White, Peter

EVIDENCE

Exhibits containing hearsay

The failure of a party offering a business record to remove objectionable hearsay renders the entire exhibit inadmissible. ***….In re Peter White*, BIIA Dec., 58,734 (1982)** [*Editor's Note*: The Board's decision was appealed to superior court under King County Cause No. 82-2-05992-7.]

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: PETER WHITE	)	**DOCKET NO. 58,734**
	)	
CLAIM NO. S-343515	)	**DECISION AND ORDER**

APPEARANCES:

Claimant, Peter White, by
Walthew, Warner, Keefe, Arron, Costello and Thompson, per
Charles F. Warner

Employer, King County, by
Perkins, Coie, Stone, Olsen and Williams, per
Calhoun Dickinson

This is an appeal filed by the employer on February 10, 1981, from an order of the Department of Labor and Industries dated December 31, 1980, which allowed the claim for benefits based upon an alleged industrial injury having occurred on June 6, 1979. **AFFIRMED**.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the claimant to a Proposed Decision an Order issued on January 13, 1982, in which the order of the Department dated December 31, 1980 was reversed and remanded to the Department with instructions to issue a further order rejecting this claim.

The Board has reviewed the evidentiary rulings in the record and with one exception finds that no prejudicial error was committed and said rulings are hereby affirmed. Although Exhibit No. 2, claimant's records from the Group Health Cooperative, may be a business record under RCW 5.45.020, there was no attempt made by the party offering this exhibit to strike the impressions and opinions which were clearly objectionable. In addition, emphasis is added at several places by underlining or bracketing, which clearly is not contemporaneous with the production of the record. Although the great bulk of the material contained in the hospital and clinical records offered an Exhibit No. 2 may be admissible under the Uniform Business Record Act and the holdings in Young v. Liddington, 50 Wn.2d 78 (1957), and Liljeblom v. Department of Labor and Industries, 57 Wn.2d 136 (1960), at least a portion is objectionable hearsay and the failure to remove this material by the party offering it leads us to the conclusion that it should be rejected in its entirety. Glenn v. Brown, 28 Wn. App. 86 at page 90 validates a trial court's decision rejecting letters admissible under the Uniform Business Records as Evidence Act. RCW 5.45.020, because no attempt was made to segregate the

potentially inadmissible portions of the letters from those which are inadmissible. Accordingly, Exhibit No. 2 will appear as identified but rejected.

Although technically speaking, the employer's counsel should have moved to reopen his case-in-chief when he learned that Dr. Knopp's deposition would not be published by the claimant, we do not feel his failure to do so should result in the rejection of this evidence. The deposition of Dr. Knopp will remain in the record as evidence offered by the employer.

Although there is extensive discussion in the Proposed Decision and Order regarding the testimony of a number of lay and medical witnesses, there is no mention made of the testimony of Annie Daniels, Mr. White's co-worker. In June of 1979, Mrs. Daniels was a store clerk for the King County Public Works Department, working at the same facility in Renton where Mr. White allegedly suffered his industrial injury. Following her testimony to the effect that she heard someone else ask Mr. White to unload barrels, she was asked if she saw him later in the day. Following an affirmative response, she was asked to state what she observed later in the day:

> "I don't remember the time, you know, I remember that after he finished unloading the barrels we were in the same building and he looked like he was in a lot of pain when he came back and I asked him, 'What's the matter,' and he told me he felt he had injured his back, and I said, 'Maybe you should go to a doctor and get it checked out.'"

Although Mrs. Daniels could not remember specifically when this incident occurred, she did state that it was in the summer of 1979. There is nothing in the record to indicate that Mrs. Daniels was a personal or social friend of the claimant or had any type of personal relationship with the claimant which would cause her to color her testimony in his favor. Although Mr. White did not see fit to complain about his back condition to Dr. Tokarchek, Dr. Knopp, or any other physician caring for him until several months after the incident of June 6, 1979, this does not mean that the incident did not occur. We are convinced through the corroboration of the claimant's testimony, by the testimony of a disinterested third party, Mrs. Daniels, that he injured his low back on June 16, 1979, as the result of moving heavy barrels during the course of his employment. Even if we were to consider the contents of Exhibit No. 2, which we have rejected, our opinion would still be that the claimant suffered an industrial injury as alleged.

FINDINGS OF FACT

Based on a careful review of the entire record, this Board finds as follows:

1. On December 7, 1979 claimant, Peter White, filed an accident report with the Department of Labor and Industries alleging that he had suffered an industrial injury to his low back on June 6, 1979 during the course of his employment with King County. On June 27, 1980, the Department of Labor and Industries issued an order rejecting the claim for the reason that there was no proof of a specific injury at a definite time and place in the course of employment. On August 26, 1980, claimant filed a protest and request for reconsideration with the Department of Labor and Industries, and on October 7, 1980, the Department issued an order holding its order of June 27, 1980 in abeyance. On December 31, 1980, the Department of Labor and Industries issued an order allowing the claim for an injury of June 6, 1979. On February 10, 1981, the self-insured employer, King County, filed a notice of appeal with the Board of Industrial Insurance Appeals from the Department's order of December 31, 1980. On March 3, 1981, the Board of Industrial Insurance Appeals issued an order granting the appeal and directed that proceedings be held on the issues raised by the appeal.

2. Peter White, the claimant, suffered an industrial injury to his low back during the course of his employment with King County, a self-insured employer, as the result of unloading barrels from a truck on June 6, 1979.

3. As of December 31, 1980, the claimant was suffering from conditions in his low back which were causally related to the industrial injury of June 6, 1979, and these conditions required further medical treatment.

CONCLUSIONS OF LAW

Based on the foregoing finding of fact, this Board concludes as follows:

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and the subject matter of this appeal.

2. On June 6, 1979, during the course of his employment with King County, Peter White, the claimant, suffered an industrial injury within the meaning of the Washington State Workers' Compensation Act.

3. The order of the Department of Labor and Industries dated December 31, 1981, allowing the claim for benefits based upon the industrial injury of June 6, 1979, is correct and must be affirmed.

It is so ORDERED.

Dated this 6th day of April, 1982.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
MICHAEL L. HALL Chairman

/s/_____
FRANK E. FENNERTY, JR. Member