

Zygarliski, William, Dec'd

BENEFICIARIES

Permanent total disability benefits

A spouse, substituted as the appealing party where the worker died during the pendency of the appeal, who established that the worker was permanently totally disabled as of the date his time-loss compensation benefits were terminated, two years before his suicide, was entitled to benefits under RCW 51.52.050(6). ...*In re William Zygarliski, Dec'd, BIIA Dec., 89 1094 (1990)*

Spouse (RCW 51.32.040)

In the circumstance where a worker died while the appeal was pending and the survivor proves the spousal relationship, and establishes that an application for survivors' benefits has been filed with the Department, the spouse will be substituted as the appealing party and is entitled to pursue any benefits to which the deceased worker may have been entitled. ...*In re William Zygarliski, Dec'd, BIIA Dec., 89 1094 (1990)*

BOARD

Substitution of parties

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PERMANENT TOTAL DISABILITY (RCW 51.08.160)

Survivors' benefits

SUICIDE (RCW 51.32.020)

Permanent total disability at time of death (RCW 51.32.050(6))

A spouse, substituted as the appealing party where the worker died during the pendency of the appeal, who established that the worker was permanently totally disabled as of the date his time-loss compensation benefits were terminated, two years before his suicide, was entitled to benefits under RCW 51.52.050(6). ...*In re William Zygarliski, Dec'd, BIIA Dec., 89 1094 (1990)*

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

1 **IN RE: WILLIAM ZYGARLISKI, DEC'D) DOCKET NO. 89 1094**
2)
3)
4 **CLAIM NO. J-498493) DECISION AND ORDER**
5

6 APPEARANCES:
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8 Elizabeth Zygarliski, surviving spouse of William Zygarliski, by
9 Law Offices of David B. Vail, per
10 Thomas E. Egan and David B. Vail
11

12 Employer, Triad Mechanical, Inc.,
13 None
14

15 Department of Labor and Industries, by
16 The Attorney General, per
17 Art E. DeBusschere, Leslie V. Johnson, and Thomas Anderson, Assistants
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19 This is an appeal filed by the claimant, William Zygarliski, on March 27, 1989 from an order of
20 the Department of Labor and Industries dated February 7, 1989 which denied responsibility for
21 unrelated pathology described as "dementia associated with alcoholism, alcohol dependency, and
22 mixed personality disorder", and which adhered to the provisions of a Department order dated
23 December 29, 1988 which closed the claim with time loss compensation as paid to April 4, 1988 and
24 which awarded a permanent partial disability consistent with Category 3 for low back impairment (10%
25 as compared to total bodily impairment), payable at 75% of monetary value. **REVERSED AND**
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29 **REMANDED.**
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31 **PROCEDURAL AND EVIDENTIARY MATTERS**
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33 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
34 and decision on a timely Petition for Review filed on behalf of the claimant to a Proposed Decision and
35 Order issued on February 1, 1990 in which the order of the Department dated February 7, 1989 was
36 affirmed.
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38 As a preliminary matter we address Elizabeth Zygarliski's Motion and Affidavit for Substitution,
39 filed on April 12, 1990. Pursuant to an agreement of the parties, we have admitted into the record a
40 certified copy of the certificate of death of William Zygarliski as Exhibit No. 4, a copy of the certificate of
41 marriage of William Zygarliski to Elizabeth L. Goff as Exhibit No. 5, and a copy of the claim for pension
42 by spouse submitted by Elizabeth Zygarliski as Exhibit No. 6. These exhibits establish that William
43 Zygarliski died on February 27, 1990 as the result of a self-inflicted gunshot wound, that at the time of
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1 his death he was married to Elizabeth Zygarliski, and that she has filed an application for benefits, as
2 the surviving spouse, with the Department of Labor and Industries.

