Francis, Kevin

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*, BIIA 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.]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: KEVIN L. FRANCIS	**)**	**DOCKET NO. 89 0483**
	)	
CLAIM NO. S-701861	**)**	**DECISION AND ORDER**

APPEARANCES:

Claimant, Kevin L. Francis, by
Pat Stiley & Associates, P.S., per
Karen N. Sereday, Legal Assistant, and
Patrick K. Stiley

Self-Insured Employer, Vaagen Brothers Lumber Company, Inc., by
Lukins & Annis, P.S., per
Edgar "Ned" L. Annan and Gregory W. Duncan

This is an appeal filed by the claimant on February 6, 1989 from an order of the Department of Labor and Industries dated December 2, 1988 which set aside and held for naught orders dated September 15, 1988 and November 9, 1988 and affirmed an order dated June 15, 1988. The September 15, 1988 Department order reopened to pay an additional permanent partial disability of Category 2 for mental health impairment. The November 9, 1988 Department order adhered to the provisions of the September 15, 1988 Department order. The June 15, 1988 order adhered to the provisions of an order dated May 12, 1988 terminating time loss compensation as paid to March 21, 1988 and closing the claim with an award for permanent partial disability equal to 5% of the amputation value of the right arm at or above the deltoid insertion or by disarticulation of the shoulder. **REVERSED AND REMANDED**.

PROCEDURAL AND EVIDENTIARY MATTERS

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 self-insured employer to a Proposed Decision and Order issued on January 14, 1990, in which the order of the Department dated December 2, 1988 was reversed and the claim was remanded to the Department to issue an order setting aside and holding for naught orders dated September 15, 1988 and November 9, 1988; requiring the self-insured employer to pay time loss compensation for the periods January 20, 1986 through March 26, 1986; April 5, 1986 through April 27, 1986; May 11, 1986 through March 1, 1987; and March 22, 1988 through December 2, 1988, and to thereupon close the claim with an award for permanent partial disability equal to 10% of the amputation value of the right arm at or above the deltoid insertion or by disarticulation at the shoulder, less prior awards.

The Board has reviewed the procedural, jurisdictional, and evidentiary matters in the record of proceedings. Noteworthy is the historical-jurisdictional fact sheet which was admitted as Exhibit No. 1 and which the Industrial Appeals Judge found sufficient to establish this Board's jurisdiction. It shows that while the Department did not receive the accident report of the November 13, 1985 industrial injury until March 13, 1987, the self-insured employer signed the report on November 19, 1985. Based upon this information which was contained within Exhibit No. 1, we find the accident report was timely filed pursuant to RCW 51.28.020 and .050. Accordingly, we hold that the Board has jurisdiction over this appeal. With the exceptions to be discussed below, the Board considers the remainder of the evidentiary rulings in the record of proceedings without prejudicial error and said rulings are hereby affirmed.

The Petition for Review filed by the employer alleges that the Industrial Appeals Judge committed prejudicial error in rejecting documentary evidence identified as a physical capabilities evaluation [PCE] completed by Dr. George Bagby in February, 1988. It was identified for the record and ruled upon in the Proposed Decision and Order as Exhibit No. 14. The employer argues that the claimant's failure to make a timely objection which correctly identified the specific evidentiary rule under which the exhibit would be inadmissible results in a waiver of any objection to the admission of this exhibit.

ER 103 requires all objections to be timely and specific. CR 2A allows agreements respecting procedural and evidentiary matters in addition to the recognized rules of evidence and procedure. Such an agreement was placed on the record at an April 25, 1989 prehearing conference. It states:

> If it is necessary to take perpetuation testimony by deposition . . . the depositions may be published by the Industrial Appeals Judge at any time after filing with the Board of Industrial Insurance Appeals; that the depositions may be made part of the records by attachment thereto; that all objections and motions shall be made on the record at the time the depositions are taken and shall be considered renewed at the time of publication, and that the Industrial Appeals Judge shall rule upon the objections and motions at the time the Proposed Decision and Order is prepared.

