

Ortiz Martinez, Carlos

TIME-LOSS COMPENSATION (RCW 51.32.090)

Withdrawal of Modified Position Offer

Where a worker and employer agree to modify a light-duty job offer description, the employer is deemed to have withdrawn the original offer. ...*In re Carlos Ortiz Martinez, BIA Dec., 20 10952*

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: CARLOS ORTIZ MARTINEZ**) **DOCKET NOS. 20 10952, 20 17652, 20 17653,**
2) **20 17654, 20 17655, 20 17657, 20 17658,**
3) **20 19152, 20 19353, 20 19754, 20 22453,**
4) **20 24350, 20 24351, 20 24653, 21 10453,**
5) **21 12350, 21 13850, 21 13851, 21 13852,**
6) **21 15651, 21 15652 & 21 15653**
7)
8)
9 **CLAIM NO. BB-40305**) **DECISION AND ORDER**

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11 On March 3, 2019, Carlos Ortiz Martinez, was working as a framer for Phil Rock Construction,
12 Inc. He stood on a ladder between four and eight feet from the ground when he jumped from the
13 ladder to avoid being hit by a heavy falling wall he was lifting with others. Mr. Ortiz Martinez fell and
14 injured his back and his left foot and ankle. On the day of the injury Mr. Ortiz Martinez went to
15 Harborview Medical Center where they documented injuries to his left ankle and back. On August 2,
16 2019, Mr. Ortiz Martinez sought additional medical care. He filed a claim with the Department of
17 Labor and Industries, and his claim was allowed. Under the claim Mr. Ortiz Martinez has received
18 medical treatment, including surgery on his left foot, wage replacement benefits, and vocational
19 services. The employer appealed the decisions of the Department of Labor and Industries providing
20 these benefits.
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23 In the Proposed Decision and Order, dated October 11, 2021, the industrial appeals judge
24 made the following determinations about the employer's 22 appeals:
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27 **Docket No. 20 10952**

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29 The Department paid time-loss compensation from September 25, 2019, through October 7,
30 2019, and the employer appealed the December 26, 2019 order arguing Mr. Ortiz Martinez was
31 capable of reasonably continuous work in a light-duty position. The employer failed to make a prima
32 facie case the order is incorrect, and the appeal is **DISMISSED**.
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35 **Docket No. 20 17652**

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37 The Department set the wage rate order at \$8,800 each month based on eight hours a day,
38 22 days a month, and \$50 an hour. The employer appealed the April 17, 2020 order affirming the
39 October 16, 2019 wage rate order arguing they did not pay Mr. Ortiz Martinez under an hourly wage
40 rate. The employer failed to establish a prima facie case the order is incorrect, and the appeal is
41 **DISMISSED**.
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1 **Docket No. 20 17653**

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3 The Department paid time-loss compensation for October 8, 2019, through March 22, 2020.
4 The employer appealed the April 21, 2020 order affirming the October 21, 2019, November 4, 2019,
5 November 18, 2019, December 2, 2019, December 16, 2019, December 30, 2019, January 13, 2020,
6 January 27, 2020, February 10, 2020, February 14, 2020, March 4, 2020, March 20, 2020, and March
7 30, 2020 orders. The employer argued Mr. Ortiz Martinez was capable of reasonably continuous
8 work in the light-duty construction manager position. The employer failed to establish a prima facie
9 case that the October 21, 2019, November 4, 2019, November 18, 2019, December 2, 2019,
10 December 16, 2019, December 30, 2019, January 13, 2020, January 27, 2020, February 10, 2020,
11 and February 14, 2020 orders are incorrect. On February 13, 2020, Mr. Ortiz Martinez began working
12 in an agreed upon light-duty construction manager position that paid \$18 an hour in contrast to his
13 job of injury wage of \$50 per hour. The employer failed to establish a prima facie case the orders
14 dated March 4, 2020, March 20, 2020, and March 30, 2020, are incorrect. The appeal is **DISMISSED**.

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21 **Docket No. 20 17654**

22 The Department approved a lumbar spine magnetic resonance imaging (MRI). The employer
23 appealed arguing it was not necessary and proper treatment. The employer failed to establish a
24 prima facie case the April 24, 2020 order affirming the December 23, 2019 letter is incorrect and the
25 appeal is **DISMISSED**.

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28 **Docket No. 20 17655**

29 The Department approved a lower left leg extremity MRI. The employer appealed arguing it
30 was not necessary and proper treatment. The employer failed to establish a prima facie case the
31 April 27, 2020 Department order affirming the February 19, 2020 letter is incorrect, and the appeal is
32 **DISMISSED**.

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35 **Docket No. 20 17657**

36 The Department allowed the left foot plantar fasciitis condition as it was proximately caused
37 by the industrial injury. The employer appealed arguing he did not have the condition, and if he had
38 the condition, it was not proximately caused by the industrial injury. The Department and claimant
39 established by a preponderance of the evidence Mr. Ortiz Martinez had left foot plantar fasciitis, and
40 it was proximately caused by the industrial injury. The April 29, 2020 Department order affirming the
41 January 31, 2020 order is correct, and **AFFIRMED**.

1 **Docket No. 20 17658**

2 The Department approved injections of the interlaminar lumbar/spine. The employer appealed
3 arguing it was not proper and necessary treatment. The employer did not establish a prima facie
4 case the April 30, 2020 order affirming the April 10, 2020 letter is incorrect, and the appeal is
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7 **DISMISSED.**

8 **Docket No. 20 19152**

9 The Department paid time-loss compensation from May 7, 2020, through June 3, 2020. The
10 employer appealed arguing Mr. Ortiz Martinez was capable of reasonably continuous work. The
11 Department and claimant established by a preponderance of the evidence he was temporarily totally
12 disabled during this time period. The Department order dated June 16, 2020, affirming the May 20,
13 2020 and June 3, 2020 orders is correct and **AFFIRMED.**

14 **Docket No. 20 19353**

15 The Department paid time-loss compensation from June 4, 2020, through June 17, 2020. The
16 employer appealed arguing Mr. Ortiz Martinez was capable of reasonably continuous work. The
17 Department and claimant established by a preponderance of the evidence he was temporarily totally
18 disabled during this time period. The Department order dated June 17, 2020, is correct and
19 **AFFIRMED.**

20 **Docket No. 20 19754**

21 The Department ordered repayment of \$7,836.12 of time-loss compensation. The employer
22 appealed the June 30, 2020 order. The employer presented no evidence. The appeal is
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24 **DISMISSED.**

25 **Docket No. 20 22453**

26 The Department paid time-loss compensation from June 18, 2020, through July 29, 2020. The
27 employer appealed arguing Mr. Ortiz Martinez was capable of reasonably continuous work. The
28 Department and claimant established by a preponderance of the evidence he was temporarily totally
29 disabled during this time period. The Department order dated September 8, 2020, affirming the July
30 1, 2020, July 15, 2020, and July 29, 2020 orders is correct and **AFFIRMED.**

31 **Docket No. 20 24350**

32 The Department allowed the conditions related to the left leg peroneal group. The employer
33 appealed arguing left leg peroneal group conditions were not proximately caused by the industrial
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1 injury or did not exist. The employer failed to establish a prima facie case the September 10, 2020
2 order affirming the July 30, 2020 order is incorrect, and the appeal is **DISMISSED**.

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4 **Docket No. 20 24351**

5 The Department paid remittances for the vocational services from October 29, 2019, through
6 March 30, 2020. The employer appealed Department order dated September 17, 2020, affirming the
7 April 28, 2020 order. The employer failed to present a prima facie case the September 17, 2020
8 order is incorrect, and the appeal is **DISMISSED**.

