

Donnelly, Linda Crumpton

PERMANENT PARTIAL DISABILITY (RCW 51.32.080)

Rating by Board

The Board itself may select a category of impairment based on the medical findings and restrictions even in the absence of medical opinion of a specific category rating.

...In re Linda Crumpton Donnelly, BIIA Dec., 54,669 (1981)

Scroll down for order.

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

1 **IN RE: LINDA CRUMPTON DONNELLY) DOCKET NO. 54,669**
2)
3 **CLAIM NO. G-663238) DECISION AND ORDER**
4

5 APPEARANCES:

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7 Claimant, Linda Crumpton, by
8 Graham and Cohen, per
9 Norman W. Cohen and Matt L. Alexander

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11 Employer, Mission Supply Company,
12 None

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14 Department of Labor and Industries, by
15 The Attorney General, per
16 Peter T. Scott and Joseph Albo, Assistants
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18 This is an appeal filed by the claimant on June 14, 1979, from an order of the Department of
19 Labor and Industries dated May 29, 1979, which adhered to a prior order closing the claim with no
20 award for permanent partial disability. **REVERSED AND REMANDED.**

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22 **DECISION**

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24 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
25 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order
26 issued by a hearing examiner for this Board on June 20, 1980, in which the order of the Department
27 dated May 29, 1979 was sustained.

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29 The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no
30 prejudicial error was committed and said rulings are hereby affirmed.

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32 The claimant's appeal raises the question whether she developed a psychiatric condition,
33 causally related to her industrial injury of October 31, 1974. If so, the claimant alleges that on May
34 29, 1979 when her claim was closed with no disability award, she was permanently totally disabled
35 as the result of such psychiatric condition and should be granted benefits by the Department of
36 Labor and Industries concomitant to that status. It is the Department's position that a significant
37 portion of the claimant's overall psychiatric disability is causally related to events that occurred
38 subsequent and unrelated to the industrial injury, and thereby, the state fund should not bear full
39 responsibility. Erickson v. Department of Labor and Industries, 48 Wn. 2d 458 (1956).

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41 The claimant presented her own testimony, that of a friend, and the medical testimony by Dr.
42 James McDermott, a psychiatrist. The Department presented the testimony of Dr. John Burns, an
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1 orthopedic specialist, and Dr. Bernard Pipe, a psychiatrist. Dr. Burns was of the opinion that there
2 was no permanent disability of an organic nature that was causally related to the industrial injury at
3 the time of closing. He felt that her condition was consistent with the description of impairments
4 revealed by Category I of WAC 296-20-280, a designation which entitles the claimant to no
5 permanent partial disability award. Dr. Pipe diagnosed a depression but felt the emotional condition
6 was neither caused by nor aggravated by the industrial injury. It was his opinion that during most of
7 her life she had been an emotionally unstable person affected by events such as back injuries,
8 births, marital problems and similar significant events. He also felt that her emotional condition
9 would have been essentially as he found at the time that he examined her in 1979 whether she had
10 had the industrial injury or not.

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12 It is clear from Dr. Pipe's testimony that he did not feel the claimant's industrial injury in 1974
13 in any way permanently adversely affected the claimant's ability to function physically nor in an
14 employment situation.

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16 When Dr. McDermott first saw the claimant on December 1, 1976, he diagnosed a reactive
17 depression which he causally related to her 1974 industrial injury. On that initial evaluation, he was
18 "hopeful" that treatment would be useful and consequently did not make a judgment that the
19 claimant's condition was permanent. He stated:

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21 "She was partially disabled, but I was not of the opinion that it was
22 permanent at that point."
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25 Seeing her weekly through October 24, 1977, he noted that she was not particularly helped by the
26 treatment he provided, noting that "things" had gotten worse because of other elements in her life,
27 primarily her husband's dependence upon her. When the claimant's psychiatric condition
28 deteriorated to the point where she needed hospitalization, Dr. McDermott turned her care over to a
29 Dr. Faghin and did not see her again until October 1, 1979.