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4 As Elizabeth Zygarliski has clearly established her status as a surviving widow, she is entitled
5 under RCW 51.32.040 to pursue any benefits to which her late husband may have been entitled. This
6 right is quite independent and separate from any claim that she may have under the provisions of
7 RCW 51.32.050(6) to receive benefits as the result of being the surviving widow of an injured worker
8 who dies during a period of permanent total disability.¹

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10 As Elizabeth Zygarliski has filed an application for compensation with the Department of Labor
11 and Industries within one year of her husband's death and is a surviving spouse, she falls within the
12 class of beneficiaries to whom awards and payments survive under the provisions of RCW 51.32.040.
13 Her situation is distinguished from that of the personal representative in Johnson v. Dep't of Labor &
14 Indus., 114 Wn.2d 479 (1990), where the claim was determined to have abated as there was no
15 surviving spouse or child. Rather, Elizabeth Zygarliski's situation is analogous to that of the widows in
16 Lightle v. Dep't of Labor & Indus., 68 Wn.2d 507 (1966) and Powell v. Dep't of Labor & Indus., 79
17 Wn.2d 378 (1971). As enunciated in Powell at 386-387:

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19 ... under the provisions of RCW 51.32.040, a widow of a workman who
20 has suffered an industrial injury and has died from some other cause, is
21 entitled to receive the compensation to which her husband was entitled but
22 which he did not receive, whether or not a decision in his favor was
23 rendered by the Department prior to his death.

24
25 In the case before us, the Board of Industrial Insurance Appeals has
26 determined, upon the evidence, that Mrs. Powell's husband was totally
27 disabled from October 23, 1959 until November 27, 1961. Having made
28 that determination, the board should have ordered that payments for such
29 disability, which the workman did not receive during his lifetime, should be
30 made to his widow.

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32 Under the holdings of Lightle and Powell, Elizabeth Zygarliski is entitled to be substituted for her
33 deceased husband, William Zygarliski, as the real party in interest to this appeal. Accordingly, we
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40 ¹If, as we believe the record establishes, Elizabeth Zygarliski is entitled to benefits under the
41 provisions of RCW 51.32.050(6) as the surviving widow of an injured worker who dies during a
42 period of permanent total disability, she is not disqualified from these benefits by the manner in
43 which her late husband met his demise. While the certificate of death, Exhibit No. 4, establishes
44 that death resulted from a "self-inflicted gunshot wound to the head", Mr. Zygarliski's suicide does
45 not bar a survivorship claim as it was not the "singular event for which compensation is claimed."
46 Dep't of Labor & Indus. v. Baker, 57 Wn. App. 57, at 59 (1990).
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1 grant the motion filed by Elizabeth Zygarliski on April 12, 1990 and substitute her as surviving widow
2 for the claimant, William Zygarliski.
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4 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no
5 prejudicial error was committed and said rulings are hereby affirmed.
6

