

Gleason, Traci

PERMANENT PARTIAL DISABILITY (RCW 51.32.080)

Cervical conditions

The system of permanent impairment ratings contemplates a best fit analysis, thus a finding of neck rigidity is necessary to support a rating equal to category 2, cervical impairments, in the absence of the other physical findings listed in WAC 296-20-240(2).
...*In re Traci Gleason*, BIIA Dec., 92 5936 (1994)

Scroll down for order.

1 findings. Specifically, the claimant charges that "rote" adherence to specific wording in the
2 Washington Administrative Code (WAC) defeats the purpose of the Industrial Insurance Act, and
3 violates the mandated liberal construction provision. Ms. Gleason requests that the Board give a
4 "definitive ruling" regarding its interpretation/construction of the WAC 296-20-240(2) requirements for
5 cervical impairment.
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9 We are not persuaded that a preponderance of the evidence in this appeal demonstrates that
10 the claimant sustained a compensable permanent partial disability for cervical impairment as a result
11 of the September 10, 1991 industrial injury. We granted review, however, to provide a detailed
12 discussion of our reasoning and our interpretation of the pertinent WAC provisions.
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15 The facts of this case are simple and will only be reiterated here as necessary to understand
16 our decision. Ms. Gleason sustained a muscle and ligamentous strain injury to her cervical-dorsal
17 spine on September 10, 1991, while in the course of her employment with Financial Maintenance
18 Corporation. The injury occurred when she was swinging a 50-60 pound bag of trash into a dumpster.
19 As a result of the injury, she experienced immediate pulling and burning sensations in her neck and
20 across her shoulders, and heard a "crunching" type of noise.
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23 On September 10, 1991, Ms. Gleason sought medical treatment at CHEC Medical Center for
24 her industrially related condition. Over the next several months, she received conservative medical
25 treatment which included: anti-inflammatories, muscle relaxants, pain and anti-depressant
26 medications, and physical therapy.
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29 On December 27, 1991, Ms. Gleason was referred to "Back in Action" for an intensive
30 eight-week back rehabilitation program. The claimant testified that she did not feel that the treatment
31 she received helped to relieve her symptoms very much, but that her condition had plateaued by the
32 end of the "Back in Action" program.
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35 Ms. Gleason did not work during the period from April 14, 1992 through the end of October
36 1992. She testified that she did not feel that she was capable of working and understood that her
37 treating physician had not released her for work during that period. In November 1992, Ms. Gleason
38 returned to work as a cook at a cafe in Renton. She continued to work in this capacity until January
39 1993 when she left the job because she felt it was too physically demanding. Subsequently, the
40 claimant started working as a cook at the International House of Pancakes, in what she described as a
41 less physically demanding job.
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1 Only two medical witnesses testified in this matter, neither of whom treated the claimant for her
2 cervical condition. Dr. Roy D. Broman, a certified family practitioner and emergency room physician,
3 testified on behalf of the claimant. Dr. Paul F. Williams, a certified orthopedic surgeon, testified on
4 behalf of the Department.
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7 Dr. Broman examined Ms. Gleason on November 2, 1992. He noted that the attitude of the
8 claimant's head and neck appeared normal. In fact, Dr. Broman's examination of the claimant's
9 cervical spine and upper extremities was normal except for the following findings: tenderness and
10 spasm of the right mid-dorsal and neck muscles and left dorsal-trapezius muscles; some spasm of the
11 interscapular muscles and tightness of the posterior axillary wall muscles; point tenderness at the
12 insertion of the levator scapulae muscles bilaterally; and limitations in the claimant's cervical range of
13 motion for flexion, extension, rotation, and side bending. Based on Ms. Gleason's objective findings
14 and subjective complaints, and the clinical consistency of all these findings, Dr. Broman rated the
15 impairment caused by the industrial injury at Category 2, WAC 296-20-240, for permanent cervical
16 impairment. In his opinion, the claimant was capable of reasonably continuous gainful employment at
17 that time in a light or sedentary capacity.