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11 **Docket No. 20 24653**

12 The Department paid time-loss compensation from July 30, 2020, through October 21, 2020.
13 The employer appealed arguing Mr. Ortiz Martinez was capable of reasonably continuous work. The
14 Department and claimant established by a preponderance of the evidence he was temporarily totally
15 disabled during this time period. The Department order dated October 27, 2020, affirming the August
16 12, 2020, August 26, 2020, September 9, 2020, September 23, 2020, October 7, 2020, and October
17 21, 2020 orders is correct and **AFFIRMED**.

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21 **Docket No. 21 10453**

22 The Department paid remittances for vocational services from October 8, 2019, through
23 December 15, 2020. The employer appealed Department order dated December 17, 2020. The
24 employer failed to present a prima facie case the order is incorrect, and the appeal is **DISMISSED**.

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27 **Docket No. 21 12350**

28 The Department paid time-loss compensation from October 22, 2020, through January 13,
29 2021. The employer appealed arguing Mr. Ortiz Martinez was capable of reasonably continuous
30 work or approved light-duty work with the employer of injury. The Department and claimant
31 established by a preponderance of the evidence he was temporarily totally disabled during this time
32 period. The Department order dated January 20, 2021, affirming the November 4, 2020, November
33 18, 2020, December 2, 2020, December 16, 2020, December 30, 2020, and January 13, 2021 orders
34 is correct and **AFFIRMED**.

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38 **Docket No. 21 13850**

39 The Department paid time-loss compensation from January 14, 2021, through February 24,
40 2021. The employer appealed arguing Mr. Ortiz Martinez was capable of reasonably continuous
41 work. The Department and claimant established by a preponderance of the evidence he was
42 temporarily totally disabled during this time period. The Department order dated March 5, 2021,
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1 affirming the January 27, 2021, February 10, 2021, and February 24, 2021 orders is correct and
2 **AFFIRMED.**

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4 **Docket No. 21 13851**

5 The Department paid remittances for vocational services and medical benefits. The employer
6 appealed. The employer failed to establish a prima facie case the March 31, 2021 order is incorrect,
7 and the appeal is **DISMISSED.**

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10 **Docket No. 21 13852**

11 The Department paid remittances for vocational services from September 27, 2019 through
12 December 16, 2020. The employer appealed. The employer failed to establish a prima facie case
13 the April 1, 2021 order is incorrect, and the appeal is **DISMISSED.**

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16 **Docket No. 21 15651**

17 The Department paid time-loss compensation from February 25, 2021, through April 7, 2021.
18 The employer appealed arguing Mr. Ortiz Martinez was capable of reasonably continuous work. The
19 Department and claimant established by a preponderance of the evidence he was temporarily totally
20 disabled during this time period. The Department order dated April 22, 2021, affirming the March 10,
21 2021, March 24, 2021, and April 7, 2021 orders is correct and **AFFIRMED.**

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25 **Docket No. 21 15652**

26 The Department denied payment for Remittance Advice No. 154795. The employer appealed
27 Department order dated April 23, 2021. The employer did not present any evidence the April 23,
28 2021 order is incorrect, and the appeal is **DISMISSED.**

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31 **Docket No. 21 15653**

32 The Department denied payment for Remittance Advice No. 154795. The employer appealed
33 Department order dated April 26, 2021. The employer did not present any evidence the April 26,
34 2021 order is incorrect, and the appeal is **DISMISSED.**

35 In its Petition for Review, the employer, Phil Rock Construction, does not challenge the
36 determinations in Docket Nos. 20 17654, 20 17655, 20 17658 and 20 19754. We do not disturb the
37 Conclusions of Law in these four appeals. The employer seeks review of the remaining appeals. We
38 agree with the determinations made by the industrial appeals judge in the Proposed Decision and
39 Order with the exception of the results in Docket Nos. 20 17653 and 20 24350. The industrial appeals
40 judge determined that Phil Rock Construction did not present prima facie evidence to support these
41 appeals and dismissed them. We find that the employer presented prima facie evidence in these two
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1 appeals. Nonetheless, the preponderance of the evidence supports the Department's orders dated
2 April 21, 2020, and September 10, 2020, (Docket Nos. 20 17653 and 20 24350 respectively) should
3 be affirmed. We set forth only that evidence sufficient to explain our decision.
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5 6 **DISCUSSION**

7 Mr. Ortiz Martinez is a framer/carpenter. His job involved the construction of exterior and
8 interior walls of houses and other structures. He was working for Phil Rock Construction on March 3,
9 2019, when he and two other workers were framing the exterior walls of a new single family dwelling.
10 As the three men were lifting the completed framed exterior wall into place, one of the jacks, or lifting
11 mechanisms, failed, causing the wall to fall to the ground. Mr. Ortiz Martinez was on a ladder and
12 had to jump to the ground to avoid getting in the way of the falling wall. He inverted his left ankle as
13 he hit the ground and sustained injuries to his left ankle and foot and to his low back.
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16 Mr. Ortiz Martinez was seen at Harborview the day of the accident. X-rays were taken of the
17 left tibia, fibula, and foot. However, Mr. Ortiz Martinez delayed further medical attention until
18 August 2, 2019, when he saw chiropractor, Dr. Michael Chapman at Chiropractic Physicians.
19 Dr. Chapman assisted Mr. Ortiz Martinez in submitting this claim. At the first visit with Dr. Chapman,
20 Mr. Ortiz Martinez complained of lower back pain and lots of ankle pain. Dr. Leo Romero, principle
21 owner of Chiropractic Physicians, examined Mr. Ortiz Martinez on August 21, 2019. He completed
22 an activity prescription form (APF) restricting Mr. Ortiz Martinez to modified work duties. In the APF
23 Dr. Romero recommended vocational evaluation.
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26 On October 16, 2019, Dr. Romero recorded that Mr. Ortiz Martinez continued to complain of
27 low back pain and left lower extremity pain. He requested a lumbar (low back) magnetic resonance
28 imaging (MRI) study of the lumbar spine, later done on January 7, 2020. Eventually, Dr. Romero
29 referred Mr. Ortiz Martinez to Michael Frazier, DPM, for an evaluation of the ongoing and persistent
30 left ankle/foot complaints.
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33 Dr. Frazier examined Mr. Ortiz Martinez on November 20, 2019. The chief complaints
34 recorded by Dr. Frazier were pain in the bottom of the left foot with some numbness and tingling.
35 Dr. Frazier noted the pain on the plantar medial aspect of the plantar fascia and neuropraxia on the
36 distal aspect of the foot. Initially, Dr. Frazier diagnosed Mr. Ortiz Martinez with left foot plantar
37 fasciitis, and he stated the condition was proximately caused by the industrial injury on March 3,
38 2019. He recommended that Mr. Ortiz Martinez stay off work until January 1, 2020, because of pain
39 associated with walking and to rest the left foot.
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1 On January 17, 2020, Dr. Frazier updated his diagnosis to include left foot peroneal brevis
2 tendonitis. He explained that the plantar fasciitis masked the additional pain Mr. Ortiz Martinez was
3 experiencing from a tear in the peroneal brevis tendon. Dr. Frazier stated that the peroneal brevis
4 tendon tear diagnosis was confirmed by an MRI of left foot on February 24, 2020. He further
5 explained that it was quite common for a foot being twisted and turned inwards to first have plantar
6 fascia pain, and then to experience subsequent tendon pain. Dr. Frazier adjusted his diagnosis of
7 conditions related to the industrial injury to include both plantar fasciitis and peroneal brevis tendon
8 tear.
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13 Dr. Frazier continued to provide treatment to Mr. Ortiz Martinez for his left foot and ankle. He
14 prescribed orthotics in April 2020. By the July 15, 2020 visit Dr. Frazier noted that Mr. Ortiz Martinez
15 had made no progress with conservative measures and recommended surgical repair. He performed
16 peroneal brevis tendon repair on September 4, 2020. Dr. Frazier testified that Mr. Ortiz Martinez
17 should not be working at job sites where there were uneven surfaces, risking further injury to the left
18 ankle as of May, 2020.
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22 Jennifer Lovejoy, VRC, received a vocational services referral from the Department of Labor
23 and Industries on September 26, 2019. She spoke with Mr. Ortiz Martinez and learned that he was
24 39 years old and completed school only to the sixth grade in Mexico. His primary language is
25 Spanish. Ms. Lovejoy determined Mr. Ortiz Martinez had a singular work history as a framing
26 carpenter and that he had no transferable skills for lighter duty work.
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30 The employer's third party administrator (TPA) contacted Ms. Lovejoy about a modified
31 light-duty job for Mr. Ortiz Martinez on October 23, 2019. The job offer required English capacity and
32 the offer itself was not sent to Mr. Ortiz Martinez in his primary language, Spanish.
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34 On December 2, 2019, the employer's TPA sent the same, unmodified light-duty job offer to
35 Mr. Ortiz Martinez but sent the offer in both English and Spanish. The job description, however, still
36 required English competency. In response to this second but unchanged light-duty offer, Ms. Lovejoy
37 arranged a meeting with the company owner Mr. Phil Rock, the company's TPA, Mr. Ortiz Martinez
38 and Mr. Ortiz Martinez's wife for the purpose of further considering additional modifications to the job
39 offer. This meeting was held on January 17, 2020. Ms. Lovejoy brought medical information including
40 Dr. Chapman's January 3, 2020 APF, the results of the January 7, 2020 MRI, and the most recent
41 physical therapy notes.
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1 At the meeting on January 17, 2020, Phil Rock Construction agreed to change the prior
2 light-duty job offer to reflect Mr. Ortiz Martinez's limitations with English. The employer also agreed
3 to reduce the physical requirements of the light-duty position to comply with Dr. Chapman's updated
4 APF. The changed light-duty job description was submitted to Dr. Chapman on January 24, 2020.
5 He approved the adjusted physical requirements in the modified job description. The amended
6 light-duty job offer was sent to Mr. Ortiz Martinez in both English and Spanish on January 30, 2020.
7 Mr. Ortiz Martinez started light-duty with the employer on February 13, 2020.