4/25/89 Tr. at 3-4. (Emphasis added).

Ronald Roe, a vocational expert, testified by deposition at the employer's request. At the time of the taking of his deposition, nine exhibits were identified on the record as Nos. 1 through 9. Of

these, only those numbered 1 and 2 (renumbered 7 and 8 in the Proposed Decision and Order) were offered. Mr. Roe's deposition was filed with the Board on November 22, 1989.

Subsequently, on January 4, 1990 (received January 8, 1990), the employer indicated in writing that videotapes identified at the deposition as Exhibit Nos. 3 and 4 were withdrawn.

By a notation found in the file which was not made a part of the record but was dated January 4, 1990, the Industrial Appeals Judge summarized his understanding of what appears to have been an unrecorded telephone discussion with counsel representing each of the parties regarding the deposition and its exhibits. The discussion was memorialized for the record in the Proposed Decision and Order as follows:

> Counsel for the employer never formally moved during the deposition to admit Exhibits numbered 11 through 14. By agreement with counsel, such motion is deemed to have been made -- and opposing counsel deemed to have raised any and all appropriate objections thereto -- for purposes of the ruling set forth in paragraphs e through i., immediately above.

PD & O, at 5 (footnote 3).

At the time the Proposed Decision and Order was entered, the Industrial Appeals Judge made the following deposition rulings:

Deposition Exhibit Nos. 1 and 2 were renumbered Board Exhibit Nos. 7 and 8. The motion to admit these exhibits made at the time of the deposition was granted.

Deposition Exhibits Nos. 3 and 4 were renumbered Board Exhibit Nos. 9 and 10. The January 4, 1990 written request to withdraw each of these exhibits was granted.

Deposition Exhibit Nos. 5, 6, 7, 8 and 9 were renumbered respectively Board Exhibit Nos. 11, 12, 13, 14, and 15. Pursuant to the procedure outlined in Footnote No. 3 above, the Industrial Appeals Judge thereupon took the responsibility of deeming each of these exhibits timely offered and timely objected to under "appropriate" evidentiary rules. The Industrial Appeals Judge proposed the admission of the exhibits renumbered 12, 13, and 15, and the rejection of the exhibits renumbered 11 and 14.

This having been accomplished, the Industrial Appeals Judge turned to the objections and motions made at the time of the deposition. All objections were overruled and all motions were denied, with the exception that the objection on page 22, beginning line 12, was sustained, and the continuing motion accompanying this objection was granted.

The concept of securing evidence and ruling upon evidence at any time other than a hearing is a limited one. Furthermore, each party carries a specific burden with respect to offering and objecting to evidence. Generally, an Industrial Appeals Judge must exercise sound discretion when entertaining requests to deviate from applicable procedural and evidentiary rules.

In this instance, the error alleged in the employer's Petition for Review requires a complete review of the Industrial Appeals Judge's decisions respecting the deposition of Ronald Roe. Of particular concern is the decision, as memorialized in Footnote No. 3, to relieve the parties of their respective responsibilities and burdens concerning important evidentiary matters. It appears this decision was based upon an understanding reached during telephone conversations between the Industrial Appeals Judge and counsel representing each party. These conversations apparently took place subsequent to the formal adjournment of hearings but prior to the publication of the deposition. A review of Footnote No. 3 found in the Proposed Decision and Order in conjunction with the allegations of error contained in the employer's Petition for Review leads us to conclude that the parameters and specific terms of the "agreement" were not fully consented to or understood by the parties.

At this point, the Board is presented with an agreement which is at best informally and vaguely identified for the record, ambiguous as to intent and content, and which requires conjecture to interpret. Though we have attempted to make sense of what took place, we view the procedure as completely insufficient to preserve a binding agreement for the record. At the very least, assuming arguendo that it would be appropriate for the Industrial Appeals Judge to assume responsibilities properly belonging to the parties, a statement on the record or written verification from the parties was necessary. See CR 2A.

