

## Francis, Kevin

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### TIME-LOSS COMPENSATION (RCW 51.32.090)

#### **Sporadic employability**

When a worker is undergoing active treatment, making attempts to return to work with the employer at the time of injury and experiencing exacerbation's of his condition which require him to miss work, that worker is not capable of reasonably continuous gainful employment. The law does not require such a worker to seek temporary employment in the general labor market during times of temporary improvement in his condition. ....***In re Kevin Francis, BIA Dec., 89 0483 (1990)*** [*Editor's Note: The Board's decision was appealed to superior court under Stevens County Cause No. 90-2-00333-5.*]

Scroll down for order.



1 The Board has reviewed the procedural, jurisdictional, and evidentiary matters in the record of  
2 proceedings. Noteworthy is the historical-jurisdictional fact sheet which was admitted as Exhibit No. 1  
3 and which the Industrial Appeals Judge found sufficient to establish this Board's jurisdiction. It shows  
4 that while the Department did not receive the accident report of the November 13, 1985 industrial  
5 injury until March 13, 1987, the self-insured employer signed the report on November 19, 1985.  
6 Based upon this information which was contained within Exhibit No. 1, we find the accident report was  
7 timely filed pursuant to RCW 51.28.020 and .050. Accordingly, we hold that the Board has jurisdiction  
8 over this appeal. With the exceptions to be discussed below, the Board considers the remainder of  
9 the evidentiary rulings in the record of proceedings without prejudicial error and said rulings are hereby  
10 affirmed.  
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12 The Petition for Review filed by the employer alleges that the Industrial Appeals Judge  
13 committed prejudicial error in rejecting documentary evidence identified as a physical capabilities  
14 evaluation [PCE] completed by Dr. George Bagby in February, 1988. It was identified for the record  
15 and ruled upon in the Proposed Decision and Order as Exhibit No. 14. The employer argues that the  
16 claimant's failure to make a timely objection which correctly identified the specific evidentiary rule  
17 under which the exhibit would be inadmissible results in a waiver of any objection to the admission of  
18 this exhibit.  
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20 ER 103 requires all objections to be timely and specific. CR 2A allows agreements respecting  
21 procedural and evidentiary matters in addition to the recognized rules of evidence and procedure.  
22 Such an agreement was placed on the record at an April 25, 1989 prehearing conference. It states:  
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24 If it is necessary to take perpetuation testimony by deposition . . . the  
25 depositions may be published by the Industrial Appeals Judge at any time  
26 after filing with the Board of Industrial Insurance Appeals; that the  
27 depositions may be made part of the records by attachment thereto; that  
28 all objections and motions shall be made on the record at the time the  
29 depositions are taken and shall be considered renewed at the time of  
30 publication, and that the Industrial Appeals Judge shall rule upon the  
31 objections and motions at the time the Proposed Decision and Order is  
32 prepared.  
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34 4/25/89 Tr. at 3-4. (Emphasis added).  
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36 Ronald Roe, a vocational expert, testified by deposition at the employer's request. At the time  
37 of the taking of his deposition, nine exhibits were identified on the record as Nos. 1 through 9. Of  
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1 these, only those numbered 1 and 2 (renumbered 7 and 8 in the Proposed Decision and Order) were  
2 offered. Mr. Roe's deposition was filed with the Board on November 22, 1989.  
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4 Subsequently, on January 4, 1990 (received January 8, 1990), the employer indicated in writing  
5 that videotapes identified at the deposition as Exhibit Nos. 3 and 4 were withdrawn.  
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7 By a notation found in the file which was not made a part of the record but was dated January  
8 4, 1990, the Industrial Appeals Judge summarized his understanding of what appears to have been an  
9 unrecorded telephone discussion with counsel representing each of the parties regarding the  
10 deposition and its exhibits. The discussion was memorialized for the record in the Proposed Decision  
11 and Order as follows:  
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14 Counsel for the employer never formally moved during the deposition to  
15 admit Exhibits numbered 11 through 14. By agreement with counsel, such  
16 motion is deemed to have been made -- and opposing counsel deemed to  
17 have raised any and all appropriate objections thereto -- for purposes of  
18 the ruling set forth in paragraphs e through i., immediately above.  
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20 PD & O, at 5 (footnote 3).  
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22 At the time the Proposed Decision and Order was entered, the Industrial Appeals Judge made  
23 the following deposition rulings:  
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25 Deposition Exhibit Nos. 1 and 2 were renumbered Board Exhibit Nos. 7 and 8. The motion to  
26 admit these exhibits made at the time of the deposition was granted.  
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28 Deposition Exhibits Nos. 3 and 4 were renumbered Board Exhibit Nos. 9 and 10. The January  
29 4, 1990 written request to withdraw each of these exhibits was granted.  
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31 Deposition Exhibit Nos. 5, 6, 7, 8 and 9 were renumbered respectively Board Exhibit Nos. 11,  
32 12, 13, 14, and 15. Pursuant to the procedure outlined in Footnote No. 3 above, the Industrial Appeals  
33 Judge thereupon took the responsibility of deeming each of these exhibits timely offered and timely  
34 objected to under "appropriate" evidentiary rules. The Industrial Appeals Judge proposed the  
35 admission of the exhibits renumbered 12, 13, and 15, and the rejection of the exhibits renumbered 11  
36 and 14.  
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38 This having been accomplished, the Industrial Appeals Judge turned to the objections and  
39 motions made at the time of the deposition. All objections were overruled and all motions were  
40 denied, with the exception that the objection on page 22, beginning line 12, was sustained, and the  
41 continuing motion accompanying this objection was granted.  
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1 The concept of securing evidence and ruling upon evidence at any time other than a hearing is  
2 a limited one. Furthermore, each party carries a specific burden with respect to offering and objecting  
3 to evidence. Generally, an Industrial Appeals Judge must exercise sound discretion when entertaining  
4 requests to deviate from applicable procedural and evidentiary rules.  
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7 In this instance, the error alleged in the employer's Petition for Review requires a complete  
8 review of the Industrial Appeals Judge's decisions respecting the deposition of Ronald Roe. Of  
9 particular concern is the decision, as memorialized in Footnote No. 3, to relieve the parties of their  
10 respective responsibilities and burdens concerning important evidentiary matters. It appears this  
11 decision was based upon an understanding reached during telephone conversations between the  
12 Industrial Appeals Judge and counsel representing each party. These conversations apparently took  
13 place subsequent to the formal adjournment of hearings but prior to the publication of the deposition.  
14 A review of Footnote No. 3 found in the Proposed Decision and Order in conjunction with the  
15 allegations of error contained in the employer's Petition for Review leads us to conclude that the  
16 parameters and specific terms of the "agreement" were not fully consented to or understood by the  
17 parties.  
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20 At this point, the Board is presented with an agreement which is at best informally and vaguely  
21 identified for the record, ambiguous as to intent and content, and which requires conjecture to  
22 interpret. Though we have attempted to make sense of what took place, we view the procedure as  
23 completely insufficient to preserve a binding agreement for the record. At the very least, assuming  
24 arguendo that it would be appropriate for the Industrial Appeals Judge to assume responsibilities  
25 properly belonging to the parties, a statement on the record or written verification from the parties was  
26 necessary. See CR 2A.  
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29 CR 2A is obviously meant to guard against the kind of dispute which has now arisen in this  
30 case. The employer now contends in its Petition for Review that Exhibit No. 14 should have been  
31 admitted because the claimant failed to make a hearsay objection to its admission at the time the  
32 deposition was taken. Of course, by the same token, the employer failed to move for the admission of  
33 Exhibit No. 14 during the deposition. Thus, while the claimant certainly could have registered a  
34 hearsay objection to Mr. Roe's testimony at the time of the deposition, the claimant had no reason to  
35 object to the admission of an unoffered exhibit.<sup>1</sup>  
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46 <sup>1</sup>We note that in Claimant's Response to Employer's Petition for Review Mr. Stiley contends  
47 that he in fact did object to the admission of Exhibit No. 14, Dr. Bagby's PCE. However, the portion