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11 Mr. Ortiz Martinez transferred his primary care from Dr. Romero's clinic to naturopathic
12 physician, Hurng Jinn Lin, N.D., on February 7, 2020. Dr. Lin's primary focus of treatment was for
13 Mr. Ortiz Martinez's chronic low back complaints. He referred Mr. Ortiz Martinez for an EMG with a
14 physiatrist, Dr. Saeed. The EMG was performed on April 7, 2020. The summary of the EMG
15 indicated chronic left sided L5 radiculopathy. Dr. Lin saw Mr. Ortiz Martinez again on May 1, 2020,
16 at which time he took a history that Mr. Ortiz Martinez had received orthotics for the left foot problems
17 from a podiatrist and was scheduled for an injection into the lumbar spine, also with Dr. Saeed.
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22 Mr. Ortiz Martinez reported for the lumbar spine injection on May 6, 2020. Immediately prior
23 to the procedure, he had a vasovagal reaction and fainted due to the loss of blood. The cause of this
24 event required surgical repair of internal hemorrhoids. Mr. Ortiz Martinez's discontinued light-duty
25 with the employer after May 6, 2020.
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29 The employer presented the testimony of two medical experts, a podiatrist, Alan MacGill, DPM,
30 and an orthopedic surgeon, Michael Steingart, D.O. Both physicians conducted a review of
31 Mr. Ortiz Martinez's medical records involving the claim. Neither physician physically examined
32 Mr. Ortiz Martinez.
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35 In its Petition for Review, Phil Rock Construction relies heavily on Dr. MacGill's opinions.
36 Dr. MacGill disputed Dr. Frazier's diagnoses and testified that Mr. Ortiz Martinez's left lower extremity
37 complaints were more consistent with L5 radiculopathy, that is, nerve problems emanating from the
38 spine. He disputed the diagnoses of plantar fasciitis and peroneal tendon condition. Dr. MacGill felt
39 that Mr. Ortiz Martinez was not limited as to work because of a localized foot and ankle issue.
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42 In contrast to the podiatrist, Dr. MacGill, the orthopedic surgeon, Dr. Steingart, diagnosed
43 peroneal tendonitis as the 'real diagnosis.' Dr. Steingart testified that the back was not the issue
44 causing Mr. Ortiz Martinez's left lower extremity problems. He noted that the January 7, 2020 MRI
45 of the low back did not support left sided pathology. Further, Dr. Steingart noted that peroneal
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1 tendonitis can be interpreted as an ankle sprain. Mr. Ortiz Martinez changed his gait to accommodate
2 the pain from the peroneal tendonitis. We accord Dr. Steingart greater weight than Dr. MacGill on
3 the question of whether Mr. Ortiz Martinez's left extremity complaints were the result of radiculopathy.
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5 Dr. Steingart's opinions are overall more consistent with Dr. Frazier's than with Dr. MacGill's.
6 Dr. Steingart endorsed Dr. Frazier's treatment of Mr. Ortiz Martinez. The biggest difference between
7 the two physicians is that Dr. Steingart felt that the peroneal tendon problem preceded the plantar
8 fasciitis issue whereas Dr. Frazier felt that plantar fasciitis preceded the peroneal tendon issues.
9 Irrespective of the order of the onset of these conditions both physicians agreed as to the diagnoses.
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11 In terms of employment, Dr. Steingart felt that Mr. Ortiz Martinez would be able to do light-duty
12 work but he agreed with Dr. Frazier that it would not be recommended to have Mr. Ortiz Martinez
13 working at a construction site.
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15 Significantly, neither Dr. MacGill nor Dr. Steingart were provided with additional medical
16 records as the physicians were unaware of Dr. Frazier's surgical repair of the peroneal brevis tendon
17 on September 4, 2020. Both physicians testified after the date of surgery but still did not have this
18 additional information. When advised of the surgery Dr. MacGill acknowledged that the tear of the
19 peroneal brevis tendon could have been caused by the industrial injury. He, nonetheless, disputed
20 the need for surgery due to the reported one centimeter tear, as indicated in Dr. Frazier's surgical
21 report.
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23 The Department order dated September 10, 2020, accepted the condition described as
24 "lac musc tend peroneal group low left leg" as caused by the industrial injury of March 3, 2019. The
25 medical witnesses took this to be a diagnostic code for peroneal brevis tendon issues. Our industrial
26 appeals judge dismissed Phil Rock Construction's appeal to this order finding the company had failed
27 to present prima facie evidence that the condition was not caused by the industrial injury. We agree
28 with the employer's Petition for Review that it had presented prima facie evidence disputing the left
29 foot peroneal brevis tendinosis.
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31 Dr. MacGill's testimony disputing the diagnosis of left foot peroneal brevis tendinosis
32 constitutes sufficient evidence challenging the allowance of the condition. His opinion may be
33 summarized as holding that if the condition does not exist, it cannot be related to the industrial injury.
34 However, we find that the preponderance of the evidence supports allowance of the disputed
35 condition and that the Department order dated September 10, 2020, in Docket No. 20 24350 should
36 be affirmed.
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1 An additional issue raised in the employer's Petition for Review is Mr. Ortiz Martinez's wage
2 rate as of the date of the industrial injury. Mr. Ortiz Martinez testified that he was paid \$50 an hour
3 by Phil Rock Construction. Mr. Rock did not dispute this number in his testimony. He submitted
4 Exhibit 1, which is a payroll document for February 10, 2020, through February 28, 2020. He also
5 submitted Exhibit 2 consisting of series of time cards bearing dates of more than a year after the
6 industrial injury. Neither exhibit contains a reference to hourly rate of pay. Exhibit 9 is the initial
7 report of accident signed by Mr. Ortiz Martinez on August 2, 2019. On this form Mr. Ortiz Martinez
8 lists his wages as \$50 an hour. Exhibit 10 is the employer's report of accident that Mr. Rock signed
9 on August 11, 2019. Mr. Rock indicated on the form that he paid Mr. Ortiz Martinez \$50 an hour.
10 Mr. Rock acknowledged his signature on Exhibit 10. He did not refute the content of the exhibit in
11 his testimony.
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13 The employer's Petition for Review asserts that Mr. Ortiz Martinez's wage rate was not fixed
14 and could not be reasonably determined. The employer argues that Mr. Ortiz Martinez's wages
15 cannot be calculated so that RCW 51.08.178(4) should apply to determine the wage. There is no
16 reasonable challenge to the hourly wage rate on this record of evidence. We find that the employer
17 failed to make a prima facie case contesting the order dated April 17, 2020.¹ The appeal was properly
18 dismissed by the industrial appeals judge.
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20 Last, we address time-loss compensation paid under the claim. Temporary total disability
21 benefits, or time-loss compensation, was paid by the Department from September 25, 2019, up to
22 the day before Mr. Ortiz Martinez's light-duty employment with Phil Rock Construction on February
23 12, 2020. Loss of earning power benefits were paid starting February 13, 2020. Time-loss
24 compensation was resumed by the Department on May 7, 2020, and the Department continued to
25 pay time-loss compensation through April 7, 2021. We address the two periods of time-loss
26 compensation separately.
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28 The employer offered no evidence or argument disputing time-loss compensation for the
29 period September 25, 2019, through October 7, 2019.
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31 The employer's primary argument against the payment of time-loss compensation for the
32 remainder of the period up to February 12, 2020, rests on the assertion that it had made a qualifying
33 light-duty job offer to Mr. Ortiz Martinez on both October 23, 2019, and on December 2, 2019, under
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¹ *Omeitt v. Dep't of Labor & Indus.*, 21 Wn.2d 684 (1944); *Roy v. Goerz*, 26 Wn. App. 807 (1980); *In re William S. Morgan*,
Dckt. No. 91 3417 (January 14, 1993).

