

## Hatch, Daniel

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### BOARD

#### Remands from Superior Court

RCW 51.52.115 indicates that the Superior Court, in case of modification or reversal of the Board's order, should refer its order to the Department, not the Board, and to direct the Department to act in accordance with the court's findings. In the circumstances of this case, the Superior Court order directed the Board to issue an order directing the Department to issue an order reopening the claim for aggravation of the condition causally related to the industrial injury, paying time-loss compensation benefits, with a permanent partial disability, reduced by an overpayment, denying responsibility for a condition identified as thoracic outlet syndrome, and thereupon closing the claim. ...*In re Daniel Hatch*, BIIA Dec., 63 150 (1992)

Scroll down for order.

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

1     **IN RE: DANIEL S. HATCH**                             )     **DOCKET NO. 63,150**  
2   )  
3   )     **FURTHER DECISION AND ORDER ON REMAND**  
4     **CLAIM NO. H-349660**                             )     **FROM SUPERIOR COURT**  
5

6 **APPEARANCES:**

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8             Claimant, Daniel S. Hatch,  
9             Tracy Madole

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11            Employer, Eastern Construction Company, by  
12            None

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14            Department of Labor and Industries, by  
15            The Attorney General, per

16  
17            Robert Costello and John Wasberg, Assistants  
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19            This is an appeal filed by the claimant on October 7, 1982 from an order of the Department of  
20 Labor and Industries dated August 11, 1982, which denied his application to reopen the claim.

21 **REVERSED AND REMANDED.**

22   **PROCEDURAL HISTORY**

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25            On July 27, 1983, a Proposed Decision and Order affirming the Department's order of August  
26 11, 1982 was entered. The claimant subsequently filed a timely Petition for Review. On September  
27 21, 1983, we entered an Order Denying Petition for Review, adopting the Proposed Decision and  
28 Order as the final order of the Board.

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31            Thereafter, on October 17, 1983, we received notice that the claimant had appealed our Order  
32 Denying Petition for Review to the Superior Court of King County (Cause No. 83-2-14345-4). On  
33 February 16, 1990, we received a conformed copy of a Judgment which reversed the decision of this  
34 Board and remanded the matter to the Board:

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37                     to render a new decision, based on the same evidence, to determine  
38 whether the plaintiff's [sic] condition due to his industrial injury of June 1,  
39 1978 worsened between November 28, 1978, when the Department  
40 closed his claim, and August 11, 1982, when the Department denied his  
41 claim for aggravation, and, if aggravation is found, to determine what  
42 benefits the plaintiff is entitled to.  
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45            Thereafter, on October 5, 1990, this Board entered a Further Decision and Order on Remand  
46 from Superior Court reversing the Department's orders of August 24, 1981 and August 11, 1982 and  
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1 remanding the claim to the Department with directions "to reopen the claim based on aggravation of  
2 condition and to provide treatment and other benefits as indicated and allowed by law." We then  
3 received notice that the claimant had appealed the Further Decision and Order on Remand from  
4 Superior Court to the Superior Court of King County (Cause No. 90-2-22743-0).  
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7 On July 16, 1992, we received a conformed copy of an Order and Judgment on Agreement of  
8 Parties which reversed the October 5, 1990 order of this Board and remanded the matter to the Board:  
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10 directing the Board to enter an order directing the Department of Labor  
11 and Industries to enter an order to: (a) pay the worker permanent partial  
12 disability at [sic] 25% amputation value for loss of his left arm at or above  
13 the deltoid insertion, or by disarticulation at the shoulder; (b) pay the  
14 worker time loss compensation for the time period from December 3, 1980  
15 through March 11, 1981 (inclusive) with statutory interest as computed by  
16 the Board pursuant to RCW 51.52.135(2); (c) deduct a previous  
17 overpayment in the amount of \$362.00, (d) enter a determination  
18 segregating thoracic outlet syndrome; and (e) thereupon close the claim.  
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### 20 DECISION

21 It was wholly unnecessary for the Court to direct this Board to direct the Department to pay Mr.  
22 Hatch time-loss compensation benefits and a permanent partial disability award. We point out that  
23 RCW 51.52.115, governing the disposition of court appeals from our orders, provides in pertinent part:  
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25 In case of modification or reversal, the superior court shall refer the same  
26 to the Department with an order directing it to proceed in accordance with  
27 the findings of the court. (Emphasis added)  
28

29 Under RCW 51.52.115, this matter should have been remanded to the Department, not this  
30 Board. Remanding the case to this Board is not required and only delays the time within which the  
31 claimant will receive the benefits due him, as determined by the Court. We strongly suggest that  
32 attorneys drafting judgments for entry by a court take notice of RCW 51.52.115, and comply with its  
33 clear and unequivocal instructions.  
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35 With respect to the calculation of interest pursuant to RCW 51.52.135, we will do so upon the  
36 Department's payment of time-loss compensation benefits in compliance with the provisions of this  
37 order.  
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39 However, having been directed by the Superior Court to enter a further order, we hereby find  
40 that the claimant's condition causally related to the industrial injury of June 1, 1978, worsened and  
41 became aggravated between August 24, 1981 and August 11, 1982, that as of August 11, 1982 was  
42 fixed and stable and that the permanent residual impairment was best described as 25% of the  
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1 amputation value of the left arm at or above the deltoid insertion, or by disarticulation at the shoulder,  
2 that he was not capable of reasonably continuous gainful employment for the period December 3,  
3 1980 through March 11, 1981, and that he experienced a condition diagnosed as thoracic outlet  
4 syndrome which was not causally related to his industrial injury.  
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7 We remand the claim to the Department of Labor and Industries to enter an order paying Mr.  
8 Hatch a permanent partial disability award of 25% of the amputation value of the left arm at or above  
9 the deltoid insertion, or by disarticulation at the shoulder, paying time-loss compensation benefits for  
10 the period December 3, 1980 through March 11, 1981, less a previous overpayment in the amount of  
11 \$362.00, denying responsibility for a condition identified as thoracic outlet syndrome and to thereupon  
12 close the claim.  
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16 It is so **ORDERED**.  
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18 Dated this 24<sup>th</sup> day of July, 1992.  
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20 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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22 /s/  
23 S. FREDERICK FELLER Chairperson  
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25 /s/  
26 FRANK E. FENNERTY, JR. Member  
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28 /s/  
29 PHILLIP T. BORK Member  
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