CR 2A is obviously meant to guard against the kind of dispute which has now arisen in this case. The employer now contends in its Petition for Review that Exhibit No. 14 should have been admitted because the claimant failed to make a hearsay objection to its admission at the time the deposition was taken. Of course, by the same token, the employer failed to move for the admission of Exhibit No. 14 during the deposition. Thus, while the claimant certainly could have registered a hearsay objection to Mr. Roe's testimony at the time of the deposition, the claimant had no reason to object to the admission of an unoffered exhibit.[1]

[1]We note that in Claimant's Response to Employer's Petition for Review Mr. Stiley contends that he in fact did object to the admission of Exhibit No. 14, Dr. Bagby's PCE. However, the portion

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

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

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

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

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

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

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

Proposed Decision and Order the Industrial Appeals Judge sustained the objection on hearsay grounds.

ER 703 permits experts to base opinion testimony upon facts or data of a type reasonably relied upon by such experts on the subject without the admission of the underlying facts or data. However, in In re Ethel E. Reynolds, Dckt. No. 87 3063 (January 18, 1989), we struck a vocational expert's testimony which had been timely and specifically objected to on the grounds of lack of foundation. In the present case, the only objection raised was that the PCE relied on by Mr. Roe did not accurately reflect the claimant's true physical capabilities. Therefore, this case differs from Reynolds and the Industrial Appeals Judge's reliance on Reynolds is misplaced. We hereby overrule the objection and deny the motion at page 22, line 22 through line 25 and page 23, line 1 of Mr. Roe's deposition.

The employer's Petition for Review also seeks to limit the scope of the time loss compensation eligibility determination which is properly before this Board to the period of March 21, 1988 through December 2, 1988. The employer asserts that the Industrial Appeals Judge's rulings extending the scope to include a prior period unfairly prejudiced its ability to effectively present its case. The employer specifically argues that the claimant waived any allegation of entitlement prior to this period by failing to provide a timely and adequate notice of the allegations.

Unquestionably, the order on appeal dated December 2, 1988 terminated time loss compensation effective March 21, 1988. Further, this order encompassed the Department's position with respect to all periods of time loss compensation not previously paid or denied. These periods included January 20 through March 26, 1986; April 5 through April 27, 1986; May 11, 1986 through March 1, 1987; and March 22 through December 2, 1988.

Claimant's notice of appeal sought past due time loss compensation. During a prehearing conference, the periods of entitlement were discussed. However, claimant's representative was not able to specifically identify with exact dates the periods of alleged entitlement. Subsequent to this conference, both parties submitted letters identifying witnesses. After receiving these letters, the Industrial Appeals Judge entered a prehearing order on May 3, 1989, stating that claimant was seeking time loss compensation, but identifying only the period of March 22, 1988 through December 2, 1988.

During the first hearing held after receipt of this order, questions were asked concerning the additional periods of time loss compensation. When the employer objected to the scope of this

inquiry, the Industrial Appeals Judge overruled the objection, with the proviso that accommodations would be made in the hearing schedule to allow the employer an opportunity to defend against any additional periods of alleged eligibility beyond that stated in his order limiting the period of entitlement to March 21, 1988 through December 2, 1988. The employer did present evidence with respect to these additional periods. While the employer's Petition for Review again asserts that the Industrial Appeals Judge erroneously permitted the claimant to expand the periods of time loss eligibility which were at issue, the employer does not say what additional action it would have been able to take if it had been advised of the additional periods of time loss compensation in a more timely manner. Therefore, we can perceive no real harm or prejudice in the ruling. We affirm the Industrial Appeals Judge's decision to allow a full inquiry into the question of time loss compensation for the periods extending from January 20 through March 26, 1986; April 5 through April 27, 1986; May 11, 1986 through March 1, 1987; and March 22 through December 2, 1988.

DECISION

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

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

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

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

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

At one point during hearings, claimant's counsel remarked that:

> Just to simplify it, Judge, I object. It doesn't matter whether he's capable of any work at all, the question on a self-insured case is if his recovery is not yet so complete that he can perform and provide the work at the time of injury, then a specific job description will -- is under the rules a physician would release him for something else. If he's capable as a french fryer and his claim is open, I don't think that makes any difference.

