

## **Schmidt, Catherine**

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### **PERMANENT PARTIAL DISABILITY (RCW 51.32.080)**

#### **Rating by Board**

The Board may determine the appropriate category of permanent impairment despite the absence in the record of any medical testimony rating the worker's permanent partial disability in category or percentage terms. The determination requires a comparison of the category descriptions with the medical evidence of the worker's physical or mental restrictions. ...*In re Catherine Schmidt*, BIA Dec., 57,001 (1981)

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1 her continuing mental problems. Based upon his own association and examinations of the  
2 claimant, together with a report from a psychologist, Dr. Sherman diagnosed a post-traumatic  
3 organic brain syndrome and a reactive depression (emotional instability) which were related to the  
4 industrial injury. Dr. Sherman testified the claimant had cognitive (intellectual or mental) difficulty,  
5 particularly in manipulation of numbers. It was his opinion that her ability to return to work which  
6 required manipulation of numbers would be significantly impaired and that her emotional instability  
7 would negatively affect her employment capabilities. He further felt that Ms. Schmidt would have  
8 difficulty in being responsive quickly and alertly involving nearly any type of sophisticated  
9 abstraction.

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15 The claimant does not complain of symptoms from the lacerations and pelvic fracture which  
16 she sustained, but does complain of other factors which resulted from her brain damage. She  
17 testified she "flipped-out" easily, got over-wrought and angry, got nervous and lost perspective of  
18 where she was and would stare off into space as if she were hypnotized and could not pull herself  
19 back. Additionally, she testified her memory for handling numbers was short and that when she  
20 tried to attend a bookkeeping school she was unable to mentally retain formulas necessary for  
21 successful completion.

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25 Nowhere in the record did either Dr. Webster nor Dr. Sherman attempt to give a percentage  
26 rating reflecting the extent of the claimant's permanent impairment of mental health. Neither did  
27 any physician attempt to describe the claimant's psychiatric limitations within the categories for  
28 evaluating permanent impairment, WAC 296-206-20-330 and WAC 296-20-340. It does appear  
29 from the record that no further treatment would likely improve the claimant's occupational potential  
30 and her condition must be considered fixed.

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34 If we were to accept and rely upon the opinions of Dr. Issac Lawless who was called to testify  
35 to the results of a single examination conducted March 25, 1980, it would be clear the claimant  
36 should not be entitled to any compensation for disability for her injury. Yet we are aware that  
37 having seen the claimant on a more extensive basis, Dr. Sherman and Dr. Webster are in preferred  
38 positions to evaluate the impact of the claimant's industrial injury upon her permanent metal health.  
39 Groff v. Department of Labor and Industries, 65 Wn. 2d 35 (1964). The claimant was able to  
40 function quite consistently in employment in her private life prior to the industrial injury. It would not  
41 appear that she had any pre-existing permanent impairment which could be equated to a  
42 psychiatric partial disability prior to her industrial injury. There being no prior disability, it is not  
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1 important that neither Dr. Webster nor Dr. Sherman attempted to segregate the claimant's pre-injury  
2 psychiatric status from that of her post-injury psychiatric status causally related to the injury. cf. Orr  
3 v. Department of Labor and Industries, 10 Wn. App. 697 (1974).  
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5 We must now turn our attention to whether the opinions of Dr. Sherman together with the  
6 observations of Dr. Webster provide a sufficient basis for us to conclude that the claimant suffers  
7 from a permanent partial disability for impairment in her mental health. Prior to October 1, 1974  
8 when the current system for evaluating unspecified partial disabilities was adopted, it was common  
9 to see permanent partial disability ratings expressed in terms of a percentage of the maximum  
10 allowed for unspecified disabilities or simply a percentage as compared to total bodily impairment.  
11 See, for example e.g., Page v. Department of Labor and Industries, 52 Wn. 2d 706 (1958), and  
12 Johnson v. Department of Labor and Industries, 88 Wn. 2d 844 (1977). However, with the inception  
13 of the category system for rating permanent impairments, percentage ratings became less material.  
14 See WAC 296-20-220(1)(e), Rule 5 and WAC 296-20-670(1)(a), Rule 1.  
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16 We believe that the system for evaluating unspecified disabilities as compared to total bodily  
17 impairment for injuries occurring on or after October 1, 1974 does not encourage, much less  
18 require, physicians who testify before this Board in such cases to state their opinions regarding  
19 disability in terms of a percentage of total bodily impairment. It is entirely appropriate, and we  
20 commonly observe, medical witnesses' testimony to be couched in terms of the category of  
21 permanent impairment which they feel is appropriate. Yet we cannot see that the failure of an  
22 expert witness to testify in the language of the statute or administrative rule is fatal to establishing a  
23 prima facie case. See Anthis v. Department of Labor and Industries, 16 Wn. App. 335 (1976) and  
24 Coleman v. Prosser Packers, 19 Wn. App. 616 (1978).  
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26 The critical question is whether this Board has authority to evaluate and weigh testimonial  
27 evidence devoid of both the percentage and category rating and determine if an award for  
28 permanent partial disability should be made. We note that in Dowell v. Department of Labor and  
29 Industries, 51 Wn. 2d 428, the court found that the question of the extent of partial disability is  
30 ultimately for the trier of fact. In addition, we discern it to be the law of this state to be that the trier  
31 of fact must award compensation for permanent partial disability on the basis of medical testimony  
32 regarding bodily function loss, whether physical or psychological, and that such awards must be  
33 within the "range" of expert testimony. Ellis v. Department of Labor and Industries, 88 Wn. 2d 844  
34 (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 replaced by a physician within any single category or continuum of  
4 categories as reflected in the Administrative Code. We believe it is sufficient for the trier of fact to  
5 rely upon a description of impairments and restrictions in its deliberations and align those  
6 restrictions with the framework of the existing categories for evaluating permanent impairment. In  
7 short, we believe this Board may compare the category descriptions with the record evidence,  
8 descriptive of physical or mental restrictions, and choose the category which those restrictions most  
9 closely resemble. In so doing, we believe the permanent partial disability award which would follow  
10 would fall within the range of expert testimony which case law requires.