1 At any rate, the Petition for Review's allegation of error is inconsistent with the existence of any  
2 real agreement or understanding between the parties, as purportedly memorialized in Footnote No. 3.  
3 We will not take the responsibility of deciding either the nature or extent of a purported oral agreement  
4 between the parties at this late date. What is clear to us is that any attempt by the parties to enter into  
5 the agreement described in Footnote No. 3 was unsuccessful. Therefore, whatever the oral  
6 agreement may have been, it is not valid and will not be substituted for the specific stipulation entered  
7 into on the record at the April 25, 1989 conference, nor can it take the place of the applicable  
8 procedural and evidentiary rules.

9 Since the oral agreement is without binding effect at this juncture, we must now determine the  
10 status of the exhibits in question and rule upon objections and motions contained in the deposition of  
11 Mr. Roe.

12 The deposition exhibits identified and renumbered 1 through 9 are renumbered Board Exhibit  
13 Nos. 7 through 15. We hereby grant the employer's motion to admit Exhibit Nos. 7 and 8. We grant  
14 the employer's written request to withdraw Exhibit Nos. 9 and 10.

15 Ron Roe testified at length and in detail about his understanding of the matters contained in  
16 Exhibit Nos. 11 through 15. However, no motion to admit or objection to the admission of these  
17 exhibits was registered at any time during the deposition. Therefore, Exhibit Nos. 11, 12, 13, 14, and  
18 15 will remain a part of the record as identified, but will not be admitted as substantive evidence.

19 With respect to the specific and timely objections and motions properly made at the time of the  
20 deposition, we hereby overrule all objections and deny all motions with the following exception: The  
21 motion on page 67, lines 4 through 6, is granted and the answer on page 67, line 3, is stricken.

22 On page 22, beginning on line 22, Mr. Roe was asked the first in a series of questions  
23 concerning his opinion of claimant's employability based upon an assumption that claimant possessed  
24 the physical capabilities reflected in Dr. Bagby's PCE (Exhibit No. 14). Dr. Bagby did not testify in this  
25 appeal and, as discussed above, Exhibit No. 14 was not admitted. Prior to being asked these  
26 questions, Mr. Roe had identified the PCE as the type of data upon which he usually relies when  
27 making employability determinations. Roe Dep. at 22. An objection to his testimony was made,  
28 based upon the accuracy of the PCE which Mr. Roe was called upon to utilize. However, in the

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29 of the transcript to which he refers us involves his objection to the admission of Exhibit No. 2 during  
30 the course of a July 31, 1989 hearing. Exhibit No. 2 is not Dr. Bagby's PCE but, rather, a  
31 Department of Labor and Industries Employability Determination.

1 Proposed Decision and Order the Industrial Appeals Judge sustained the objection on hearsay  
2 grounds.  
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4 ER 703 permits experts to base opinion testimony upon facts or data of a type reasonably  
5 relied upon by such experts on the subject without the admission of the underlying facts or data.  
6 However, in In re Ethel E. Reynolds, Dckt. No. 87 3063 (January 18, 1989), we struck a vocational  
7 expert's testimony which had been timely and specifically objected to on the grounds of lack of  
8 foundation. In the present case, the only objection raised was that the PCE relied on by Mr. Roe did  
9 not accurately reflect the claimant's true physical capabilities. Therefore, this case differs from  
10 Reynolds and the Industrial Appeals Judge's reliance on Reynolds is misplaced. We hereby overrule  
11 the objection and deny the motion at page 22, line 22 through line 25 and page 23, line 1 of Mr. Roe's  
12 deposition.  
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18 The employer's Petition for Review also seeks to limit the scope of the time loss compensation  
19 eligibility determination which is properly before this Board to the period of March 21, 1988 through  
20 December 2, 1988. The employer asserts that the Industrial Appeals Judge's rulings extending the  
21 scope to include a prior period unfairly prejudiced its ability to effectively present its case. The  
22 employer specifically argues that the claimant waived any allegation of entitlement prior to this period  
23 by failing to provide a timely and adequate notice of the allegations.  
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27 Unquestionably, the order on appeal dated December 2, 1988 terminated time loss  
28 compensation effective March 21, 1988. Further, this order encompassed the Department's position  
29 with respect to all periods of time loss compensation not previously paid or denied. These periods  
30 included January 20 through March 26, 1986; April 5 through April 27, 1986; May 11, 1986 through  
31 March 1, 1987; and March 22 through December 2, 1988.  
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34 Claimant's notice of appeal sought past due time loss compensation. During a prehearing  
35 conference, the periods of entitlement were discussed. However, claimant's representative was not  
36 able to specifically identify with exact dates the periods of alleged entitlement. Subsequent to this  
37 conference, both parties submitted letters identifying witnesses. After receiving these letters, the  
38 Industrial Appeals Judge entered a prehearing order on May 3, 1989, stating that claimant was  
39 seeking time loss compensation, but identifying only the period of March 22, 1988 through December  
40 2, 1988.  
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45 During the first hearing held after receipt of this order, questions were asked concerning the  
46 additional periods of time loss compensation. When the employer objected to the scope of this  
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1 inquiry, the Industrial Appeals Judge overruled the objection, with the proviso that accommodations  
2 would be made in the hearing schedule to allow the employer an opportunity to defend against any  
3 additional periods of alleged eligibility beyond that stated in his order limiting the period of entitlement  
4 to March 21, 1988 through December 2, 1988. The employer did present evidence with respect to  
5 these additional periods. While the employer's Petition for Review again asserts that the Industrial  
6 Appeals Judge erroneously permitted the claimant to expand the periods of time loss eligibility which  
7 were at issue, the employer does not say what additional action it would have been able to take if it  
8 had been advised of the additional periods of time loss compensation in a more timely manner.  
9 Therefore, we can perceive no real harm or prejudice in the ruling. We affirm the Industrial Appeals  
10 Judge's decision to allow a full inquiry into the question of time loss compensation for the periods  
11 extending from January 20 through March 26, 1986; April 5 through April 27, 1986; May 11, 1986  
12 through March 1, 1987; and March 22 through December 2, 1988.

