

Camp, Tom

SCOPE OF REVIEW

Time-loss compensation

The Board is without authority to determine entitlement to time-loss compensation for periods of time not covered by the Department order on appeal. ...*In re Tom Camp*, BIIA Dec., 38,035 (1973)

Scroll down for order.

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

1 **IN RE: TOM G. CAMP**) **DOCKET NO. 38,035**
2))
3 **CLAIM NO. F-840961**) **DECISION AND ORDER**
4 _____

5 **APPEARANCES:**

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7 Claimant, Tom G. Camp, by
8 Richard Perry

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10 Employer, Knob Hill Mines, Inc., by
11 Witherspoon, Kelley, Davenport & Toole, per
12 John Neff

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14 Department of Labor and Industries, by
15 The Attorney General, per
16 James D. Pack, Assistant
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18 This is an appeal filed by the employer on February 8, 1971, from orders of the Department
19 of Labor and Industries dated December 11, 1970 and December 17, 1970. The order of
20 December 11, 1970 modified a final order dated June 10, 1970 to an interlocutory order and
21 directed that the claim remain open for treatment. The order of December 17, 1970, converted
22 permanent partial disability awarded under the June 10, 1970 order to time loss compensation
23 covering the period from June 10, 1970 to December 11, 1970. **SUSTAINED AS TO BOTH**
24 **ORDERS.**

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28 **DECISION**

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30 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
31 and decision on timely Petitions for Review filed by the claimant and the Department of Labor and
32 Industries to a Proposed Decision and Order issued by a hearing examiner for this Board on July 6,
33 1972, in which the orders of the Department dated December 11 and December 17, 1970 were
34 sustained in part and reversed in part.
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37 The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no
38 prejudicial error was committed and said rulings are hereby affirmed.
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40 The prime issue raised by both petitions for review is whether or not the claimant was
41 temporarily totally disabled for the period from June 10, 1970 to December 10, 1970.
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43 Without hesitation, we find the claimant was so disabled during the aforesaid period and is
44 entitled to time loss compensation covering such period. We base our resolution of this issue upon
45 the testimony of Dr. Thomas P. Connors, the claimant's attending doctor for his industrial injury,
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1 whose opinion as to both disability and causation is entitled to greater weight than that expressed
2 by Drs. Phillip J. Suver and Gordon B. O'Neil, who examined the claimant on but one occasion.
3 Spalding v. Department of Labor and Industries, 29 Wn. 2d 115.
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5 Under the testimony of Dr. Connors, it is quite clear that the industrial injury aggravated a
6 pre-existing arthritic condition of the claimant's back, causing such condition to flare up and become
7 painfully disabling. During the period in question, the doctor hospitalized the claimant on two
8 occasions for low back and leg pain and described the claimant's condition during this period of
9 time as being such as to render him hardly able to walk. Quite obviously, the hearing examiner
10 attempted to segregate the claimant's pre-existing arthritis from the industrial aggravation thereof
11 and thereby treat them as two separate entities. The law precludes this type of segregation and
12 requires that the entire residual disability be attributed to the industrial injury. Miller v. Department
13 of Labor and Industries, 200 Wash. 674.
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16 In addition to invalidating the time loss compensation awarded the claimant from June 10,
17 1970 to December 10, 1970 the hearing examiner also denied all prospective time loss
18 compensation which might be awarded the claimant for any period of time subsequent to December
19 10, 1970, on the theory that if the Department's original determination and order granting time loss
20 was invalid, all subsequent time loss orders based upon that original determination would
21 necessarily have to be invalid also.
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24 The fallacy of this reasoning lies in the fact that each time loss order issued by the
25 Department constitutes an original determination in and of itself and is not in any way based upon
26 or determined by any other time loss order. Each time loss order is an independent adjudication by
27 the Department that the claimant was temporarily and totally disabled for whatever period of time is
28 specified in the order. It is based upon a certification of disability submitted by the attending doctor
29 covering the period of time specified in the order. Such order is a final appealable determination as
30 to the claimant's right to time loss compensation for that particular period of time. No time loss
31 order covering any period of time subsequent to December 10, 1970, is on appeal before us, and
32 we are therefore without jurisdiction to determine the claimant's eligibility or right to time loss
33 compensation for any period of time subsequent to December 10, 1970.
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FINDINGS OF FACT

Based on the record, the Board makes the following findings:

1. On July 21, 1969, the claimant, Tom G. Camp, suffered a myofascial lumbosacral strain of the low back while in the course of his employment with Knob Hill Mines, Inc. The injury was accepted by the Department of Labor and Industries, treatment provided, time loss compensation paid, and on June 10, 1970, the claim was closed with a permanent partial disability award of 25% of the maximum allowable for unspecified disabilities. On August 5, 1970, the claimant filed a notice of appeal, and on September 2, 1970, the Department issued an order holding its order of June 10, 1970 interlocutory. On November 6, 1970, the Department issued an order reopening the claim for treatment, and continuing to hold the June 10, 1970 order interlocutory. On December 11, 1970, the Department issued an order cancelling its order of November 6, 1970, and holding interlocutory its order of June 10, 1970, and directing that the claim remain open for treatment. On December 17, 1970, the Department issued an order granting time loss compensation from June 10, 1970 to December 10, 1970, and directing that such time loss compensation award be applied as a set off against the permanent partial disability award granted in its order of June 10, 1970. On February 8, 1971, the employer filed a notice of appeal from orders of the Department dated December 11, 1970 and December 17, 1970, and on March 5, 1971, the Board issued an order granting the appeal.
2. Appellate proceedings were conducted before the Board of Industrial Insurance Appeals, and on July 6, 1972, a hearing examiner for this Board entered a Proposed Decision and Order in connection with this appeal. Thereafter, within the period of time provided by law, Petitions for Review were filed and the case referred to the Board for review as provided by RCW 51.52.106.
3. On June 10, 1970, the claimant's condition was not fixed but was in need of further medical treatment.
4. During the period from June 10, 1970 to December 10, 1970, the claimant was unable to engage in any form of gainful employment on a reasonably continuous basis as a result of his industrial injury.

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CONCLUSIONS OF LAW

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

1. The Board has jurisdiction of the parties and subject matter of this appeal.
2. The claimant was temporarily totally disabled within the meaning of the Workmen's Compensation Act for the period from June 10, 1970 to December 10, 1970.

1 3. The order of the Department of Labor and Industries dated December
2 11, 1970, and the order of the Department dated December 17, 1970,
3 are both correct in all respects and should be affirmed.
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5 It is so ORDERED.

6 Dated this 5th day of March, 1973.
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8 BOARD OF INDUSTRIAL INSURANCE APPEALS

9
10 /s/
11 ROBERT C. WETHERHOLT Chairman

12
13 /s/
14 R.H. POWELL Member

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16 /s/
17 R.M. GILMORE Member
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