1 the provisions of RCW 51.32.090(4). Time-loss compensation may be terminated where an employer
2 at the time of the job of injury makes a qualifying light-duty job offer to the injured worker. In such
3 cases the injured worker maybe be entitled to loss of earning power benefits where the wage of the
4 light-duty job is more than 5 percent less than the wage of the job of injury. The employer asserts
5 that the light-duty job description was a qualifying light-duty job offer. The assigned vocational
6 counselor, Ms. Lovejoy, reviewed the job description and found some matters of concern. As
7 described above, she arranged for a meeting with the employer, the employer's TPA,
8 Mr. Ortiz Martinez and his wife.

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10 At the meeting on January 17, 2020, the employer agreed to modify the prior job offer.
11 Exhibit 3 is the job offer of October 23, 2019, and Exhibit 4 is the modified job offer resulting from the
12 January 17, 2020 meeting with all the parties. Comparing the two exhibits we note that Phil Rock
13 Construction agreed to accommodate issues with English communication. Mr. Rock's testimony
14 regarding that Mr. Ortiz Martinez has English speaking capacity is not persuasive. The physical
15 requirements of the light-duty-job were further reduced. For example, the October 23, 2019 job
16 description described the requirements for sitting, standing, walking, bending/stooping and twisting
17 at the waist as "occasional," while Exhibit 4, dated January 24, 2020, reduced all these activities to
18 "seldom."

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20 We are not persuaded that time-loss compensation should have been terminated based on
21 the modified job duty description sent on October 23, 2019, and resent on December 2, 2019.
22 Following Ms. Lovejoy's concerns as to the appropriateness of the first light-duty job offer, the
23 employer agreed to modify the light-duty job description. By adjusting the light-duty job offer the
24 employer effectually withdrew the prior offer. The January 30, 2020 light-duty job offer superseded
25 the prior light-duty job description. The changed light-duty job offer was sent to Mr. Ortiz Martinez on
26 January 30, 2020. Mr. Ortiz Martinez accepted the January 30, 2020 job offer and started light-duty
27 on the day specified, February 13, 2020.² The Department properly ended time-loss compensation
28 on February 12, 2020.³

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30 The Department order dated April 21, 2020, and appealed in Docket No. 20 17653, affirmed
31 several previous Department orders. The orders dated October 21, 2019; November 4, 2019;
32 November 18, 2019; December 2, 2019; December 16, 2019; December 30, 2019; January 13, 2020;
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46 ² Exhibit 7.

47 ³ RCW 51.32.090(4).

1 January 27, 2020; February 10, 2020; and February 14, 2020, paid time-loss compensation for
2 October 8, 2019, through February 12, 2020. The orders dated March 4, 2020; March 20, 2020; and
3 March 30, 2020, paid loss of earning power benefits for February 13, 2020, through March 22, 2020.
4 Phil Rock Construction does not contest the payment of loss of earning power benefits authorized by
5 RCW 51.32.090(3). Mr. Ortiz Martinez was entitled to time-loss compensation up to the start date of
6 the light-duty job offer on February 13, 2020. The Department order dated April 21, 2020, in Docket
7 No. 20 17653 should be affirmed.
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11 Next, we address time-loss compensation for the period May 7, 2020, through April 7, 2021.

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13 Phil Rock Construction argues that Mr. Ortiz Martinez stopped performing light-duty work due
14 to an independent intervening medical condition – the gastrointestinal/hemorrhoid problem where
15 Mr. Ortiz Martinez fainted due to the loss of blood just prior to the lumbar injection procedure for the
16 accepted low back sprain/strain. Mr. Ortiz Martinez received surgery to correct the hemorrhoid
17 condition on June 30, 2020.
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20 Dr. Frazier's testimony supports work activity restrictions relating to the peroneal brevis tendon
21 prior to the lumbar injection on May 6, 2020. Dr. Frazier, as the attending surgeon, testified that
22 Mr. Ortiz Martinez needed to be off work from May 6, 2020, through the date of the surgery,
23 September 4, 2020, and afterwards. This restriction was intended to prevent a further tear of the
24 peroneal brevis tendon. Dr. Frazier expressed this concern even before May 2020. While
25 Mr. Ortiz Martinez clearly had an episode requiring medical attention, the employer did not present
26 any expert medical testimony establishing that he suffered work restrictions proximately caused by
27 the gastrointestinal event.
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30 In response to the employer's questions on cross examination, Dr. Frazier conceded that
31 Mr. Ortiz Martinez would have been capable of sedentary work on a later date, January 1, 2021;
32 approximately four months after the September 4, 2020 surgery. He defined sedentary work as sitting
33 at desk. The employer appears to raise an inference that Mr. Ortiz Martinez could have resumed the
34 prior light-duty work. Phil Rock Construction did not submit a new light-duty job offer that took into
35 account the additional restrictions relating to peroneal brevis tendon tear and subsequent surgery.
36 As we find that condition is proximately caused by the industrial injury, we cannot conclude that the
37 prior light-duty job offer of January 30, 2020, was still applicable and valid by January of 2021.
38 Time-loss compensation payments were properly resumed as of May 7, 2020.
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1 The employer did not, otherwise, present separate medical or vocational evidence challenging
2 the payment of time-loss compensation through April 7, 2021.
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4 **DECISION**