### 13 **DECISION**

14 This brings us to the substantive issue of whether Mr. Francis was entitled to time loss  
15 compensation during all or any portion of these time periods. Mr. Francis wrenched his right shoulder  
16 while working as a stacker operator (sticker stacker) on November 13, 1985 for Vaagen Brothers  
17 Lumber. As a result, he has a condition diagnosed as acromioclavicular degenerative arthritis. He  
18 continued working until January 20, 1986, when his symptoms worsened enough to require treatment.  
19 Mr. Francis was off work until March 26, 1986, but no time loss compensation was paid.

20 Between March 26 and April 5, 1986 claimant returned to work, this time as a sticker ripper.  
21 His right shoulder condition was again aggravated and he was unable to work between April 5, 1986  
22 and April 27, 1986. Again, no time loss compensation was paid.

23 On April 28, 1986 Mr. Francis again returned to work, this time as a lumber wrapper. Once  
24 again, because the work aggravated his right shoulder condition, he had to quit on May 11, 1986. Dr.  
25 William M. Shanks began treating him in June of 1986.

26 On March 2, 1987 Dr. Shanks operated on his shoulder. From May 11, 1986 through March 1,  
27 1987, no time loss compensation was paid. From March 2, 1987 through March 21, 1988 time loss  
28 compensation was paid. No time loss compensation was paid thereafter for the period of March 22,  
29 1988 through final claim closure on December 2, 1988. The claim was initially closed on May 12,  
30 1988.



1 The Industrial Appeals Judge concluded that Mr. Francis was entitled to time loss  
2 compensation for all four disputed periods. We conclude that Mr. Francis was entitled to time loss  
3 compensation for the three periods prior to the surgery of March 2, 1987. The self-insured employer  
4 has already paid time loss compensation during the year-long recovery period following the surgery.  
5 By March 22, 1988, when Mr. Francis's condition had stabilized, he was clearly capable of continuous  
6 gainful employment according to his attending physician, Dr. Shanks.  
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10 At one point during hearings, claimant's counsel remarked that:

11 Just to simplify it, Judge, I object. It doesn't matter whether he's capable  
12 of any work at all, the question on a self-insured case is if his recovery is  
13 not yet so complete that he can perform and provide the work at the time  
14 of injury, then a specific job description will -- is under the rules a physician  
15 would release him for something else. If he's capable as a french fryer  
16 and his claim is open, I don't think that makes any difference.  
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19 9/25/89 Tr. at 89. This is not an accurate statement of the law.

