

## Washington, Larry

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### TIME-LOSS COMPENSATION (RCW 51.32.090)

#### Eligibility where capable of performing light work

A permanent long time worker temporarily unable to perform his regular job while undergoing treatment, but capable of performing some type of light duty employment, was not precluded from receiving time-loss compensation where it was anticipated that he would return to his prior job and the employer had not offered an alternative job within the worker's capabilities. ...*In re Larry Washington*, BIIA Dec., 65,450 (1984) [dissent]

Scroll down for order.



1 Lewis, expressed the view that further chiropractic treatment, augmented by treatment at the hands  
2 of a physical therapist, will further improve Mr. Washington's condition. In the past, the doctor has  
3 requested of the employer that Mr. Washington receive physical therapy, but to no avail.  
4 Parenthetically, in this regard, we have noted that there are two references to a medical report from  
5 a Dr. McCollum wherein it is recommended that Mr. Washington undergo a program of physical  
6 therapy before his claim is closed.  
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10 It is the employer's position that the medical opinions and the lack of medical physical  
11 findings of a truly objective nature, as testified to by Drs. Donald L. Stainsby and Irving Tobin, both  
12 medical practitioners who examined Mr. Washington independently of each other on single  
13 occasions and felt the claimant's condition was fixed and without need of further treatment, should  
14 outweigh the opinions of Dr. Lewis, a chiropractor.  
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18 Given the circumstances of this particular case, we do not agree. As previously noted, the  
19 only modality of treatment which the claimant has received to date has been chiropractic. His  
20 condition, which appears to be limited to an injury of the muscles and soft tissue of the low back,  
21 has in fact responded to that form of treatment. If, in the opinion of the practitioner who has brought  
22 about this improvement, a limited continuance of treatment of this nature would be of curative  
23 benefit, we do not choose to deny the claimant that opportunity. Whereas the existence of objective  
24 medical findings is critical to a permanent partial disability rating, it is not a legal condition  
25 precedent to the continuance of treatment.  
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30 There remains the question of the claimant's employability. In this regard, it is clear to us  
31 that the work-modified job offered the claimant by the employer as a "dock returns" clerk was  
32 beyond the claimant's physical limitations. Not only did it require him to stand and walk about on  
33 concrete, which Dr. Lewis testified was particularly aggravating to the claimant's back condition, but  
34 it entailed the handling and separation of heavy case goods which were beyond the claimant's  
35 physical restrictions. Dr. Lewis retracted his original work release upon learning of the true  
36 dimensions of the job.  
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40 Much is made of the claimant's work experience, some untold years ago for an untold period  
41 of time, as a loan officer for a finance company, and of his educational level (one and one-half  
42 years of college). The employer contends that this establishes that the claimant was capable of  
43 performing any number of light-duty jobs in the labor market, which in turn disentitles him from time-  
44 loss compensation. We would take no quarrel with the proposition that there are probably a  
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1 number of light duty-type jobs which are within the claimant's performance capacity. However, no  
2 job of this nature was ever offered or made available to the claimant by this or any other employer.  
3 It must be borne in mind that the claimant was a regular and relatively long-time (five and one-half  
4 years) employee of the employer herein. In other words, he was a permanent, not a transient,  
5 employee. He was looking to returning to his regular job for the employer as soon as he was  
6 physically able; the record establishes that his job was in fact still open and awaiting his return.  
7 Under these circumstances, where the worker is still undergoing treatment and recuperating from  
8 his injury, we do not believe it is either the intent or the requirement of the Workers' Compensation  
9 Act, that the worker, upon peril of losing his time-loss compensation, go out and scare up some  
10 type of interim work or job within his capacities to tide him over until such time as he is physically  
11 able to return to his regular employment for his long-time employer. In short, we hold that the  
12 claimant continued to be entitled to time-loss compensation for the period of time here in issue.

### 13 **FINDINGS OF FACT**

14 Finding No. 1 of the Proposed Decision and Order entered herein on December 12, 1983, is  
15 hereby adopted by the Board and incorporated herein by this reference. In addition, the Board  
16 finds:  
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- 18 2. On September 16, 1982, the claimant sustained a sprain and/or strain  
19 of the low back as a result of lifting boxes in the course of his  
20 employment as a warehouseman for Associated Grocers.
- 21 3. On June 8, 1983, the claimant's low back condition resulting from his  
22 industrial injury of September 16, 1982, was not fixed, and he was in  
23 need of further treatment therefor.
- 24 4. The work-modified job of dock returns clerk offered to the claimant by  
25 the employer entailed functions and duties beyond the claimant's  
26 physical limitations as prescribed by his attending chiropractor, Dr.  
27 Jeffrey Lewis. At no time herein was the claimant offered a light-duty  
28 job by any employer within his abilities and physical limitations.

### 29 **CONCLUSIONS OF LAW**

- 30 1. The Board of Industrial Insurance Appeals has jurisdiction of the parties  
31 and subject matter of this appeal.
- 32 2. From February 28, 1983 to June 8, 1983, inclusive, the claimant was  
33 temporarily totally disabled within the meaning of the Workers'  
34 Compensation Act.
- 35 3. The order of the Department of Labor and Industries dated June 8,  
36 1983, adhering to the provisions of a prior order dated April 12, 1983,  
37 which set aside a prior order dated March 15, 1983, and directed this

1 claim to remain open for authorized treatment and such other and  
2 further action as may be indicated or authorized, is correct, and should  
3 be affirmed

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5 It is so ORDERED.

6 Dated this 18th day of April, 1984.

7 BOARD OF INDUSTRIAL INSURANCE APPEALS

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10 /s/  
11 MICHAEL L. HALL Chairman

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13 /s/  
14 FRANK E. FENNERTY, JR. Member

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16 **DISSENTING OPINION**

17 My evaluation of the testimony of the expert witnesses herein leads me to conclude that his  
18 claimant had a simple low back sprain which has resolved; that he has no remaining objective  
19 findings; and that he is able to work without restrictions.

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22 Regardless of the precise nature and demands of the "work-modified" job as a "dock returns"  
23 clerk -- a job which the claimant refused without even attempting it -- I believe the more persuasive  
24 medical evidence is that this man can go back to his regular warehouse job, and that he has no  
25 residual impairment.

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28 The disposition of this appeal as made by the Proposed Decision and Order was to remand  
29 the claim for closure in accord with the Department's order of March 15, 1983, i.e., with time-loss  
30 compensation as paid to February 23, 1983, and with no permanent partial disability award. I  
31 concur with that result; and therefore dissent from the Board's majority's decision.

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34 Dated this 18th day of April, 1984.

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36 /s/  
37 PHILLIP T. BORK Member