9/25/89 Tr. at 89. This is not an accurate statement of the law.

What is true, however, is that during the period of January 20, 1986 through March 21, 1988 Mr. Francis's condition causally related to the industrial injury was subject to exacerbations and remissions. He attempted to return to work at Vaagen Brothers on several occasions, without sustained success. Finally, surgery was required. Because he was only intermittently available for employment during the pre-surgery period, the only employment reasonably available to him was employment at Vaagen Brothers Lumber, i.e., the employer at the time of injury. That is, while Mr. Francis was capable of sporadic gainful employment, he was not capable of reasonably continuous gainful employment.

When a worker is undergoing active treatment, making attempts to return to work with the employer at the time of injury, and experiencing exacerbations in his condition which require him to miss work, that worker is not capable of reasonably continuous gainful employment. We will therefore not require such a worker to seek out temporary employment in the general labor market during times of temporary improvement in his condition.

This interpretation of the time loss statute, RCW 51.32.090, is consistent with the intent of RCW 51.12.010 and RCW 51.32.095. The former requires that Title 51 be "liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment." The latter states that "[o]ne of the primary purposes of this

title is to enable the injured worker to become employable at gainful employment" and lists jobs with the employer at the time of injury as the top four return-to-work priorities.

However, once the surgery of March 1987 had been performed, and the recovery period had been completed, and Dr. Shanks had released claimant to return to work, there was no impediment to Mr. Francis's returning to generally available gainful employment.

Three vocational rehabilitation counselors were called to testify -Ronald Roe, Thomas Moreland, and Neila Poteshman. Because all three focused so heavily on the jobs available at Vaagen Brothers rather than Mr. Francis's ability to perform generally available gainful employment, particularly after the surgery and recovery period, their testimony is of limited value.

Dr. Shanks was the attending physician from June 9, 1986 through August 21, 1989. Based on his familiarity with the case, Dr. Shanks felt that the physical restrictions imposed by the industrial injury would not have changed from anytime after the industrial injury through December 1988, with the exception of added restrictions for the two months subsequent to the March 2, 1987 surgery. At the same time, however, he acknowledged that claimant reported improved function as a result of the surgery. We also note that Dr. James Dunlap's examination of August 1988 corroborates Mr. Francis's self-report of an improvement subsequent to the surgery.

While Dr. Shanks never completed his own written physical capacities evaluation, he did testify that he felt the claimant was limited to occasional overhead lifting, occasional lifting up to 50 pounds, lifting 20 pounds repetitively, no up and down pushing and pulling, and pushing and pulling only light weights. Within these limitations, Dr. Shanks stated that claimant was employable and would have been so as of March 1988. Dr. Shanks acknowledged that descriptions of jobs at Vaagen Brothers had been provided to him. He felt that the job claimant was doing when injured would generally fit within his restrictions, except for the occasional heavy work.

On the other hand, Dr. Shanks testified that he had made periodic reports throughout 1987 and 1988 that the claimant was unable to work and should be vocationally retrained as a result of his industrial injury. Dr. Shanks recommended enrollment in courses, with the goal of retraining to find employment within claimant's restrictions.

Dr. James Dunlap examined Mr. Francis on August 23, 1988. As of that date, he felt the disability resulting from the industrial injury restricted claimant's ability to work above shoulder level and to lift repetitively over 40 to 50 pounds. Based upon his medical findings, he stated that the claimant was employable.

As noted above, the vocational testimony is of limited use. Ultimately, Ronald Roe's much-discussed testimony is unpersuasive because he relies on the February 29, 1988 PCE of a nontestifying doctor, Dr. Bagby. Claimant's counsel's cross-examination of Mr. Roe with respect to Dr. Bagby's specific limitations demonstrates that they are inconsistent with those imposed by Dr. Shanks, for the earlier period, and Dr. Dunlap, for the later period. We accept the restrictions actually testified to by Drs. Shanks and Dunlap as more reliable.