20 What is true, however, is that during the period of January 20, 1986 through March 21, 1988  
21 Mr. Francis's condition causally related to the industrial injury was subject to exacerbations and  
22 remissions. He attempted to return to work at Vaagen Brothers on several occasions, without  
23 sustained success. Finally, surgery was required. Because he was only intermittently available for  
24 employment during the pre-surgery period, the only employment reasonably available to him was  
25 employment at Vaagen Brothers Lumber, i.e., the employer at the time of injury. That is, while Mr.  
26 Francis was capable of sporadic gainful employment, he was not capable of reasonably continuous  
27 gainful employment.  
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29 When a worker is undergoing active treatment, making attempts to return to work with the  
30 employer at the time of injury, and experiencing exacerbations in his condition which require him to  
31 miss work, that worker is not capable of reasonably continuous gainful employment. We will therefore  
32 not require such a worker to seek out temporary employment in the general labor market during times  
33 of temporary improvement in his condition.  
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35 This interpretation of the time loss statute, RCW 51.32.090, is consistent with the intent of RCW  
36 51.12.010 and RCW 51.32.095. The former requires that Title 51 be "liberally construed for the  
37 purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death  
38 occurring in the course of employment." The latter states that "[o]ne of the primary purposes of this  
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1 title is to enable the injured worker to become employable at gainful employment" and lists jobs with  
2 the employer at the time of injury as the top four return-to-work priorities.  
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4 However, once the surgery of March 1987 had been performed, and the recovery period had  
5 been completed, and Dr. Shanks had released claimant to return to work, there was no impediment to  
6 Mr. Francis's returning to generally available gainful employment.  
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8 Three vocational rehabilitation counselors were called to testify -Ronald Roe, Thomas  
9 Moreland, and Neila Poteshman. Because all three focused so heavily on the jobs available at  
10 Vaagen Brothers rather than Mr. Francis's ability to perform generally available gainful employment,  
11 particularly after the surgery and recovery period, their testimony is of limited value.  
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13 Dr. Shanks was the attending physician from June 9, 1986 through August 21, 1989. Based on  
14 his familiarity with the case, Dr. Shanks felt that the physical restrictions imposed by the industrial  
15 injury would not have changed from anytime after the industrial injury through December 1988, with  
16 the exception of added restrictions for the two months subsequent to the March 2, 1987 surgery. At  
17 the same time, however, he acknowledged that claimant reported improved function as a result of the  
18 surgery. We also note that Dr. James Dunlap's examination of August 1988 corroborates Mr.  
19 Francis's self-report of an improvement subsequent to the surgery.  
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22 While Dr. Shanks never completed his own written physical capacities evaluation, he did testify  
23 that he felt the claimant was limited to occasional overhead lifting, occasional lifting up to 50 pounds,  
24 lifting 20 pounds repetitively, no up and down pushing and pulling, and pushing and pulling only light  
25 weights. Within these limitations, Dr. Shanks stated that claimant was employable and would have  
26 been so as of March 1988. Dr. Shanks acknowledged that descriptions of jobs at Vaagen Brothers  
27 had been provided to him. He felt that the job claimant was doing when injured would generally fit  
28 within his restrictions, except for the occasional heavy work.  
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31 On the other hand, Dr. Shanks testified that he had made periodic reports throughout 1987 and  
32 1988 that the claimant was unable to work and should be vocationally retrained as a result of his  
33 industrial injury. Dr. Shanks recommended enrollment in courses, with the goal of retraining to find  
34 employment within claimant's restrictions.  
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36 Dr. James Dunlap examined Mr. Francis on August 23, 1988. As of that date, he felt the  
37 disability resulting from the industrial injury restricted claimant's ability to work above shoulder level  
38 and to lift repetitively over 40 to 50 pounds. Based upon his medical findings, he stated that the  
39 claimant was employable.  
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1 As noted above, the vocational testimony is of limited use. Ultimately, Ronald Roe's  
2 much-discussed testimony is unpersuasive because he relies on the February 29, 1988 PCE of a  