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- 6 1. In Docket No. 20 10952, the employer, Phil Rock Construction, filed an appeal with the Board of
7 Industrial Insurance Appeals on January 21, 2020, from an order of the Department of Labor and
8 Industries dated December 26, 2019. In this order, the Department paid time-loss compensation
9 from September 25, 2019, through October 7, 2019. The employer appealed the December 26,
10 2019 order arguing Mr. Ortiz Martinez was capable of reasonably continuous work in a light-duty
11 position. The employer failed to present a prima facie case establishing that the December 26,
12 2019 order was incorrect. The appeal is **DISMISSED**.
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 - 14 2. In Docket No. 20 17652, the employer, Phil Rock Construction, filed an appeal with the Board of
15 Industrial Insurance Appeals on May 19, 2020, from an order of the Department of Labor and
16 Industries dated April 17, 2020. In this order, the Department affirmed a previous order dated
17 October 16, 2019, that set Mr. Ortiz Martinez's wages as of the date of industrial injury as \$50 an
18 hour; 8.00 hours a day; 22 days a month for a total gross monthly wage of \$8,800.
19 Mr. Ortiz Martinez's time-loss compensation was further adjusted based on his status as married
20 with four children. There is no evidence directly disputing Mr. Ortiz Martinez's hourly wage. The
21 employer failed to present a prima facie case establishing that the April 17, 2020 order was
22 incorrect. The appeal is **DISMISSED**.
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 - 24 3. In Docket No. 20 17653, the employer, Phil Rock Construction, filed an appeal with the Board of
25 Industrial Insurance Appeals on May 19, 2020, from an order of the Department of Labor and
26 Industries dated April 21, 2020. The order of April 21, 2020, affirmed orders dated October 21,
27 2019; November 4, 2019; November 18, 2019; December 2, 2019; December 16, 2019;
28 December 30, 2019; January 13, 2020; January 27, 2020; February 10, 2020; February 14, 2020;
29 March 4, 2020; March 20, 2020; and March 30, 2020, paying time-loss compensation for
30 October 8, 2019, through March 22, 2020. The employer appealed the April 21, 2020 order
31 arguing that Mr. Ortiz Martinez was not entitled to time-loss compensation during this time frame
32 because he could perform light-duty work. The orders dated March 4, 2020; March 20, 2020; and
33 March 30, 2020, paid Mr. Ortiz Martinez loss of earning power benefits for the period February 13,
34 2020, through March 22, 2020. The employer offered no evidence contesting the payment of loss
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1 of earning power benefits. Based on the record of evidence the Department order dated April 21,
2 2020, is correct and is **AFFIRMED**.

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5 4. In Docket No. 20 17654, the employer, Phil Rock Construction, filed an appeal with the Board of
6 Industrial Insurance Appeals on May 19, 2020, from an order of the Department of Labor and
7 Industries dated April 24, 2020. In this order the Department affirmed a prior letter dated
8 December 23, 2019, approving a lumbar spine magnetic resonance imaging (MRI) test under a
9 prior authorization number: 2501785539. The employer presented no evidence challenging the
10 medical necessity for this test in relation to the industrial injury of March 3, 2019. The employer
11 failed to present a prima facie case establishing that the April 24, 2020 order was incorrect. The
12 employer does not raise this issue in its Petition for Review. The appeal is **DISMISSED**.
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15 5. In Docket No. 20 17655, the employer, Phil Rock Construction, filed an appeal with the Board of
16 Industrial Insurance Appeals on May 19, 2020, from an order of the Department of Labor and
17 Industries dated April 27, 2020. The April 27, 2020 order affirmed a prior letter dated February 19,
18 2020, approving a lower left leg extremity magnetic resonance imaging (MRI) test under a prior
19 authorization number: 2501796640. The employer presented no evidence challenging the
20 medical necessity for this test in relation to the industrial injury of March 3, 2019. The employer
21 failed to present a prima facie case establishing that the April 27, 2020 Department order was
22 incorrect. The employer does not raise this issue in its Petition for Review. The appeal is
23 **DISMISSED**.
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26 6. In Docket No. 20 17657, the employer, Phil Rock Construction, filed an appeal with the Board of
27 Industrial Insurance Appeals on May 19, 2020, from an order of the Department of Labor and
28 Industries dated April 29, 2020. The April 29, 2020 order affirmed an earlier order dated
29 January 31, 2020, allowing the condition described as left foot plantar fasciitis condition. The
30 employer argued that Mr. Ortiz Martinez did not have the condition or in the alternative that if he
31 had the condition, it was not proximately caused by the industrial injury. The Department and
32 Mr. Ortiz Martinez established by a preponderance of the evidence Mr. Ortiz Martinez had left foot
33 plantar fasciitis that was proximately caused by the industrial injury. The April 29, 2020
34 Department order affirming the January 31, 2020 order is correct and **AFFIRMED**.
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37 7. In Docket No. 20 17658, the employer, Phil Rock Construction, filed an appeal with the Board of
38 Industrial Insurance Appeals on May 19, 2020, from an order of the Department of Labor and
39 Industries dated April 29, 2020. The April 29, 2020 order affirmed an earlier order dated
40 January 31, 2020, allowing the condition described as left foot plantar fasciitis condition. The
41 employer argued that Mr. Ortiz Martinez did not have the condition or in the alternative that if he
42 had the condition, it was not proximately caused by the industrial injury. The Department and
43 Mr. Ortiz Martinez established by a preponderance of the evidence Mr. Ortiz Martinez had left foot
44 plantar fasciitis that was proximately caused by the industrial injury. The April 29, 2020
45 Department order affirming the January 31, 2020 order is correct and **AFFIRMED**.
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1 Industries dated April 30, 2020. The April 30, 2020 order affirmed a prior letter dated April 10,
2 2020, approving outpatient injections of the interlaminar lumbar/sacroiliac under a prior
3 authorization number: 2501804954. The employer presented no evidence challenging the
4 medical necessity for this test in relation to the industrial injury of March 3, 2019. The employer
5 failed to present a prima facie case that the April 30, 2020 order was incorrect. The employer
6 does not raise this issue in its Petition for Review. The appeal is **DISMISSED**.

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11 8. In Docket No. 20 19152, the employer, Phil Rock Construction, filed an appeal with the Board of
12 Industrial Insurance Appeals on June 16, 2020, from an order of the Department of Labor and
13 Industries dated June 16, 2020. The June 16, 2020 order affirmed two prior orders dated May 20,
14 2020, and June 3, 2020, paying time-loss compensation for May 7, 2020, through June 3, 2020.
15 The employer argued that Mr. Ortiz Martinez was capable of at least light-duty employment during
16 this period when considering only the conditions caused by the industrial injury. The Department
17 and Mr. Ortiz Martinez established by a preponderance of the evidence he (Mr. Ortiz Martinez)
18 was temporarily totally disabled during this time period. The Department order of June 16, 2020,
19 is correct and is **AFFIRMED**.

