms. Houlihan's labor market is very much constrained by geographic boundaries because the issue before us is not the reality we'd prefer, but the reality that actually exists. Ms. Houlihan has done her entire nursing career in Washington. Washington is not a part of the enhanced nursing licensure compact that is required in order to work as a telehealth nurse so she is automatically not qualified to work in half the states prior to even getting to any of her other qualifications. The fact that they are "adding states" could actually work to Ms. Houlihan's detriment rather than her benefit because each of the states that is added to the compact prior to Washington becomes another state in which Ms. Houlihan is not qualified to work, further reducing her possibilities of employment. Additionally, the issue before us is what transferable skills Ms. Houlihan has now, not sometime in the future.

The real issue regarding Ms. Houlihan's transferable skills is that she received her nursing training prior to the inception of the modern Internet. The fact that she used various databases in her duties as a nurse does not mean that she is capable of utilizing one full time as a telehealth nurse. The vast majority of Ms. Houlihan's experience was as an operating room nurse where she was not doing general nursing, but relatively specialized nursing that had to do with preparing the operating rooms for surgeries. This involved limited charting in the computer system. Her general nursing was during the ten year period when she was a home health nurse. Again, this was a hands-on nursing position in people's homes that likely involved little computer use on a daily basis.

The fact that Ms. Houlihan had to use a hospital computer system as part of her job, does not mean she is qualified to switch to a position where she uses computer systems on a full time basis. How is Ms. Houlihan to help patients that need to understand how to use the telehealth system when she doesn't even understand it herself? Contrary to the majority's opinion, employers are not going to see Ms. Houlihan as competitive when they not only have to teach her how to use their system, but the very basics of computer use.

Ms. Houlihan is past the average American's minimum retirement age, she types 13 words a minute when accounting for errors (something that should definitely be accounted for in a medical record), and doesn't know how to use Zoom or other telehealth platforms. This is in addition to the fact that she is already not in competition in at least half of the country because of where she is licensed.

1 If this were a decision about whether Ms. Houlihan could be successful in a retraining plan to
2 learn all of these skills, that would be a different question. The Department determined that
3 Ms. Houlihan already has the skills to be successful as a telehealth nurse. The testimony, however,
4 shows she is woefully unprepared for that position. The fact that she couldn't even get a response
5 to her electronic applications until her daughter basically did them for her is more proof that
6 Ms. Houlihan does not have the transferable skills necessary to be successful at the telehealth nurse
7 position. The industrial appeals judge's Proposed Decision and Order was cognizant of the reality of
8 Ms. Houlihan's employability and I would adopt it. Therefore, I dissent.
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10 Dated: August 16, 2021.
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16 BOARD OF INDUSTRIAL INSURANCE APPEALS

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19 ISABEL A. M. COLE, Member
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3 **Addendum to Decision and Order**
4 **In re Kathleen A. Houlihan**
5 **Docket No. 19 26282**
6 **Claim No. SK-27855**
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8 **Appearances**

9 Claimant, Kathleen A. Houlihan, by Meyer Thorp, PLLC, per Stephen K. Meyer

10 Self-Insured Employer, Providence Health & Services WA, by Law Office of Robert M. Arim,
11 PLLC, per Robert M. Arim
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13 **Petition for Review**

14 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
15 and decision. The employer filed a timely Petition for Review of a Proposed Decision and Order
16 issued on April 2, 2021, in which the industrial appeals judge reversed and remanded the Department
17 order dated October 18, 2019. On July 13, 2021, Ms. Houlihan filed Claimant's Response to
18 Employer's Petition for Review.
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20 **Evidentiary Rulings**

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