3 nontestifying doctor, Dr. Bagby. Claimant's counsel's cross-examination of Mr. Roe with respect to Dr.  
4 Bagby's specific limitations demonstrates that they are inconsistent with those imposed by Dr. Shanks,  
5 for the earlier period, and Dr. Dunlap, for the later period. We accept the restrictions actually testified  
6 to by Drs. Shanks and Dunlap as more reliable.  
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10 Vocational counselor Thomas Moreland's testimony is limited to the period from July 1987,  
11 when the claimant was referred to him by the self- insured employer's service company, through April  
12 1988. It is to be recalled that the self-insured employer paid time loss compensation from March 2,  
13 1987 through March 21, 1988. Mr. Moreland submitted an employability statement dated March 14,  
14 1988, determining that the claimant was employable. Based upon that assessment, the Department  
15 found Mr. Francis employable. While Dr. Shanks did not sign off on a specific job analysis, he did  
16 send a letter saying that the described job was within Mr. Francis's capabilities.  
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20 Unlike Mr. Moreland, vocational counselor Neila Poteshman felt Mr. Francis was totally  
21 temporarily disabled beyond March 21, 1988 and through December 2, 1988. Her opinion is not  
22 persuasive for several reasons. First, claimant's condition was legally fixed as of May 12, 1988, when  
23 the Department issued its first order closing the claim. In the absence of medical evidence that  
24 claimant's condition was not in fact fixed as of that date, no time loss compensation can be paid  
25 beyond May 12, 1988. See In re Douglas Weston, BIIA Dec., 86 1645 (1987).  
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30 Second, Ms. Poteshman's opinion simply does not jibe with the testimony of the medical  
31 experts, Drs. Shanks and Dunlap. Third, Ms. Poteshman's opinion is contrary to Mr. Francis's  
32 demonstrated ability to function at a high level. A man who in September 1988 could enroll in  
33 community college, travel 1 1/2 hours each way to school four days a week, and maintain a 3.8 grade  
34 point average is a man who is clearly employable in some capacity.  
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37 Finally, Ms. Poteshman's opinion becomes absurd when taken to its logical conclusion. If Ms.  
38 Poteshman were correct, claimant would be entitled to a pension as of December 2, 1988, since his  
39 condition was fixed and he was, according to Ms. Poteshman, totally disabled on that date. Not even  
40 the claimant is contending that he is a pensioner. In fact, since the claimant did not petition for review  
41 of the Proposed Decision and Order, he is apparently content with the determination that his claim  
42 should be closed as of December 2, 1988 with a permanent partial disability award equal to 10% of  
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1 the amputation value of the right arm at or above the deltoid insertion or by disarticulation at the  
2 shoulder.  
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4 The best and most complete picture which we can glean from this record is that the claimant  
5 was intermittently totally temporarily disabled from January 20, 1986 through March 21, 1988 and, by  
6 the latter date, was employable in the general labor market, if not at Vaagen Brothers.  
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8 With respect to the Proposed Decision and Order's analysis of the permanent partial disability  
9 question, we agree that the attending physician's opinions are most persuasive. Thus we concur that  
10 the claim should be closed with a permanent partial disability award equal to 10% of the amputation  
11 value of the right arm at or above the deltoid insertion or by disarticulation at the shoulder, as  
12 recommended by Dr. Shanks.  
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14 In light of the foregoing and after a careful review of the entire record, including the Employer's  
15 Petition for Review and the Claimant's Response to Employer's Petition for Review, we conclude that  
16 the Department order of December 2, 1988 is incorrect and should be reversed. The claimant is  
17 entitled to additional intermittent time loss compensation for the period of January 20, 1986 through  
18 March 21, 1988, as well as additional permanent partial disability. Proposed Finding of Fact No. 1  
19 (with the correction that the first sentence is amended to read " On November 19, 1985 the  
20 self-insured employer received an accident report alleging that the claimant, Kevin L. Francis, had  
21 sustained an injury to the right shoulder on November 13, 1985 during the course of his employment  
22 with Vaagen Brothers Lumber Inc."), 2, 3, 4, 7, 8, and 9 and proposed Conclusion of Law No. 1 are  
23 hereby adopted as the final findings and conclusion of this Board. In addition, the following findings  
24 and conclusions are entered:  
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### **FINDINGS OF FACT**

