

Pister, Reuben

PERMANENT TOTAL DISABILITY (RCW 51.08.160)

Combined effects of preexisting and subsequent disabilities

A worker may establish permanent total disability by combining the effects of the industrial injury with conditions preexisting the injury and causing a significant physical impairment. Even though the conditions were not discovered or diagnosed until after the injury, they should not be viewed as subsequently occurring events. ...*In re Reuben Pister*, BIIA Dec., 61,785 (1983)

Scroll down for order.

1 cavity; and a chronic heavy gastric hyperacidity. The transcript contains
2 no date relative to original diagnosis;

- 3
4 (3) abdominal aortic aneurysm, diagnosed in September of 1980, for which
5 the claimant underwent surgery, excision and replacement of the
6 weakened segment on October 3, 1980;
- 7 (4) arteriosclerotic vascular changes which were pre-existing and advanced
8 but were first noted on October 27, 1980;
- 9 (5) diabetes mellitis, initially diagnosed in August or September of 1980,
10 and subsequently controlled by insulin; and
- 11 (6) peripheral vascular disease, causing poor circulation of blood, especially
12 in the lower extremities.
13

14
15 It is well established in the law of this state that if a person is impaired by a physical or mental
16 condition which pre-existed the occurrence of an industrial injury, and later is prevented from
17 returning to gainful employment because of the added or combined effects of a later occurring
18 industrial injury, the worker is then entitled to compensation as a permanently totally disabled
19 worker. Wendt v. Department of Labor and Industries, 18 Wn. App. 674 (1977).
20
21

22 The prior injury or disability is viewed not as the cause of the total disability, but merely a
23 condition upon which the subsequent injury combined to cause permanent total disability. See
24 Erickson v. Department of Labor and Industries, 48 Wn. 2d 458 (1956) and Miller v. Department of
25 Labor and Industries, 200 Wash. 674 (1939).
26
27

28
29 Certainly, if the effects of the industrial injury, although later occurring, are an insignificant
30 contributor to physical or mental impairment and consequent disability, and a pre-existing condition
31 progresses independently to the point that it alone prevents the claimant from returning to gainful
32 employment, then it would be inappropriate for the claimant to receive compensation under our Act.
33 See Shea v. Department of Labor and Industries, 12 Wn. App. 410 (1974). It follows that if a worker
34 who has been injured in his employment and suffers a permanent partial disability therefrom is later
35 prevented from returning to work because of a subsequently occurring independent injury or
36 disease, it would be also inappropriate to accord the claimant the benefits of the Act. This would
37 hold true unless perhaps the effects of the earlier injury worsened and became a significant
38 contributing cause of the later occurring total disability and thereby should be superimposed upon
39 the effects of intervening events. See Allen v. Department of Labor and Industries, 30 Wn. App.
40 693 (1981).
41
42
43
44
45
46
47

1 In the record before us it is clear that the claimant had a number of pre-existing conditions
2 which undoubtedly contributed greatly to his disability scheme. Many of these conditions were not
3 discovered until after the industrial injury. It does not follow that these conditions should be viewed
4 as subsequently occurring events merely because their discovery or diagnosis was made after the
5 industrial injury at issue. To the contrary, it is clear that the nature of these conditions were such
6 that they had to pre-exist the May, 1980 industrial injury for them to have developed and
7 progressed to a state where their discovery was made, and in the case of the aneurysm, where
8 surgery was required because of imminent danger.

9 Neither physician whose testimony appears in the record gave an opinion regarding the
10 extent of the claimant's pre-existing impairment which would be attributable to any of the previously
11 listed six unrelated conditions. However, the record clearly shows that both physicians regarded
12 the claimant's pre-existing problems to constitute a substantial limitation upon Mr. Pister's daily life
13 and physical capacity for work.

14 Truly, the nature of the limitations described in the record from the pre-existing problems
15 describes a situation setting the stage for an industrial injury, albeit minor, to act as "the straw that
16 breaks the camel's back". In fact, we view the claimant's injury of May 30, 1980, and its sequelae
17 to have done precisely that. When the impairment caused by the claimant's industrial injury is
18 superimposed upon the effects of his pre-existing conditions and considered with the claimant's age
19 of 61 years, his educational background and work experience, it is clear that the preponderance of
20 evidence shows that Mr. Pister cannot return to gainful employment. Pacific Car and Foundry
21 Company v. Coby, 5 Wn. App. 547 (1971). It is also clear from the evidence that the industrial
22 injury of May 30, 1980, is a significant contributor to this development and should be viewed as a
23 proximate cause of the claimant's ultimate permanent total disability. Wendt v. Department of
24 Labor and Industries, 18 Wn. App. 674 (1977).