11 With respect to the claimant in this appeal, we turn to WAC 296-20-340 and observe that the  
12 evidence in the record before us reveals the claimant to be subject to more than just "nervousness,  
13 irritability, worry or lack of motivation" which is described by Category I. Category II in total  
14 describes an impairment of mental health that would be represented by:

15 "Any and all permanent worsenings of preexisting personality traits or  
16 character disorders where aggravation of preexisting personality trait or  
17 character disorder is the major diagnosis; mild loss of insight, mildly  
18 deficient judgment, or rare difficulty in controlling behavior, anxiety with  
19 feeling of tension that occasionally limit activity; lack of energy or mild  
20 apathy with malaise; brief phobic reactions under usually avoidable  
21 conditions; mildly unusual and overly rigid responses that cause mild  
22 disturbance in personal or social adjustment; rare and usually self-  
23 limiting psycho-physiological reactions; episodic hysterical or conversion  
24 reactions with occasional self-limiting losses of physical functions; a  
25 history of misinterpreted conversations or events, which is not a  
26 preoccupation; is aware of being absentminded, forgetful, thinking  
27 slowly occasionally or recognizes some unusual thoughts; mild behavior  
28 deviations not particularly disturbing to others; shows mild over-activity  
29 or depression; personal appearance is mildly unkempt. Despite such  
30 features, productive activity is possible most of the time. If organicity is  
31 present, some difficulty may exist with orientation; language skills,  
32 comprehension, memory; judgment; capacity to make decisions; insight;  
33 or unusual social behavior; but the patient is able to carry out usual work  
34 day activities unassisted."  
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1 The majority concludes that the preponderance of evidence in the record before us reflects the  
2 claimant's permanent impairment related to the injury to fall within the description of above quoted,  
3 especially with respect to the claimant being aware of being absent-minded, forgetful, thinking  
4 slowly occasionally and recognizing some unusual thoughts. Given this state of affairs, we believe  
5 the claimant is entitled to an award for permanent partial disability reflective of that condition.  
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### 9 **FINDINGS OF FACT**

10 After a thorough review of the entire record, the Board finds as follows:

- 11 1. On March 8, 1976, an accident report was received by the Department  
12 of Labor and Industries alleging the claimant had sustained an injury  
13 while employed by Trader Pats, Inc., on February 20, 1976. The claim  
14 was accepted, medical treatment provided, time-loss compensation  
15 paid, and on April 10, 1980 the Department closed the claim with no  
16 award for a permanent partial disability. On June 6, 1980, the claimant  
17 filed a notice of appeal with the Board of Industrial Insurance Appeals  
18 who issued an order on June 23, 1980, granting the appeal and  
19 directing that proceedings be had on the issues raised by the appeal.  
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- 21 2. On February 20, 1976, while driving a vehicle for her employer, the  
22 claimant was involved in a collision which resulted in multiple abrasions,  
23 cuts and a cerebral contusion together with a fractured pubic rami.  
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- 25 3. As of April 10, 1980, the claimant was suffering from a post-traumatic  
26 organic brain syndrome with reactive depression (emotional instability),  
27 more particularly manifested by cognitive difficulty particularly in the  
28 manipulation of numbers.
- 29 4. As of April 10, 1980, the claimant's condition was fixed and her  
30 permanent partial disability resulting from the industrial injury was then  
31 consistent with Category II of WAC 296-20-340, Categories for  
32 Evaluation of Permanent Impairments of Mental Health.
- 33 5. As of April 10, 1980, the claimant was not precluded from gainful  
34 employment on a reasonably continuous basis by the residuals of the  
35 industrial injury of February 20, 1976.  
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### 37 **CONCLUSIONS OF LAW**

38 The Board having made the foregoing findings of fact, now concludes as follows:

- 39 1. The Board of Industrial Insurance Appeals has jurisdiction of the parties  
40 and the subject matter of this appeal.  
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- 42 2. The order of the Department of Labor and Industries dated April 10,  
43 1980, closing the claim with no permanent partial disability award is  
44 incorrect and should be reversed, and this claim remanded to the  
45 Department of Labor and Industries with direction to pay the claimant a  
46 permanent partial disability award reflective of Category II of WAC 296-  
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20-340 (10% as compared to total bodily impairment) and thereupon  
close the claim.

It is so ORDERED.

Dated this 21st day of April, 1981.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/  
MICHAEL L. HALL Chairman

/s/  
AUGUST P. MARDESICH Member

/s/  
FRANK E. FENNERTY, JR. Member

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