

Belton, Jerry

STATUTORY PENSION (RCW 51.08.160)

The statutory pension provisions of RCW 51.08.160 entitle a quadriplegic worker to receive time-loss compensation even though he is engaged in full-time gainful employment.*In re Jerry Belton*, BIIA Dec., 85 2107 (1987) [special concurrence]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS

STATE OF WASHINGTON

In Re: JERRY T. BELTON)	DOCKET NO. 85 2107
)	
CLAIM NO. H-202360)	DECISION AND ORDER
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APPEARANCES:

Claimant, Jerry T. Belton, by
Goodwin, Grutz & Scott, per
Jay C. Kinney

Employer, Belton Fabricating & Construction, by
None

Department of Labor and Industries, by
The Attorney General, per
David Swan and John Wasberg, Assistants

This is an appeal filed by the claimant on August 30, 1985 from an order of the Department of Labor and Industries dated July 10, 1985 which denied his request for total temporary disability benefits on the basis that the claimant's employment and the character of his injury did not qualify him for temporary total disability benefits pursuant to RCW 51.08.160 and RCW 51.32.090. Reversed and Remanded.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the Department of Labor and Industries to a Proposed Decision and Order issued on July 7, 1986 in which the order of the Department dated July 10, 1985 was reversed, and the claim remanded to the Department with instructions to pay the claimant temporary total disability

2-13-87

1 compensation for the period June 3, 1983 through July 10, 1985 and
2 thereafter until such time as medical evidence establishes that all the
3 claimant's conditions causally related to his quadriplegia are fixed
4 and stable.

5 The Board has reviewed the evidentiary rulings in the record of
6 proceedings and finds that no prejudicial error was committed and said
7 rulings are hereby affirmed.

8 The issues presented by this appeal and the evidence presented by
9 the parties are adequately set forth in the Proposed Decision and
10 Order.

11 The Proposed Decision and Order reversed the Department's denial
12 of time loss benefits and ordered that temporary total disability
13 compensation continue to be paid to the claimant from the date when
14 such benefits had previously been terminated by the Department. The
15 Department's Petition for Review challenges the continuation of total
16 disability compensation because claimant had resumed continuous gainful
17 employment. Thus, the question raised for our review is whether this
18 quadriplegic claimant is entitled to total disability compensation as a
19 matter of law, regardless of his return to regular gainful employment.

20 After consideration of the Proposed Decision and Order, the
21 Department's Petition for Review filed thereto, and the claimant's
22 reply to the Department's petition, and a careful review of the entire
23 record before us, we are persuaded that the Proposed Decision and Order
24 is supported by the preponderance of the evidence and is correct as a
25 matter of law.

26 With the exception of the following corrections to dates, the

1 proposed Findings, Conclusions and Order are hereby adopted as this
2 Board's final Findings, Conclusions and Order and are incorporated
3 herein by this reference. Findings of Fact 5 and 7, and Conclusions
4 of Law 2 and 4 are corrected so that the beginning date of the period
5 in issue is consistently shown as June 6, 1983; instead of June 3, 1983
6 and June 3, 1985 in Finding 5; June 3, 1985 in Finding 7; June 3, 1985
7 in Conclusion 2; and June 3, 1983 in Conclusion 4.

8 It is so ORDERED.

9 Dated this 13th day of February, 1987.

10 BOARD OF INDUSTRIAL INSURANCE APPEALS

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13 /s/ _____
14 GARY B. WIGGS Chairperson

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17 /s/ _____
18 FRANK E. FENNERTY, JR. Member

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21 /s/ _____
22 PHILLIP T. BORK Member

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31 SPECIAL CONCURRING STATEMENT

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33 I have signed the foregoing Decision because I concur in the
34 ultimate requirement of continuing this quadriplegic claimant on total
35 disability compensation even though he has resumed regular gainful
36 employment.

37 Both parties herein agree, and the record affirmatively

1 establishes that it has been the Department's long-standing policy,
2 that claimants must be paid total disability compensation for
3 industrially-caused amputation of both legs, of both arms, of one leg
4 and one arm, or total loss of eyesight, regardless of the claimant's
5 ability to still carry on substantial gainful employment; and this
6 compensation is paid whether such statutorily-mandated total disability
7 has the status of permanent total disability because the claimant's
8 condition is fixed and stable, or whether it has the status of
9 temporary total disability because treatment is still required and
10 medical stabilization has not been reached.