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- 34 5. Between January 20 and March 26, 1986, between April 5 and April 27,  
35 1986, and between May 11, 1986 and March 1, 1987, the claimant was  
36 incapable of reasonably continuous gainful employment as a result of the  
37 industrial injury.  
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  - 39 6. Between March 22, 1988 and December 2, 1988 the industrial injury did  
40 not preclude claimant from performing gainful employment on a  
41 reasonably continuous basis in light of his age, education, training and  
42 work history.  
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### **CONCLUSIONS OF LAW**

- 44
- 45 2. Between January 20 and March 26, 1986, between April 5 and April 27,  
46 1986, and between May 11, 1986 and March 1, 1987, the claimant was  
47 temporarily totally disabled as contemplated by RCW 51.32.090.

1 3. The Department order issued on December 2, 1988, which set aside and  
2 held for naught prior orders issued on November 9, 1988 and September  
3 15, 1988 and provided that the claim was to remain closed pursuant to the  
4 provisions of a Department order issued on June 15, 1988, is incorrect  
5 and is reversed and the claim is remanded to the Department with  
6 direction to issue an order requiring the self-insured employer to pay time  
7 loss compensation for the periods January 20 through March 26, 1986,  
8 April 5 through April 27, 1986, and May 11, 1986 through March 1, 1987;  
9 requiring the self- insured employer to pay a permanent partial disability  
10 award equal to 10% of the amputation value of the right arm at or above  
11 the deltoid insertion or by disarticulation at the shoulder, less prior award;  
12 and thereupon closing the claim.

13 It is so ORDERED.

14 Dated this 31<sup>st</sup> day of August, 1990.

15 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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19 /s/ \_\_\_\_\_  
20 SARA T. HARMON Chairperson  
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23 /s/ \_\_\_\_\_  
24 PHILLIP T. BORK Member  
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