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24 Dr. Williams examined Ms. Gleason on April 23, 1992. His examination did not reveal any
25 muscle spasm or significant limitations in the claimant's cervical range of motion. In fact, he did not
26 detect any findings on examination to objectify the claimant's continuing pain complaints. Dr. Williams
27 reviewed the claimant's medical history and noted that Dr. Monlux, who treated the claimant for 5-6
28 months beginning in December 1991, did not record any findings of muscle spasm either. Dr.
29 Williams rated the claimant's industrially related cervical condition at Category 1, WAC 296-20-240.
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33 Neither Dr. Broman nor Dr. Williams obtained x-rays at the time of their respective
34 examinations; however, they reviewed x-rays and an MRI of Ms. Gleason's cervical spine taken
35 shortly after the industrial injury. The cervical x-rays and MRI were normal, except that the x-rays
36 evidenced a congenital fusion between C2 and C3, and the MRI revealed an abnormal rightward
37 signal intensity by the tracheae at T1-2. Neither of these abnormalities were industrially related,
38 however.
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42 The category system of rating impairment for unspecified disabilities was adopted pursuant to a
43 legislative grant of authority, a 1971 amendment to RCW 51.32.080(2). That amendment directed the
44 Department to classify unspecified permanent partial disabilities and determine the proportion they
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1 bear to total bodily impairment. The express purpose of the amendment was to reduce litigation and
2 establish more certainty and uniformity in fixing awards for unspecified disabilities.
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4 In Vliet v. Dep't of Labor & Indus., 30 Wn. App. 709, 713 (1981), the Washington Court of
5 Appeals upheld the validity of the category system of rating unspecified impairments as being
6 reasonably consistent with the enabling legislation. The Court of Appeals specifically noted that:
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8 It is implicit in the language of the amended statute that the legislature
9 contemplated the loss of a certain degree of precision in rating workers'
10 impairments in order to attain these administrative goals. We are
11 convinced that the regulations enacted by the Department, which base
12 disability awards on the presence of specific physical findings and
13 eliminate reliance on physicians' subjective opinions, are entirely
14 consistent with these goals and must be upheld.
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16 Under the category system of rating impairment for unspecified permanent partial disabilities,
17 physicians are directed to "select the one category which most accurately indicates the overall degree
18 of permanent impairment." If it appears that more than one category may be applicable, the physician
19 must select "the category which most accurately reflects the overall impairment." WAC 296-20-
20 220(1)(g). Impairment is defined as the "loss of physical . . . function," and must be evidenced by
21 objective clinical findings. WAC 296-20-220(1)(c). Under WAC 296-20-230(1)(a), such objective
22 clinical findings, including muscle spasm or involuntary guarding, are to be considered "only insofar as
23 productive of cervical or cervico-dorsal impairment."
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25 In this appeal, we are faced with choosing between the disability ratings of two forensic
26 examiners. Based on a careful review of the record, we are convinced that the opinion of Dr. Williams
27 preponderates. We believe that his rating of Category 1, WAC 296-20-240, most accurately reflects
28 the overall degree of the claimant's permanent cervical impairment.
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30 Under WAC 296-20-240(1), subjective complaints are generally present, but there are "no
31 objective clinical findings" of impairment. On examination, Dr. Williams was not able to detect any
32 muscle spasm or other significant objective findings as a causal result of the industrial injury. We also
33 note that Dr. Williams' findings, or lack thereof, were consistent with the claimant's medical history
34 since the injury.
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36 Conversely, Dr. Broman rated the claimant's permanent partial disability at Category 2 for
37 cervico-dorsal impairment. WAC 296-20-240(2) defines cervico-dorsal impairment as follows:
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1 Mild cervico-dorsal impairment, with objective clinical findings of such
2 impairment with neck rigidity substantiated by x-ray findings of loss of
3 anterior curve, without significant objective neurological findings.