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25 9. In Docket No. 20 19353, the employer, Phil Rock Construction, filed an appeal with the Board of
26 Industrial Insurance Appeals on June 19, 2020, from an order of the Department of Labor and
27 Industries dated June 17, 2020. The order dated June 17, 2020, paid time-loss compensation to
28 Mr. Ortiz Martinez for June 4, 2020, through June 17, 2020. The employer argued that
29 Mr. Ortiz Martinez was capable of at least light-duty employment during this period when
30 considering only the conditions caused by the industrial injury. The Department and
31 Mr. Ortiz Martinez established by a preponderance of the evidence he was temporarily totally
32 disabled during this time period. The Department order dated June 17, 2020, is correct and is
33 **AFFIRMED**.

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39 10. In Docket No. 20 19754, the employer, Phil Rock Construction, filed an appeal with the Board of
40 Industrial Insurance Appeals on June 30, 2020, from an order of the Department of Labor and
41 Industries dated June 30, 2020. The June 30, 2020 order affirmed a prior order dated June 1,
42 2020, that assessed an overpayment of time-loss compensation for March 31, 2020, through
43 May 5, 2020, in the amount of \$7,836.12. No party presented evidence on this issue and appeal.
44 The appeal from the Department order dated June 30, 2020, is **DISMISSED**.

1 11. In Docket No. 20 22453, the employer, Phil Rock Construction, filed an appeal with the Board of
2 Industrial Insurance Appeals on September 9, 2020, from an order of the Department of Labor
3 and Industries dated September 8, 2020. The order dated September 8, 2020, affirmed earlier
4 orders dated July 1, 2020; July 15, 2020; and July 29, 2020, paying time-loss compensation
5 benefits for June 18, 2020, through July 29, 2020. The employer argued that Mr. Ortiz Martinez
6 was capable of at least light-duty employment for this period when considering only the conditions
7 caused by the industrial injury. The Department and Mr. Ortiz Martinez established by a
8 preponderance of the evidence that he was temporarily totally disabled during the period of time
9 covered by the orders. The Department order dated September 8, 2020, affirming the July 1,
10 2020, July 15, 2020, and July 29, 2020 orders is correct and is **AFFIRMED**.

11 12. In Docket No. 20 24350, the employer, Phil Rock Construction, filed an appeal with the Board of
12 Industrial Insurance Appeals on October 21, 2020, from an order of the Department of Labor and
13 Industries dated September 10, 2020. The September 10, 2020 order affirmed a prior order dated
14 July 30, 2020, allowing the condition described as, "lac musc tend peroneal group low left leg."⁴
15 The employer argued that the conditions were not proximately caused by the industrial injury or
16 did not exist. The September 10, 2020 order affirming the July 30, 2020 order is correct and is
17 **AFFIRMED**.

18 13. In Docket No. 20 24351, the employer, Phil Rock Construction, filed an appeal with the Board of
19 Industrial Insurance Appeals on October 21, 2020, from an order of the Department of Labor and
20 Industries dated September 17, 2020. The September 17, 2020 order affirmed a prior order dated
21 April 28, 2020, that paid remittances for the vocational services from October 29, 2019, through
22 March 30, 2020. The employer presented no evidence addressing the entitlement to, or
23 authorization of, vocational services and did not present a prima facie case that the order of
24 September 17, 2020, was incorrect. The appeal from the September 17, 2020 Department order
25 is **DISMISSED**.

26 14. In Docket No. 20 24653, the employer, Phil Rock Construction, filed an appeal with the Board of
27 Industrial Insurance Appeals on October 28, 2020, from an order of the Department of Labor and
28 Industries dated October 27, 2020. The October 27, 2020 order affirmed earlier orders dated
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47 ⁴ Description of the allowed condition quoted from the Department Order of July 7, 2020, as affirmed by the order dated
September 10, 2020.

1 August 12, 2020; August 26, 2020; September 9, 2020; September 23, 2020; October 7, 2020;
2 and October 21, 2020, that paid time-loss compensation for July 30, 2020, through October 21,
3 2020. The employer appealed arguing Mr. Ortiz Martinez was capable of at least light-duty work
4 during this period when considering only the conditions proximately caused by the industrial injury.
5 The Department and Mr. Ortiz Martinez established by a preponderance of the evidence that he
6 (Mr. Ortiz Martinez) was temporarily totally disabled during this time period. The Department
7 order dated October 27, 2020, affirming the August 12, 2020; August 26, 2020; September 9,
8 2020; September 23, 2020; October 7, 2020; and October 21, 2020 orders is correct and is
9 **AFFIRMED.**

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15 15. In Docket No. 21 10453, the employer, Phil Rock Construction, filed an appeal with the Board of
16 Industrial Insurance Appeals on January 13, 2021, from an order of the Department of Labor and
17 Industries dated December 17, 2020. The December 17, 2020 order affirmed previously paid
18 remittances for vocational services from October 8, 2019, through December 15, 2020. The
19 employer presented no evidence relating to the entitlement to, or authorization of, vocational
20 services paid for under the claim. The employer failed to present a prima facie case that the order
21 is incorrect. The appeal from the Department order of December 17, 2020, is **DISMISSED.**

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26 16. In Docket No. 21 12350, the employer, Phil Rock Construction, filed an appeal with the Board of
27 Industrial Insurance Appeals on March 3, 2021, from an order of the Department of Labor and
28 Industries dated January 20, 2021. The January 20, 2021 order affirmed prior orders dated
29 November 4, 2020; November 18, 2020; December 2, 2020; December 16, 2020; December 30,
30 2020; and January 13, 2021, paying compensation benefits for October 22, 2020, through
31 January 13, 2021. The employer appealed arguing Mr. Ortiz Martinez was capable of at least
32 light-duty work during this period when considering only the conditions proximately caused by the
33 industrial injury. The Department and Mr. Ortiz Martinez established by a preponderance of the
34 evidence he (Mr. Ortiz Martinez) was temporarily totally disabled during this time period. The
35 Department order dated January 20, 2021, affirming the November 4, 2020; November 18, 2020;
36 December 2, 2020; December 16, 2020; December 30, 2020; and January 13, 2021 orders is
37 correct and **AFFIRMED.**