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31 In the interim between October 1977 and October 1979, the claimant had become pregnant
32 and given birth to a daughter who was eight months old at the time of his last evaluation. She
33 related that she had had a post-partum depression. He recounted that she admitted to being
34 volatile emotionally varying between elation and depression. Despite this, she was alert, well
35 oriented, had no thought disorders nor delusions or hallucinations, but was mildly depressed.
36 Based upon the condition as he found it, Dr. McDermott felt that it was possible for her to go back
37 to work but unlikely that she would. She had been off work for a significant period of time without
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1 improvement. He agreed with claimant's counsel's statement that on a more probably than not
2 basis she would be unable to return to gainful employment on a reasonably continuous basis.
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4 The majority is unable to accept as its conclusion that the claimant is permanently totally
5 disabled as a result of her industrial injury. We believe it is clear from the testimony of Drs. Pipe
6 and from statements of Dr. McDermott that the major factors now affecting the claimant's mental
7 health are from events which occurred subsequent to her industrial injury, e.g., divorce and
8 remarriage, childbirth with post-partum emotional complications and with continuing stress due to
9 the heavy dependence of her present husband.
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13 Nowhere in the record did either Dr. McDermott, and certainly not Dr. Pipe, attempt to give a
14 percentage rating reflecting the extent of the claimant's permanent impairment of mental health.
15 Neither did any physician attempt to describe the claimant's psychiatric limitations within the
16 categories for evaluating permanent impairment, WAC 296-20-330 and 296-20-340. Moreover,
17 neither did Dr. Pipe nor Dr. McDermott state specifically that the claimant's psychiatric condition
18 was fixed and stable. Dr. McDermott acknowledged the possibility of six months further treatment
19 of the claimant, but qualified that statement by indicating he was not at all optimistic of its success.
20 Given that qualification, we are unable to conclude that further treatment is required for the
21 claimant's condition and that his testimony viewed in the context it was presented established the
22 claimant's condition due to the injury was fixed.
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28 If we were to accept and rely upon the opinions of Dr. Pipe, it would be clear the claimant
29 should not be entitled to any compensation for disability for her injury. Yet we are aware that
30 having seen the claimant in a treating capacity and later as an examining physician, Dr. McDermott
31 is in a preferred position to evaluate the impact of the claimant's industrial injury upon her
32 permanent mental health. Groff v. Department of Labor and Industries, 65 Wn. 2d 35 (1964). The
33 opinions of Dr. Pipe would suggest that the claimant had a predisposition to the development of the
34 types of problems she now exhibits in her mental health if not a pre-existing disability relative
35 thereto. Still the claimant was able to function quite consistently in employment and in her private
36 life prior to the industrial injury. Therefore, we are not convinced that she had any pre-existing
37 permanent impairment which could be equated to a psychiatric partial disability prior to her
38 industrial injury. There being no prior disability, it is not important that Dr. McDermott did not
39 attempt to segregate the claimant's pre-injury psychiatric status from that of her post-injury
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1 psychiatric status causally related to the injury. cf. Orr v. Department of Labor and Industries, 10
2 Wn. App. 697 (1974).
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4 We must now turn our attention to whether Dr. McDermott's testimony provides a sufficient
5 basis for us to conclude that the claimant suffers from a permanent partial disability for impairment
6 in her mental health. Prior to October 1, 1974 when the current system for evaluating unspecified
7 partial disabilities was adopted, it was common to see permanent partial disability ratings
8 expressed in terms of a percentage of the maximum allowed for unspecified disabilities or simply as
9 a percentage compared to total bodily impairment. See, e.g., Page v. Department of Labor and
10 Industries, 52 Wn. 2d 706 (1958) and Johnson v. Department of Labor and Industries, 88 Wn. 2d
11 844 (1977). However, with the inception of the category system for rating permanent impairments,
12 percentage ratings became less material. See WAC 296-20-220(1)(e), Rule 5 and WAC 296-20-
13 670(1)(a), Rule 1.
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19 We believe that the system for evaluating unspecified disabilities as compared to total bodily
20 impairment for injuries occurring on or after October 1, 1974 does not encourage, much less
21 require, physicians who testify before this Board in such cases to state their opinions regarding
22 disability in terms of a percentage of total bodily impairment. It is entirely appropriate, and we
23 commonly observe, medical witnesses' testimony to be couched in terms of the category of
24 permanent impairment which they feel is appropriate.
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28 The critical question now becomes whether this Board has the authority to evaluate and
29 weigh testimonial evidence devoid of both a percentage and category rating and determine if a
30 prima facie case for permanent partial disability is established.
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32 The concepts of permanent partial disability and total permanent disability are separate
33 concepts with distinct features in the scheme of workers' compensation. We do not discern the law
34 of this state to declare that in evaluating permanent disabilities that testimony which states a worker
35 is permanently totally disabled automatically permits the trier of fact to find that a lesser disability
36 (permanent partial disability) exists in the alternative. What we do discern the law of this state to be
37 is that the trier of fact must award compensation for permanent partial disability on the basis of
38 medical testimony regarding bodily function loss, whether physical or psychological, and that such
39 awards must be within the "range" of expert testimony. Ellis v. Department of Labor and Industries,
40 88 Wn. 2d 844 (1977).
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1 Still, given the current scheme for rating permanent impairments for injuries occurring on or
2 after October 1, 1974, we do not believe the law requires that such "range" be stated in terms of
3 percentage of disability or be placed by a physician within any single category or continuum of
4 categories as reflected in the administrative code.
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7 We believe it is sufficient for the trier of fact to rely upon a description of impairments and
8 restrictions in its deliberations and align those restrictions within the framework of the existing
9 categories for evaluating permanent impairment. In short, we believe this Board may compare the
10 category descriptions with the record evidence, descriptive of physical or mental restrictions, and
11 choose the category which those restrictions most closely resemble. In so doing we believe the
12 permanent partial disability award which would follow would fall within the range of expert testimony
13 which case law requires.
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18 With respect to the claimant in this appeal, we turn to WAC 296-20-340 and observe that the
19 evidence in the record before us reveals the claimant to be subject to more than just "nervousness,
20 irritability, worry or lack of motivation" which is described by Category 1. Category 2 in total
21 describes an impairment of mental health that would be represented by:
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24 "Any and all permanent worsenings of preexisting personality traits or
25 character disorders where aggravation of preexisting personality trait or
26 character disorder is the major diagnosis; mild loss of insight, mildly
27 deficient judgment, or rare difficulty in controlling behavior, anxiety with
28 feelings of tension that occasionally limit activity; lack of energy or mild
29 apathy with malaise; brief phobic reactions under usually avoidable
30 conditions; mildly unusual and overly rigid responses that cause mild
31 disturbance in personal or social adjustment; rare and usually self-
32 limiting psycho-physiological reactions; episodic hysterical or conversion
33 reactions with occasional self-limiting losses of physical functions; a
34 history of misinterpreted conversations or events, which is not a
35 preoccupation; is aware of being absentminded, forgetful, thinking
36 slowly occasionally or recognizes some unusual thoughts; mild behavior
37 deviations not particularly disturbing to others; shows mild over-activity
38 or depression; personal appearance is mildly unkempt. Despite such
39 features, productive activity is possible most of the time. If organicity is
40 present, some difficulty may exist with orientation; language skills,
41 comprehension, memory; judgment; capacity to make decisions; insight;
42 or unusual social behavior; but the patient is able to carry out usual work
43 day activities unassisted."
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45 The majority concludes that the preponderance of evidence in the record before us reflects the
46 claimant's permanent impairment related to the injury to fall within the description above quoted,
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1 especially with respect to anxiety, limiting activity, self-limiting psycho-physiological reactions, mild
2 depression, but with productive activity possible most of the time. Given this state of affairs, we
3 believe the claimant is entitled to an award for permanent partial disability reflective of that
4 condition.
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7 **FINDINGS OF FACT**

