

Antilla, Eino

PERMANENT PARTIAL DISABILITY (RCW 51.32.080)

Converting premature permanent partial disability award to time-loss compensation

Where the Department closed the claim with a permanent partial disability award but subsequently held the claim open and reinstated time-loss compensation, it was proper for the Department to "convert" a portion of the premature permanent partial disability award to time-loss compensation. ...*In re Eino Antilla*, BIIA Dec., 21,097 (1963)

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

1 **IN RE: EINO ANTILLA**) **DOCKET NO. 21,097**
2)
3 **CLAIM NO. C-669919**) **ORDER DENYING APPEAL**
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5 Appeal filed by the claimant, Eino Antilla, on November 14, 1963, from an order of the
6 supervisor of industrial insurance dated October 2, 1963, awarding the claimant time-loss
7 compensation for the eleven-month period from November 2, 1962, to October 2, 1963, less
8 "conversion of Permanent Partial Disability to time loss" in the amount of \$1890.00, leaving a net
9 amount paid to claimant of \$210.00. Appeal **DENIED**.
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DECISION

11 The record of the department of labor and industries reveals that this claim, for an industrial
12 injury sustained by the claimant on February 20, 1960, was closed (based on a report of an
13 orthopedic examination performed on November 1, 1962, together with a letter from the claimant's
14 attending physician giving his opinion of claimant's condition) by an order of the supervisor dated
15 December 11, 1962, with time-loss compensation for temporary total disability as paid through
16 November 1, 1962, and with a permanent partial disability award of 80% of the amputation value of
17 the left leg at or above the knee, 10% of the amputation value of the left, minor, forearm at the
18 upper third, 20% of the amputation value of the right, major, hand at the wrist, and 10% of the
19 maximum allowed for unspecified disabilities, for a total award of \$7323.75. The claimant appealed
20 from said order to this Board on January 30, 1963, alleging, among other things, that he was still in
21 need of medical treatment. Said appeal was denied because, on February 26, 1963, the supervisor
22 entered an order making the prior order of December 11, 1962, interlocutory pending further
23 investigation, pursuant to R.C.W. 51.52.060. Based on further medical opinions obtained, the
24 department continued to hold the claim open for further authorized medical treatments, and further
25 surgery was authorized in August of 1963.
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27 On October 2, 1963, the supervisor entered the order here appealed from, reinstating
28 claimant's temporary total disability status and awarding him time-loss compensation from
29 November 2, 1962 (the day following the date of previous termination of such compensation) to
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1 October 2, 1963, deducting from said amount, however, the sum of \$1890.00 as a partial
2 conversion of the previously paid permanent partial disability award to time-loss compensation.
3 The sole ground of claimant's appeal from said order is that this conversion was "not reasonable"
4 and that he should receive the full amount of time-loss compensation for the period in question
5 without any deduction for the permanent partial disability award conversion.
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9 In view of the record, this Board is convinced that the department's order of October 2, 1963,
10 was entirely correct and proper. It has been established by the record and determined by the
11 department, and not disputed by the claimant, that he was in fact temporarily totally disabled in
12 November and December of 1962 and has continued in said temporary disability status since that
13 time, and that his condition was not fixed in December of 1962. This being the case, he was not
14 entitled to any of the permanent partial disability award paid by the supervisor's order of December
15 11, 1962. A claimant cannot be classified as temporarily disabled and permanently disabled at the
16 same time. Franks v. Department of Labor and Industries, 35 Wn. (2d) 763; Hunter v. Department
17 of Labor and Industries, 43 Wn. (2d) 696.
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22 In effect, therefore, the \$7323.75 award paid to the claimant in December of 1962 should be
23 considered as an "advance" in that amount on his future time-loss compensation payable. Legally
24 there would be nothing to prevent the department from "converting" the entire \$7323.75 into time-
25 loss compensation, and deducting accordingly from further monthly installments as they may
26 become due. The department is not doing this, however, and has only converted \$1890.00 of the
27 permanent partial disability award into time-loss compensation, still leaving a balance of excess
28 payment of \$5433.75. Presumably this is on the assumption that, although the medical and
29 surgical treatment currently being given to the claimant is expected to improve his condition and
30 reduce his disability, it will still leave a substantial permanent disability, when his condition
31 eventually becomes fixed, equal to or in excess of the monetary value of \$543375.
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37 This appeal raises solely a question of law, and it is clear to the Board that the department's
38 order of October 2, 1963, was correct and proper under the law, and was entirely reasonable. Said
39 order should, pursuant to R.C.W. 51.52.080, be confirmed and this appeal should be denied.
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ORDER

Now, therefore, it is hereby ORDERED that the order of the supervisor of industrial insurance dated October 2, 1963, be, and the same is hereby, confirmed; and the claimant's above-numbered appeal from said order, filed herein on November 14, 1963, be, and the same is hereby, denied.

Dated this 13th day of December, 1963.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
J. HARRIS LYNCH Chairman

/s/
R. H. POWELL Member

/s/
HAROLD J. PETRIE Member