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44 17. In Docket No. 21 13850, the employer, Phil Rock Construction, filed an appeal with the Board of
45 Industrial Insurance Appeals on April 7, 2021, from an order of the Department of Labor and
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1 Industries dated March 5, 2021. The March 5, 2020 order affirmed prior orders dated January 27,
2 2021; February 10, 2021; and February 24, 2021, paying compensation benefits for January 14,
3 2021, through February 24, 2021. The employer appealed arguing Mr. Ortiz Martinez was
4 capable of at least light-duty work during this period when considering only the conditions
5 proximately caused by the industrial injury. The Department and Mr. Ortiz Martinez established
6 by a preponderance of the evidence he (Mr. Ortiz Martinez) was temporarily totally disabled during
7 this time period. The Department order dated March 5, 2021, affirming the January 27, 2021,
8 February 10, 2021, and February 24, 2021 orders is correct and is **AFFIRMED**.
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14 18. In Docket No. 21 13851, the employer, Phil Rock Construction, filed an appeal with the Board of
15 Industrial Insurance Appeals on April 7, 2021, from an order of the Department of Labor and
16 Industries dated March 31, 2021. The March 31, 2021 order affirmed prior remittance advices for
17 medical [*sic*] vocational benefits under the claim. The remittances covered by this order authorize
18 payment only for vocational services. The employer presented no evidence addressing the
19 entitlement to, or authorization of, vocational services and did not establish a prima facie case the
20 March 31, 2021 order is incorrect. The appeal is **DISMISSED**.
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25 19. In Docket No. 21 13852, the employer, Phil Rock Construction, filed an appeal with the Board of
26 Industrial Insurance Appeals on April 7, 2021, from an order of the Department of Labor and
27 Industries dated April 1, 2021. The April 1, 2021 order affirmed all remittance advices paid under
28 the claim for vocational services. The Department paid remittances for vocational services from
29 September 27, 2019, through December 16, 2020. The employer presented no evidence
30 addressing the entitlement to, or authorization of, vocational services and did not present a prima
31 facie case that the April 1, 2021 order is incorrect. The appeal is **DISMISSED**.
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36 20. In Docket No. 21 15651, the employer, Phil Rock Construction, filed an appeal with the Board of
37 Industrial Insurance Appeals on May 19, 2021, from an order of the Department of Labor and
38 Industries dated April 22, 2021. The April 22, 2021 order affirmed prior orders dated the March 10,
39 2021; March 24, 2021; and April 7, 2021, paying compensation benefits for February 25, 2021,
40 through April 7, 2021. The employer appealed arguing Mr. Ortiz Martinez was capable of at least
41 light-duty work during this period when considering only the conditions proximately caused by the
42 industrial injury. The Department and Mr. Ortiz Martinez established by a preponderance of the
43 evidence he (Mr. Ortiz Martinez) was temporarily totally disabled during this time period. The
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1 Department order dated April 22, 2021, affirming the March 10, 2021, March 24, 2021, and April 7,
2 2021 orders is correct and is **AFFIRMED**.

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5 21. In Docket No. 21 15652, the employer, Phil Rock Construction, filed an appeal with the Board of
6 Industrial Insurance Appeals on May 19, 2021, from an order of the Department of Labor and
7 Industries dated April 23, 2021. The April 23, 2021 order affirmed remittance advices paying for
8 medical benefits under the claim. The employer appealed Department order dated April 23, 2021.
9 The employer did not present evidence that the April 23, 2021 order is incorrect. The appeal is
10 **DISMISSED**.

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14 22. In Docket No. 21 15653, the employer, Phil Rock Construction, filed an appeal with the Board of
15 Industrial Insurance Appeals on May 19, 2021, from an order of the Department of Labor and
16 Industries dated April 26, 2021. The April 26, 2021 order affirmed remittance advices paying for
17 medical benefits under the claim. The employer appealed Department order dated April 26, 2021.
18 The employer did not present evidence that the April 26, 2021 order is incorrect and the appeal
19 is **DISMISSED**.

20 21 22 23 24 **FINDINGS OF FACT**

- 25 1. On October 26, 2020, and on August 5, 2021, an industrial appeals judge
26 certified that the parties agreed to include the Jurisdictional History in the
27 Board record solely for jurisdictional purposes.
- 28 2. On March 3, 2019, Carlos Ortiz Martinez sustained an industrial injury
29 when he jumped from a ladder from between four and eight feet above
30 the ground in order to avoid a framed wall that fell during the attempt to
31 raise it. Mr. Ortiz Martinez sustained injuries to his low back, and left leg,
32 ankle and foot.
- 33 3. Following the industrial injury Mr. Ortiz Martinez developed left foot
34 plantar fasciitis. Mr. Ortiz Martinez also developed left peroneal brevis
35 tendon partial tear and tendonitis described in the Department order of
36 September 10, 2020, as "lac musc tend peroneal group low left leg," a
37 diagnostic code for peroneal brevis tendon injury. He also sustained a
38 sprain/strain of the lumbar spine. Each condition was proximately caused
39 by the industrial injury of March 3, 2019.
- 40 4. Mr. Ortiz Martinez's lower back strain/sprain proximately caused by the
41 industrial injury required further proper and necessary medical treatment
42 in the form of a lumbar spine MRI and an injection in the interlaminar
43 lumbar/sacral region. The employer, Phil Rock Construction, presented
44 no contrary evidence disputing the medical necessity of these treatments.
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- 1 5. Mr. Ortiz Martinez lower back strain/sprain required proper and necessary
2 medical treatment in the form of a lumber spine MRI proximately caused
3 by the industrial injury. The appealing party, Phil Rock Construction,
4 presented no contrary evidence disputing the medical necessity of this
5 treatment.
- 6 6. Mr. Ortiz Martinez's left peroneal brevis tendonitis and left foot plantar
7 fasciitis proximately caused by the industrial injury required proper and
8 necessary treatment of the lower left extremity by a diagnostic MRI. The
9 appealing party, Phil Rock Construction, presented no contrary evidence
10 disputing the medical necessity of this treatment.
- 11 7. At no time from September 25, 2019, through April 7, 2021, was Mr. Ortiz
12 Martinez, capable of returning to the job of injury as a framing carpenter
13 because of physical limitations proximately caused by the industrial injury
14 of March 3, 2019.
- 15 8. Mr. Ortiz Martinez's wages as of the date of the industrial injury, March 3,
16 2019, were \$50 an hour, 8 hours a day, 22 days a month for a total gross
17 wage of \$8,800 a month. Time-loss compensation was calculated based
18 on Mr. Ortiz Martinez's status as married with four dependent children.
- 19 9. Mr. Ortiz Martinez was born on May 5, 1982, and had a sixth grade
20 education in Mexico. He has worked as a framer/carpenter since he was
21 18 years old. Mr. Ortiz Martinez's primary language is Spanish. He only
22 has English capacity limited to the technical requirements of his
23 longstanding employment as a framing carpenter. Mr. Ortiz Martinez has
24 a singular work history involving heavy labor; he does not have
25 transferable skills for other types of employment.
- 26 10. Mr. Ortiz Martinez was unable to engage in reasonably continuous gainful
27 employment from September 25, 2019, through February 12, 2020, when
28 considering the residuals of the industrial injury of March 3, 2019, and
29 when considering Mr. Ortiz Martinez's age, education, and work history.
- 30 11. Phil Rock Construction prepared a light-duty job offer on October 23,
31 2019. On January 17, 2020, Phil Rock Construction changed the light-
32 duty job offer to adjust the language requirement and to reflect the
33 increased physical limitations required by the attending physician. The
34 changed job offer was approved by the attending physician on
35 January 24, 2020, and sent to Mr. Ortiz Martinez on January 30, 2020, in
36 both English and Spanish. The January 30, 2020 light-duty job offer
37 replaced and superseded prior light-duty job offer submitted to Mr. Ortiz
38 Martinez on October 23, 2019, and December 2, 2019.
- 39 12. Mr. Ortiz Martinez engaged in a qualifying modified light-duty position to
40 accommodate physical limitations proximately caused by the industrial
41 injury with Phil Rock Construction from February 13, 2020, through May 5,
42 2020.
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- 1 13. Mr. Ortiz Martinez suffered a loss of income greater than 5 percent of his
2 wage as of the date of the industrial injury on March 3, 2019, while
3 engaging in qualifying light-duty employment with Phil Rock Construction
4 from February 13, 2020, through May 5, 2020.
- 5 14. The Department of Labor and Industries paid Mr. Ortiz Martinez loss of
6 earning power benefits for the period February 13, 2020, through May 6,
7 2020. Phil Rock Construction presented no evidence that the payment of
8 loss of earning power benefits was incorrect.
- 9 15. Conservative treatment for Mr. Ortiz Martinez's peroneal brevis tendon
10 partial tear and tendonitis was unsuccessful and as of May 1, 2020, the
11 condition required surgical repair. Mr. Ortiz Martinez was unable to stand
12 and walk around a construction site or on uneven ground due to the risk
13 of further injury to the condition.
- 14 16. Mr. Ortiz Martinez was unable to engage in reasonably continuous gainful
15 employment from May 7, 2020, through April 7, 2021, when considering
16 the residuals of the peroneal brevis tendon partial tear and tendonitis, the
17 residuals of the surgical repair performed to correct the condition on
18 September 4, 2020, and when further considering Mr. Ortiz Martinez's
19 other conditions proximately caused by the industrial injury and when
20 considering his age, education, and singular work history.
- 21 17. No evidence was presented by any party disputing that the Department
22 correctly assessed Mr. Ortiz Martinez an overpayment of time-loss
23 compensation paid from March 31, 2020, through May 5, 2020.
- 24 18. Phil Rock Construction made no further light-duty job offer after
25 January 30, 2020.
- 26 19. Phil Rock Construction presented no evidence disputing vocational
27 services authorized by the Department of Labor and Industries for
28 Mr. Ortiz Martinez under Claim No. BB-40305.
- 29 20. Based on the entire record, no evidence contesting remittance advices
30 128074, 147718, 148142, 154795, 161665, 168329, 174718, 195176,
31 216024, 134810, 141375, 181240, 209462, 221959, 227197, 233982,
32 232235, 237390, 242738, 248154, 253499, 258648, 264123, 269879,
33 275377, 280895, 286550, 292330, 298039, 303744, 309230, and 314733
34 for vocational services and medical benefits were paid incorrectly.