7 DECISION

8 The direct appeal filed on behalf of William Zygarliski from the Department order closing his
9 claim raises a number of issues regarding causal relationship and extent of disability. It was the
10 contention of Mr. Zygarliski that conditions delineated in the Department order dated February 7, 1989
11 consisting of "dementia associated with alcoholism, alcohol dependency, and a mixed personality
12 disorder" were all conditions which were related to the industrial injury of October 25, 1984. In
13 addition, and probably most significantly, was the issue of the extent of Mr. Zygarliski's entire disability
14 in light of the permanent impairment caused by the industrial injury, combined with the disability
15 caused by conditions which preexisted that injury. It was argued on Mr. Zygarliski's behalf that the
16 Category 3 low back impairment previously awarded by the Department of Labor and Industries for the
17 effects of the industrial injury had rendered him unable to perform any forms of continuous gainful
18 employment when considered in light of his preexisting limitations and disabilities.
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20 While the evidence presented by the parties is fully and accurately discussed in the Proposed
21 Decision and Order, we believe that insufficient consideration was given to the disabling effect of the
22 impairment caused by this industrial injury when considered in light of Mr. Zygarliski's preexisting
23 disabilities. By closing the claim with a permanent partial disability award for a Category 3 low back
24 impairment, the Department has conceded that Mr. Zygarliski had a permanent physical impairment
25 which was causally related to the industrial injury of October 25, 1984. In our view, that impairment,
26 coupled with the myriad disabilities Mr. Zygarliski had prior to the industrial injury, rendered him totally
27 and permanently disabled.
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29 The record provides a clear picture of Mr. Zygarliski as a person who had limited education and
30 skills. His lifetime employment was as an iron worker, a trade which places some demands on
31 intellectual abilities but higher demands on physical skill and strength. Mr. Zygarliski was first
32 employed as an iron worker in 1956. He injured his back on the job in 1963, but continued to work as
33 an iron worker on a regular basis until he suffered his second industrial injury to his low back in 1979.
34 After 1979, Mr. Zygarliski worked on an irregular and limited basis, his principal employment being the
35 four or five days he worked prior to the 1984 industrial injury here in issue.
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1 It is also clearly established in the record that Mr. Zygarliski had a long-term serious problem
2 with alcohol abuse. The long-term alcohol abuse, which was commented on by almost every witness
3 who testified in this matter, resulted in Mr. Zygarliski's permanent loss of driving privileges in 1981 and
4 caused a number of significant health problems.
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7 In addition to suffering from the health problems attributable to chronic alcohol abuse, Mr.
8 Zygarliski suffered from the effects of a number of injuries which occurred prior to his industrial injury.
9 In addition to job-related low back injuries which occurred in 1963 and 1979, Mr. Zygarliski suffered a
10 severe head injury in 1967 when he was assaulted, and injured his right shoulder, hand and left elbow
11 when he fell from his bicycle in 1982. In spite of the many problems associated with these various
12 injuries and conditions, Mr. Zygarliski was capable of at least marginal gainful employment prior to the
13 October 25, 1984 industrial injury, as evidenced by the fact that he worked for four or five days as an
14 iron worker immediately prior to that industrial injury. He did not work thereafter.
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17 During the course of proceedings the parties presented the testimony of three mental health
18 professionals, and although they disagreed to some degree about the causal relationship of some
19 conditions to the industrial injury, they were in agreement that Mr. Zygarliski had substantial psychiatric
20 or psychological problems preexisting the industrial injury.
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22
23 Dr. Hugh Murray, a psychiatrist, testified on behalf of the claimant on the basis of an
24 examination he performed on August 8, 1989. Based upon his examination and upon testing
25 performed by Dr. Robert A. Lester, a psychologist, he expressed the opinion that Mr. Zygarliski's
26 primary problems related to organic brain dysfunction, a condition which preexisted the industrial
27 injury. In addition to organic brain dysfunction and a number of other conditions, Dr. Murray