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9 After a careful review of the record, the Board finds as follows:

- 10 1. On November 12, 1974 the claimant, Linda Crumpton, filed a report of
11 accident with the Department of Labor and Industries alleging that she
12 had sustained an injury while employed by Mission Supply Company on
13 October 31, 1974. The claim based thereon was allowed and on May
14 29, 1979 the Department issued an order adhering to the provisions of a
15 prior order which closed the claim with no award for permanent partial
16 disability. On June 14, 1979 the claimant appealed to this Board and on
17 June 28, 1979 the appeal was granted.
- 18 2. As the result of the industrial injury of October 31, 1974, the claimant
19 developed a psychiatric condition, described as reactive depression,
20 which was disabling to her in 1976 and required psychiatric treatment.
21 Subsequent to her October 31, 1974 injury, several elements coalesced
22 in the claimant's life affecting her emotional condition and causing her to
23 become depressed. These included marital difficulties with her first
24 husband culminating in a divorce in the spring of 1975, ongoing marital
25 difficulties with her second husband beginning in 1975, and post-partum
26 "blues" following the birth of a daughter in January 1979, as well as the
27 effects of her industrial injury.
- 28 3. On May 29, 1979, the claimant's depression was essentially fixed in that
29 further psychiatric treatment would not improve her condition and the
30 major portion of her depression was causally related to the incidents and
31 traumas which occurred to the claimant subsequent to October 31,
32 1974.
- 33 4. The portion of the claimant's overall emotional condition that was
34 causally related to the October 31, 1974 industrial injury caused an
35 impairment to her mental health most aptly described within Category II
36 of WAC 296-20-340.
- 37 5. On May 29, 1979, the claimant was not suffering from any permanent
38 residuals of any organic condition causally related to the October 31,
39 1974 industrial injury.
- 40 6. As of May 29, 1979, the claimant was capable of performing gainful
41 employment on a reasonably continuous basis in areas with which she
42 had ability and/or prior experience.
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CONCLUSIONS OF LAW

Based on the following findings of fact, the Board concludes as follows:

1. The Board of Industrial Insurance Appeals had jurisdiction of the parties and subject matter of this appeal.
2. The order of the Department of Labor and Industries dated May 29, 1979, adhering to the provisions of a prior order closing the claim with no permanent partial disability award is incorrect and the order should be reversed and this matter remanded to the Department with direction to reopen the claim to grant a permanent partial disability award under Category II, WAC 296-20-680(6), and thereupon close the claim.

It is so ORDERED.

Dated this 12th day of January, 1981.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
MICHAEL L. HALL Chairman

/s/
AUGUST P. MARDESICH Member