35 **CONCLUSIONS OF LAW**

- 36 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
37 and subject matter in these appeals.
- 38 2. The modified light-duty job offer submitted by Phil Rock Construction on
39 January 30, 2020, was a valid offer within the meaning of
40 RCW 51.32.090(4).

- 1 3. Temporary total disability (time-loss) benefits were correctly terminated
2 when Carlos. Ortiz Martinez started the light-duty position with the
3 employer on February 13, 2020, as provided by RCW 51.32.090(4)(b).
- 4 4. Mr. Ortiz Martinez suffered a loss of earning power within the meaning of
5 RCW 51.32.090(3) for the period February 13, 2020, through May 5,
6 2020.
- 7 5. Mr. Ortiz Martinez was a temporarily totally disabled worker within the
8 meaning of RCW 51.32.090 from September 25, 2019, through
9 February 12, 2020, and from May 7, 2020, through April 7, 2021.
- 10 6. In Docket No. 20 10152 the employer failed to establish a prima facie
11 case that the Department order dated December 26, 2019, paying
12 temporary total disability (time-loss) benefits for the period September 25,
13 2019, through October 7, 2019, was incorrect. The appeal from
14 Department order dated December 26, 2019, is dismissed for failure to
15 present a prima facie case for the relief sought as required by
16 RCW 51.52.050
- 17 7. In Docket No. 20 17652, the employer failed to establish a prima facie
18 case that the Department wage rate order dated April 17, 2020, was
19 incorrect. The appeal from Department order dated April 17, 2020, is
20 dismissed for failure to present a prima facie case for the relief sought as
21 required by RCW 51.52.050.
- 22 8. In Docket No. 20 17654, the employer failed to establish a prima facie
23 case the lumbar spine MRI was not proper and necessary treatment. The
24 appeal from Department order dated April 24, 2020, is dismissed for
25 failure to present a prima facie case for the relief sought as required by
26 RCW 51.52.050.
- 27 9. In Docket No. 20 17655, the employer failed to establish a prima facie
28 case the lower left extremity MRI was not proper and necessary
29 treatment. The appeal from Department order dated April 27, 2020, is
30 dismissed for failure to present a prima facie case for the relief sought as
31 required by RCW 51.52.050.
- 32 10. In Docket No. 20 17657, the Department order dated April 29, 2020, is
33 correct and affirmed.
- 34 11. In Docket No. 20 17658, the employer failed to establish a prima facie
35 case the injection in the interlaminar lumbar/sacral area was not proper
36 and necessary treatment. The appeal from Department order dated
37 April 30, 2020, is dismissed for failure to present a prima facie case for
38 the relief sought as required by RCW 51.52.050.
- 39 12. In Docket No. 20 19754, neither the employer nor any other party
40 presented evidence regarding the overpayment of time-loss
41 compensation to Mr. Ortiz Martinez for the period March 31, 2020,
42 through May 5, 2020. The appeal from Department order dated June 30,
43 2020, is dismissed as required under RCW 51.52.050.
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13. In Docket No. 20 24350, the Department order dated September 10, 2020, is correct and is affirmed.
 14. The Department orders dated; April 21, 2020 (Docket No. 20 17653); June 16, 2020 (Docket No. 20 19152); June 17, 2020 (Docket No. 20 19353); September 8, 2020 (Docket No. 20 22453); October 27, 2020 (Docket No. 20 24653); January 20, 2021 (Docket No. 21 12350); March 5, 2021 (Docket No. 21 13850); and April 22, 2021 (Docket No. 21 15651), are correct and are affirmed.
 13. In Docket Nos. 20 24351 (Department order, September 17, 2020); 21 10453 (Department order, December 17, 2020); 21 13851 (Department order, March 31, 2021); 21 13852, (Department order dated, April 1, 2021); 21 15652 (Department order, April 23, 2021); and 21 15653 (Department order, April 26, 2021), the employer, Phil Rock Construction failed to establish a prima facie case the Department's remittance advices paying for vocational services and medical benefits were incorrect. The appeals are dismissed for failure to present a prima facie case for the relief sought as required under RCW 51.52.050

Dated: February 24, 2022.

BOARD OF INDUSTRIAL INSURANCE APPEALS



MARK JAFFE, Acting Chairperson



ISABEL A. M. COLE, Member

1 **Addendum to Decision and Order**

2 **In re Carlos Ortiz Martinez**

3 **Docket Nos. 20 10952, 20 17652, 20 17653, 20 17654, 20 17655, 20 17657, 20 17658, 20 19152,**
4 **20 19353, 20 19754, 20 22453, 20 24350, 20 24351, 20 24653, 21 10453, 21 12350, 21 13850,**
5 **21 13851, 21 13852, 21 15651, 21 15652 & 21 15653**
6 **Claim No. BB-40305**
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8 **Appearances**

9 Claimant, Carlos Ortiz Martinez, by Endres Law, Inc. P.S., per Corey L. Endres

10 Employer, Phil Rock Construction, by ABC Law Group, LLP, per Neil Weiss

11 Department of Labor and Industries, by Office of the Attorney General, per Michael E. Duggan

12 **Petition for Review**

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15 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
16 and decision. The employer filed a timely Petition for Review of a Proposed Decision and Order
17 issued on October 11, 2021, in which the industrial appeals judge dismissed the appeals in Docket
18 Nos. 20 10952, 20 17652, 20 17653, 20 17654, 20 17655, 20 17658, 20 19754, 20 24350, 20 24351,
19 21 10453, 21 13851, 21 13852, 21 15652 and 21 15653 and affirmed the orders of the Department
20 dated April 29, 2020, June 16, 2020, June 17, 2020, September 8, 2020, October 27, 2020,
21 January 20, 2021, March 5, 2021, and April 22, 2021. No response to the petition for review was
22 filed.
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