28 diagnosed dementia associated with alcoholism or possibly attributable to head trauma.
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31 Based upon the testing he performed, Dr. Lester expressed the opinion that Mr. Zygarliski was
32 intellectually limited, having an IQ of only 76. He also felt that Mr. Zygarliski's level of intellectual
33 function had remained unchanged throughout his life.
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36 Dr. Jeanne Boucher-Leif, a psychiatrist, testified on behalf of the Department relying upon
37 examinations that she performed in April of 1986 and August of 1988. Based upon her examinations
38 and upon information supplied by the attorney for the Department, she expressed the opinion that Mr.
39 Zygarliski suffered from significant intellectual impairment due to damage to his nervous system which
40 was most likely caused by chronic alcoholism. She did not feel that either the dementia associated
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1 with alcohol dependency or the mixed personality disorder, which she diagnosed, were in any way
2 causally related to the industrial injury.
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4 While the exact cause may be in doubt, there is no question that Mr. Zygarliski had substantial
5 psychiatric or psychological impairment prior to his industrial injury of October 25, 1984. The disability
6 caused by these conditions provides us with a convincing explanation of why Mr. Zygarliski would be
7 unable to perform any type of employment other than the physically demanding type of work he had
8 performed for all of his adult life. In light of Mr. Zygarliski's limited intellectual capacity and the
9 conditions associated with his prior head injury and chronic alcoholism, he was not capable of
10 performing any forms of employment of a lighter or more intellectual nature than he was involved in as
11 an iron worker. Although we agree with the Department's determination that the "dementia associated
12 with alcoholism, alcohol dependency, and the mixed personality disorder" were unrelated to the
13 industrial injury, these conditions must still be considered in the permanent total disability equation,
14 because they all existed and were disabling prior to the occurrence of the industrial injury on October
15 25, 1984.
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22 If we were relying solely upon the testimony presented by the parties, we might very well come
23 to the conclusion that Mr. Zygarliski had no permanent impairment or permanent partial disability
24 attributable to the industrial injury of October 25, 1984. However, as the Department closed this claim
25 with a permanent partial disability award for a level of impairment best described by Category 3 of
26 WAC 296-20-280, we are not faced with this question. By closing the claim with a disability award for
27 low back impairment, the Department conceded that Mr. Zygarliski had a permanent impairment or
28 loss of physical function attributable to the industrial injury of October 25, 1984. While the physical
29 effect of this impairment may have been minor, its legal effect on the outcome of Mr. Zygarliski's
30 appeal is significant. The impairment admitted to have been caused by the industrial injury is truly
31 analogous to the "straw that broke the camel's back". While Mr. Zygarliski may have been a most
32 marginal member of the workforce, he was employed prior to the industrial injury in his usual trade as
33 an iron worker. Although he was employed on a limited and fitful basis, he was performing
34 employment as an iron worker immediately prior to his industrial injury even though he had substantial
35 limitations, impairment and disability.
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43 Considering the testimony of the various expert witnesses, it is clear that Mr. Zygarliski was
44 unable to return to work as an iron worker after his industrial injury and was in fact probably incapable
45 of returning to work in any form of gainful employment. The only significant disagreement between the
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1 various experts relates to their opinions regarding the cause of Mr. Zygarliski's inability to perform
2 gainful employment. We are convinced that the low back impairment caused by the industrial injury
3 was the final causative factor which completely removed Mr. Zygarliski from the work force. While the
4 effect of a Category 3 low back impairment would have been relatively minor on any number of
5 individuals, it had a substantial impact on Mr. Zygarliski because of his significant preexisting
6 problems. Considering the combined effects of the impairment caused by this injury and Mr.
7 Zygarliski's preexisting limitations, impairments and disabilities, we are firmly convinced that he was
8 totally and permanently disabled and was entitled to be placed upon the pension rolls as of April 5,
9 1988.