11 The basic issue is whether this same mandatory total disability
12 status should ever be applied to the condition of "paralysis" which is
13 also listed in the statutory definition. See RCW 51.08.160. The
14 Department argues that it should not, because paralysis can cover a
15 range of disability from minor loss of function in only a small portion
16 of the body, all the way to quadriplegia with virtually complete loss
17 of control over all physical bodily functions. The Department
18 expresses the fear that carrying the result reached here to its
19 "logical extreme" would produce total disability benefits for all
20 injured workers with any sort of paralysis, even where it is a minor
21 loss of function and even where they have resumed regular gainful
22 employment.

23 In my view, this is a groundless fear, and this case provides for
24 the sharply limiting rationale to be properly applied. This claimant
25 does not have paralysis involving minor loss of function in a portion
26 of the body. He has complete loss of motion, sensation, and control

1 over bodily functions due to severance of the spinal cord at T-4, from
2 that level (approximately the armpits) downward, and he also has marked
3 weakness and partial paralysis in the arms and considerable diminished
4 finger dexterity due to a syrinx, or post-traumatic degenerative
5 swelling, in the cervical spinal cord upward from T-4. He is, for all
6 practical physical purposes, a quadriplegic, permanently
7 wheelchair-bound, and has and will have need for treatment for other
8 medical complications of his quadriplegia.

9 Is Mr Belton's condition of quadriplegia a disability constituting
10 "paralysis" within the intent of that word in RCW 51.08.160? Yes, it
11 is. The statute makes a presumption of total disability as a matter
12 of law for double amputations, and total blindness, and the Department
13 agrees with this conclusion. The statute also makes such conclusive
14 presumption for "paralysis", (see Fochtman v. Department of Labor and
15 Industries, 12 Wn. App. 286 (1972), at page 288) and proper application
16 of this presumption requires definition of this term in the context of
17 its inclusion in the statute along with those other readily
18 ascertainable and obviously very severe disabilities.

19 While "paralysis" has one definition of "partial . . . loss, or
20 temporary interruption, of a function, especially of voluntary motion
21 or of sensation in some part . . . of the body," there is another more
22 appropriate definition of the word:

23 "A condition of helpless inactivity or of inability to act."
24
25

26 And to "paralyze" is to "bring into a condition of helpless inactivity;
27 make ineffective or powerless." Webster's New World Dictionary, 2nd

1 College Ed. To this writer, and certainly within normal usage of the
2 general public, generally, this is the more commonly understood
3 definition. It is eminently reasonable to also attribute such a
4 meaning to the legislature, in aligning the word with the other obvious
5 and readily understood total disabilities made mandatory by law.
6 Limiting of "paralysis" to such crippling inability or powerless
7 condition seems to me to be in accord with the extremely limited nature
8 of these "statutory" total disability cases. In my opinion, this
9 claimant's quadriplegia, about as severe a condition of being
10 physically paralyzed as possible, with permanent consignment to solely
11 getting around by wheel-chair, does meet this definition of paralysis
12 within the intent of the statute. When people talk of a person being
13 paralyzed, it is precisely the severe disability of Mr. Belton which is
14 envisioned.

15 Fortunately for Mr. Belton, his mental faculties were not harmed
16 by his industrial injury, and he has used his brain power to obtain a
17 college education, and subsequently a regular professional-type job
18 with an understanding employer. Some double amputees and blind
19 persons made so disabled by industrial injuries have been able to do
20 the same. They are still legally concluded to be totally disabled.
21 This claimant must also be.

22 The definite changes I would make in the findings, in addition to
23 the technical changes in dates previously recited, would be to strike
24 the phrase "and loss of both legs" from Findings 7 and 8, so that those
25 findings would simply provide that "claimant's quadriplegia constituted
26 paralysis within the meaning of RCW 51.08.160." The "loss of both

1 legs" phrase is to connote that loss of use of both legs (by paralysis
2 here) is equivalent to actual loss of legs by amputation, a conclusion
3 which is not clearly stated by our law, nor is it necessary to reach
4 the correct result in this case.

5 Based on all the foregoing comments, I do concur with my
6 colleagues in the final result of this appeal.

7 Dated this 13th day of February, 1987.

8 /s/ _____
9 PHILLIP T. BORK Member
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