25 **FINDINGS OF FACT**

- 26 1. On June 4, 1980, an application for benefits was filed with the
27 Department of Labor and Industries alleging that the claimant, Reuben
28 A. Pister, had sustained an industrial injury on May 30, 1980, while in
29 the course of his employment with the City of Walla Walla. On August
30 14, 1980, the Department issued an order allowing the claim and closing
31 it with no benefits other than medical treatment provided.
- 32 2. On November 4, 1980, the claimant filed with the Department an
33 application to reopen the claim for aggravation of condition. On
34 November 25, 1980, the Department issued an order reopening the

1 claim effective October 27, 1980. In a series of subsequent orders the
2 Department paid to the claimant time-loss compensation for the period
3 from October 27, 1980 through May 1, 1981. On December 2, 1981, the
4 Department issued an order closing the claim with a permanent partial
5 disability award equal to 10% as compared to total bodily impairment,
6 paid at 75% of the monetary value thereof pursuant to RCW
7 51.32.080(2). On December 16, 1981, the claimant filed a letter of
8 protest from the foregoing order. On January 8, 1982, the Department
9 issued an order holding in abeyance its previous order dated December
10 2, 1981, pending further consideration. On March 11, 1982, the
11 Department issued an order adhering to the provisions of its prior order
12 dated December 2, 1981. On March 24, 1982, the claimant filed a
13 notice of appeal with the Board of Industrial Insurance Appeals. On
14 April 9, 1982, this Board issued its order granting the appeal, assigning
15 it Docket No. 61,785, and ordering that proceedings be held on the
16 issues raised therein.

- 17
18 3. On May 30, 1980, the claimant sustained an injury to his low back while
19 in the course of his employment with the City of Walla Walla. While the
20 claimant was ascending a ladder, his left foot slipped on paint thinner,
21 causing a severely twisted back by the sudden loss of support.
- 22
23 4. Reuben A. Pister is 61 years of age, has a high school education, and
24 has a lifetime history of employment, including saleswork, stockman,
25 carpenter, gardener, maintenance work and the cleaning and editing of
26 film.
- 27
28 5. On and before May 30, 1980, the claimant had a number of causally
29 unrelated pre-existing conditions, as follows: the excision by radiation
30 therapy of a lymphangioma (or hemangioma) from the right hip in 1943
31 while the claimant was serving in the U.S. Army, for which the claimant
32 receives a 10% pension; a chronic hiatal hernia of the diaphragm with
33 partial displacement of the stomach into the chest cavity and a
34 continuing heavy gastric hyperacidity; an abdominal aortic aneurysm
35 diagnosed in September of 1980, which required surgery on October 3,
36 1980; pre-existing long term progressive advanced arteriosclerotic
37 vascular changes; initially noted on October 27, 1980; diabetes mellitus;
38 diagnosed in August or September, 1980, since controlled by insulin;
39 and peripheral vascular disease, causing poor circulation of blood,
40 especially in the lower extremities. On and immediately prior to May 30,
41 1980, the foregoing pre-existing conditions caused a significant physical
42 impairment to the claimant in his employment and non-employment life.
- 43
44 6. On March 11, 1982, as a result of his industrial injury of May 30, 1980,
45 the claimant had conditions diagnosed as lumbosacral sprain and low
46 back pain syndrome which were fixed, further treatment not being
47 indicated.

- 1 7. On March 11, 1982, the claimant exhibited impairment in his dorso-
2 lumbar and lumbosacral spine most closely resembling that degree of
3 impairment described by Category 3 of WAC 296-20-280. None of the
4 clinical objective findings relative to these conditions rose to the level of
5 "marked", on a scale "mild", "moderate" and "marked".
6
7 8. As of March 11, 1982, the claimant's impairment attributable to his
8 industrial injury of May 30, 1980, considered alone, did not prevent him
9 from performing a gainful occupation on a reasonably continuous basis.
10
11 9. As of March 11, 1982, when the claimant's impairment from his
12 industrial injury of May 30, 1980, was combined with and superimposed
13 upon the effects of his pre-existing conditions unrelated to the industrial
14 injury, together with the factors of his age, education and history of
15 employment, the claimant was permanently prevented from performing
16 a regular gainful occupation on a reasonably continuous basis.

17 **CONCLUSIONS OF LAW**

18 Based upon the foregoing findings of fact, the following conclusions are entered:

- 19 1. The Board of Industrial Insurance Appeals has jurisdiction of the parties
20 and the subject matter of this appeal.
21
22 2. As of March 11, 1982, as a proximate result of his industrial injury of
23 May 30, 1980, the claimant was permanently totally disabled as defined
24 and contemplated under the Industrial Insurance Act of this state.
25
26 3. The order of the Department of Labor and Industries issued March 11,
27 1982, adhering to provisions of a previous order dated December 2,
28 1981, which closed the claim with a permanent partial disability award
29 equal to 10% as compared to total bodily impairment, paid at 75% of the
30 monetary value thereof pursuant to the provisions of RCW 51.32.080(2)
31 is incorrect, should be reversed, and the claim remanded to the
32 Department with direction to acknowledge the claimant as a
33 permanently totally disabled worker effective March 11, 1982, and grant
34 him all benefits consistent with that status.

35 It is so ORDERED.

36 Dated this 22nd day of August, 1983.

37
38 BOARD OF INDUSTRIAL INSURANCE APPEALS

39 /s/ _____
40 MICHAEL L. HALL Chairman

41
42 /s/ _____
43 FRANK E. FENNERTY, JR. Member

44
45 /s/ _____
46 PHILLIP T. BORK Member
47