10 After consideration of the Proposed Decision and Order and the Petition for Review filed
11 thereto on behalf of the claimant, and a careful review of the entire record before us, we are
12 persuaded that the Department order closing the claim is incorrect and must be reversed. The claim
13 will be remanded to the Department with direction to declare that Mr. Zygarliski was a totally and
14 permanently disabled worker, effective April 5, 1988.

15 Proposed Findings of Fact Nos. 1, 2, and 3, and proposed Conclusions of Law Nos. 1 and 2
16 are hereby adopted as this Board's final findings and conclusions. In addition, the Board enters the
17 following findings and conclusions:
18

19 **FINDINGS OF FACT**

- 20 4. As of April 5, 1988 and through February 7, 1989, claimant's condition
21 causally related to his industrial injury of October 25, 1984, was fixed and
22 stable and in need of no further treatment.
- 23 5. As of April 5, 1988 and through February 7, 1989, claimant's permanent
24 impairment, causally related to his industrial injury of October 25, 1984,
25 was best described by Category 3 of the categories for lumbosacral
26 impairments contained in WAC 296-20-280.
- 27 6. In 1989, claimant was a 55 year old man with a seventh grade education.
28 His working career was limited to heavy work as an iron worker, structural
29 steel worker and as a longshoreman, since he commenced working in
30 1956.
- 31 7. Mr. Zygarliski injured his back on-the-job in 1963, but continued to work as
32 an iron worker. He suffered a head injury in 1967 when he was assaulted.
33 He worked relatively consistently from 1956 until he sustained his second
34 industrial back injury in 1979. His work record after 1979 was spotty. He
35 injured his right shoulder, hand, and left elbow in 1982, when he fell off his
36 bicycle. Mr. Zygarliski also had a long history of severe alcohol abuse.

- 1 8. As of April 5, 1988 and through February 7, 1989, claimant suffered from
2 pathological conditions including dementia associated with alcoholism,
3 alcohol dependency and mixed personality disorder, which preexisted his
4 industrial injury of October 25, 1984 and which were not aggravated by
5 that injury.
- 6 9. As of February 7, 1989, and during the period between April 4, 1988 and
7 February 7, 1989, the claimant was prevented from performing the
8 physical activities necessary to maintain employment as an iron worker as
9 a result of the impairment caused by the industrial injury of October 25,
10 1984, when considered in combination with the disabilities and limitations
11 which existed prior to that injury.
- 12 10. As of April 5, 1988 and through February 7, 1989, William Zygarliski, in
13 light of his age, training, education, work experience, preexisting
14 disabilities, and additional disability causally related to the industrial injury
15 of October 25, 1984, was incapable of engaging in any form of continuous
16 gainful employment.
- 17 11. William Zygarliski died on February 27, 1990, as the result of a
18 self-inflicted gunshot wound to the head.
- 19 12. Elizabeth Zygarliski was married to William Zygarliski on December 5,
20 1986 and was his surviving widow at the time of his death on February 27,
21 1990.
- 22 13. On April 4, 1990, Elizabeth Zygarliski filed an application for benefits with
23 the Department of Labor and Industries as the surviving widow of William
24 Zygarliski.

CONCLUSIONS OF LAW

- 25 3. As of April 5, 1988 and through February 7, 1989, the claimant, William
26 Zygarliski, was totally and permanently disabled within the meaning of
27 RCW 51.08.160.
- 28 4. As Elizabeth Zygarliski is the surviving widow of William Zygarliski and has
29 filed an application for benefits within one year of the date of death, this
30 appeal does not abate and she is entitled to be substituted as the real
31 party in interest and to prosecute this appeal under the provisions of RCW
32 51.32.040.
- 33 5. The order of the Department of Labor and Industries dated February 7,
34 1989 which denied responsibility for unrelated pathology described as
35 "dementia associated with alcoholism, alcohol dependency, and mixed
36 personality disorder", and which adhered to the provisions of a
37 Department order dated December 29, 1988 which closed the claim with
38 time loss compensation as paid to April 4, 1988 and which awarded a
39 permanent partial disability consistent with Category 3 for low back
40 impairment (10% as compared to total bodily impairment), payable at 75%
41 of monetary value, is incorrect and is reversed and the claim is remanded
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1 to the Department with directions to declare that William Zygarliski was a
2 totally and permanently disabled worker under the Industrial Insurance Act
3 as of April 5, 1988, to pay to Elizabeth Zygarliski as the surviving widow
4 any benefits to which William Zygarliski was entitled at the time of his
5 death, and to issue a further order determining whether Elizabeth
6 Zygarliski is entitled to further benefits as the surviving widow of a totally
7 permanently disabled worker in light of the determinations made herein.
8

9 It is so ORDERED.

10 Dated this 21st day of September, 1990.

11 BOARD OF INDUSTRIAL INSURANCE APPEALS
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13
14 /s/
15 _____
16 SARA T. HARMON Chairperson
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19 /s/
20 _____
21 FRANK E. FENNERTY, JR. Member
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