Vocational counselor Thomas Moreland's testimony is limited to the period from July 1987, when the claimant was referred to him by the self- insured employer's service company, through April 1988. It is to be recalled that the self-insured employer paid time loss compensation from March 2, 1987 through March 21, 1988. Mr. Moreland submitted an employability statement dated March 14, 1988, determining that the claimant was employable. Based upon that assessment, the Department found Mr. Francis employable. While Dr. Shanks did not sign off on a specific job analysis, he did send a letter saying that the described job was within Mr. Francis's capabilities.

Unlike Mr. Moreland, vocational counselor Neila Poteshman felt Mr. Francis was totally temporarily disabled beyond March 21, 1988 and through December 2, 1988. Her opinion is not persuasive for several reasons. First, claimant's condition was legally fixed as of May 12, 1988, when the Department issued its first order closing the claim. In the absence of medical evidence that claimant's condition was not in fact fixed as of that date, no time loss compensation can be paid beyond May 12, 1988. See In re Douglas Weston, BIIA Dec., 86 1645 (1987).

Second, Ms. Poteshman's opinion simply does not jibe with the testimony of the medical experts, Drs. Shanks and Dunlap. Third, Ms. Poteshman's opinion is contrary to Mr. Francis's demonstrated ability to function at a high level. A man who in September 1988 could enroll in community college, travel 1 1/2 hours each way to school four days a week, and maintain a 3.8 grade point average is a man who is clearly employable in some capacity.

Finally, Ms. Poteshman's opinion becomes absurd when taken to its logical conclusion. If Ms. Poteshman were correct, claimant would be entitled to a pension as of December 2, 1988, since his condition was fixed and he was, according to Ms. Poteshman, totally disabled on that date. Not even the claimant is contending that he is a pensioner. In fact, since the claimant did not petition for review of the Proposed Decision and Order, he is apparently content with the determination that his claim should be closed as of December 2, 1988 with a permanent partial disability award equal to 10% of

the amputation value of the right arm at or above the deltoid insertion or by disarticulation at the shoulder.

The best and most complete picture which we can glean from this record is that the claimant was intermittently totally temporarily disabled from January 20, 1986 through March 21, 1988 and, by the latter date, was employable in the general labor market, if not at Vaagen Brothers.

With respect to the Proposed Decision and Order's analysis of the permanent partial disability question, we agree that the attending physician's opinions are most persuasive. Thus we concur that the claim should be closed with a permanent partial disability award equal to 10% of the amputation value of the right arm at or above the deltoid insertion or by disarticulation at the shoulder, as recommended by Dr. Shanks.

In light of the foregoing and after a careful review of the entire record, including the Employer's Petition for Review and the Claimant's Response to Employer's Petition for Review, we conclude that the Department order of December 2, 1988 is incorrect and should be reversed. The claimant is entitled to additional intermittent time loss compensation for the period of January 20, 1986 through March 21, 1988, as well as additional permanent partial disability. Proposed Finding of Fact No. 1 (with the correction that the first sentence is amended to read " On November 19, 1985 the self-insured employer received an accident report alleging that the claimant, Kevin L. Francis, had sustained an injury to the right shoulder on November 13, 1985 during the course of his employment with Vaagen Brothers Lumber Inc."), 2, 3, 4, 7, 8, and 9 and proposed Conclusion of Law No. 1 are hereby adopted as the final findings and conclusion of this Board. In addition, the following findings and conclusions are entered:

FINDINGS OF FACT

5. Between January 20 and March 26, 1986, between April 5 and April 27, 1986, and between May 11, 1986 and March 1, 1987, the claimant was incapable of reasonably continuous gainful employment as a result of the industrial injury.

6. Between March 22, 1988 and December 2, 1988 the industrial injury did not preclude claimant from performing gainful employment on a reasonably continuous basis in light of his age, education, training and work history.

CONCLUSIONS OF LAW

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

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

It is so ORDERED.

Dated this 31st day of August, 1990.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
SARA T. HARMON Chairperson

/s/
PHILLIP T. BORK Member