4 This and subsequent categories include the presence or absence of pain
5 locally and/or radiating into an extremity or extremities. This and
6 subsequent categories also include the presence or absence of reflex
7 and/or sensory losses. This and subsequent categories also include
8 objectively demonstrable herniation of a cervical intervertebral disc with or
9 without discectomy and/or fusion, if present.

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11 Under WAC 296-20-680(1), a Category 2 rating for cervical impairment is equal to 10% of total bodily
12 impairment.

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14 In this appeal, we are simply not convinced that Dr. Broman's one-time findings of some muscle
15 spasm and associated range of motion deficits are indicative of permanent impairment. This is
16 especially true given the lack of any such findings by prior examining and treating physicians. Further,
17 Dr. Broman's findings, by themselves, do not establish the existence of a condition that is equivalent to
18 10% of total bodily impairment, a significant disability.

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20 The claimant challenges our industrial appeals judge's narrow reading of WAC 296-20-240.
21 She argues that the rule should not be construed to absolutely require a finding of "neck rigidity
22 substantiated by x-ray findings of loss of anterior curve." We concede that the category rating system
23 contemplates a "best fit analysis." In our view, we are not compelled to place an injured worker in a
24 lower category simply because of the absence of one of the elements contained in the higher
25 category.

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27 The lack of a finding of "neck rigidity . . ." is, however, a critical or determinative factor in this
28 appeal. We are convinced that such a finding is necessary to support a Category 2 rating in the
29 absence of the other physical findings listed in WAC 296-20-240(2) which are productive of mild
30 cervical impairment. As noted above, one-time findings of some muscle spasm and some range of
31 motion limitations do not necessarily evidence permanent impairment and are not sufficient for a
32 Category 2 rating for cervical impairment.

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34 We recognize that the category system does not provide for compensation for some injured
35 workers with objectively measurable, but slight, loss of cervical function or cervical impairment. Under
36 WAC 296-20-240 and WAC 296-20-680(1) an injured worker is not entitled to monetary compensation
37 for permanent partial disability unless his or her cervical impairment is evidenced by the requisite
38 physical findings and equals or exceeds 10% of total bodily impairment. While such a result is
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1 arguably unfair to some individuals, our Legislature and the courts have determined that the category
2 system is preferable to the uncertainty, lack of uniformity, and subjectivity that preceded its adoption.
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4 After consideration of the Proposed Decision and Order and the Petition for Review filed
5 thereto, and a careful review of the entire record before us, we are persuaded that the Department
6 order dated November 13, 1992, which closed the claim with time-loss compensation as paid to April
7 14, 1992 without further award for time-loss compensation or permanent partial disability, is correct
8 and should be affirmed.
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11 **FINDINGS OF FACT**

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- 13 1. On September 13, 1991, Traci L. Gleason, claimant, filed an application
14 for benefits with the Department of Labor and Industries alleging that she
15 sustained an injury on September 10, 1991, during the course of her
16 employment with Financial Management Corp. The claim was
17 subsequently allowed and benefits were paid to the claimant. On
18 November 13, 1992, the Department entered an order closing the claim
19 with time-loss compensation as paid to April 14, 1992 and without further
20 award for time-loss compensation or permanent partial disability.
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22 On December 7, 1992, the claimant filed a Notice of Appeal with the
23 Board of Industrial Insurance Appeals. On December 30, 1992, the Board
24 entered an order granting the appeal, assigning Docket No. 92 5936 and
25 directing that hearings be held on the issues raised by the appeal.

- 26 2. On September 10, 1991, the claimant, Traci L. Gleason, was working as a
27 janitor for Financial Maintenance Corp. On that day, she was attempting
28 to throw a 50 to 60 pound trash bag over her head into a trash dumpster
29 when she felt an immediate pull and pain in her shoulder, upper back and
30 neck.
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- 32 3. As a direct and proximate result of the September 10, 1991 industrial
33 injury, the claimant sustained a cervical and thoracic strain.
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- 35 4. The claimant has a congenital fusion at C2-C3, which pre-existed and was
36 not causally related to the September 10, 1991 industrial injury.
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- 38 5. As of November 13, 1992, the claimant's condition, causally related to the
39 industrial injury of September 10, 1991, was fixed and stable and not in
40 need of further medical treatment.
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- 42 6. As of November 13, 1992, the claimant's permanent disability causally
43 related to the September 10, 1991 industrial injury was best described by
44 Category 1 of WAC 296-20-240.
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- 46 7. The claimant is a 29-year-old high school graduate who has worked in
47 commercial foods as a cook, on an assembly line producing car stereos,
as a file clerk and as a janitor.

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8. Between April 15, 1992 and October 25, 1992, the claimant was not precluded by the residuals of the industrial injury, given her age, education, and work experience, from engaging in gainful employment on a reasonably continuous basis.

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CONCLUSIONS OF LAW

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1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and the subject matter of this appeal.
 2. Between April 15, 1992 and October 25, 1992, the claimant was not temporarily and totally disabled within the meaning of RCW 51.32.090.
 3. As of November 13, 1992, the claimant did not sustain a compensable permanent partial disability within the meaning of RCW 51.32.080 as a result of the September 10, 1991 industrial injury.
 4. The order of the Department of Labor and Industries dated November 13, 1992, which closed this claim with time-loss compensation as paid to April 14, 1992 and without further award for time-loss compensation or permanent partial disability is correct and is affirmed.

20 It is so ORDERED.

21 Dated this 7th day of January, 1994.

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23 BOARD OF INDUSTRIAL INSURANCE APPEALS

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26 /s/
27 S. FREDERICK FELLER Chairperson

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30 /s/
31 ROBERT L. McCALLISTER Member