

## **Elliott, Rose**

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### **PERMANENT TOTAL DISABILITY (RCW 51.08.160)**

#### **Part-time employment**

Worker, who was a part-time bingo caller at the time of her injury and was capable of returning to such employment, was not deprived of her ability to follow her previous occupation and was therefore not permanently and totally disabled. ...*In re Rose Elliott*, **BIIA Dec., 87 4017 (1989)** [*Editor's Note*: The Board's decision was appealed to superior court under Pierce County Cause No. 89-2-05748-0.]

Scroll down for order.



1 that industrial injury and performed the laminectomy on November 2, 1983. Dr. Johnson examined  
2 the claimant on January 24, 1984, two weeks prior to the industrial injury which is the subject of this  
3 appeal, and it was Dr. Johnson's opinion that as of that date the claimant's low back impairment was  
4 best described by Category 1 of WAC 296-20-280. As a result of the February 10, 1984 industrial  
5 injury, claimant had low back surgery performed on July 31, 1985 by Galen Hoover, M.D., an  
6 orthopedic surgeon. Subsequent to the surgery, the claimant remained under the treatment of Dr.  
7 Hoover. Dr. Hoover Testified that the low back surgery failed to give Ms. Elliott any relief from her  
8 symptoms.  
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13 Ms. Elliott testified that her job as a bingo monitor required her to lift weights up to seven  
14 pounds on a frequent basis and that she was not required to perform any kitchen duties. Elizabeth  
15 Rodgers, a vocational rehabilitation counselor, testified on direct examination that the claimant was  
16 totally and permanently disabled as a result of her industrial injury. In reaching this conclusion, she  
17 relied upon (1) the physical capacities evaluation as testified to by Dr. Galen Hoover; (2) the physical  
18 requirements of bingo monitors as listed in the Dictionary of Occupational Titles; and (3) her personal  
19 observation of bingo monitors. Significantly, Ms. Rodgers did not observe the activities of bingo  
20 monitors at the Boys & Girls Clubs where the claimant was employed at the time of her industrial  
21 injury. Ms. Rodgers believed the claimant was not able to return to her former work because she was  
22 incapable of meeting the lifting requirements of bingo monitors as listed in the Dictionary of  
23 Occupational Titles. Ms. Rodgers was not aware that the claimant was not required to perform any  
24 kitchen duties, nor was she aware that the claimant testified that her maximum lifting requirement was  
25 approximately seven pounds. Ms. Rodgers admitted that based on the physical limitations imposed  
26 by Dr. Hoover, the claimant could return to her former job as a bingo caller. Therefore, looking solely  
27 at the testimony of the claimant's witnesses, it is clear that the claimant was capable of returning to her  
28 former occupation.  
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37 We are convinced that the claimant sustained a significant industrial injury on February 10,  
38 1984. However, the evidence does not lead to the conclusion that, as a result of the industrial injury,  
39 the claimant was totally and permanently disabled as that term is defined by statute (RCW 51.08.160)  
40 or case law. See Allen v. Dept. of Labor & Indus., 30 Wn App 693, 697-698 (1981); Kuhnle v. Dept.  
41 of Labor & Indus., 12 Wn 2d 191, 198-199 (1942). Prior to the industrial injury, the claimant was  
42 working as a bingo caller three and one-third hours per day, three days per week. She had apparently  
43 been so employed on a regular basis for some six years prior to the industrial injury. Subsequent to  
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1 the industrial injury, the claimant was still capable of working in that same capacity. There has been  
2 no showing that the claimant has been deprived of her ability to "follow her previous occupation" due  
3 to the residuals of the industrial injury. Under these circumstances, she is not entitled to be placed  
4 upon the pension rolls.  
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7 It was Dr. Hoover's opinion that, as of November 23, 1987 when the Department closed her  
8 claim, Ms. Elliott's condition was fixed and stable and her impairment was best described by Category  
9 4 of WAC 296-20-280. Michael Potter, M.D., a board-certified neurosurgeon, evaluated Ms. Elliott for  
10 the Department of Labor and Industries on May 15, 1987. It was Dr. Potter's opinion that, as of  
11 November 24, 1987, the claimant's impairment was best described by Category 3 of WAC  
12 296-20-280.  
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16 Our review of the evidence convinces us that Category 4 best describes the claimant's  
17 permanent impairment and she is therefore entitled to a commensurate permanent partial disability  
18 award. We note that as the claimant's attending physician, Dr. Hoover's opinion is entitled to special  
19 consideration. Hamilton v. Dept. of Labor & Indus., 111 Wn 2d 569, 571 (1988); Groff v. Dept. of  
20 Labor & Indus., 65 Wn 2d 35, 45 (1964). As the claimant's attending physician, Dr. Hoover not only  
21 performed the surgery but had an opportunity to observe the claimant on numerous occasions over a  
22 considerable period of time. In contrast, Dr. Potter only saw the claimant on a single occasion.  
23 Additionally, Dr. Potter reached his decision primarily because his examination did not disclose  
24 atrophy and weakness of a specific muscle or muscle group. It is not necessary that a claimant have  
25 each and every finding listed in a specific category. It is merely necessary that the category most  
26 accurately reflects the overall impairment. WAC 296-20-220(g). In the present case, we are  
27 convinced that Category 4 more accurately reflects the impairment causally related to the industrial  
28 injury than does Category 3.  
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### 36 **FINDINGS OF FACT**

- 37 1. On February 21, 1984 the claimant filed an accident report with the  
38 Department of Labor and Industries alleging the occurrence of an  
39 industrial injury on February 10, 1984 while in the course of her  
40 employment with Boys & Girls Clubs of Tacoma/Pierce County. On April  
41 23, 1985 the Department issued an order closing the claim with time loss  
42 compensation as paid and with an award for permanent partial disability  
43 equal to 10% as compared to total bodily impairment. On May 13, 1985  
44 the Department received a protest from the claimant's physician  
45 recommending further treatment. On May 31, 1985, the Department  
46 issued an order setting aside and holding for naught its order of April 23,  
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1 1985 and directing the claim to remain open for treatment and further  
2 action. On November 23, 1987 the Department issued an order closing  
3 the claim with time loss compensation as paid and with an award for  
4 unspecified disabilities of 10% as compared to total bodily impairment. On  
5 December 4, 1987 the claimant filed a notice of appeal from the  
6 Department order of November 23, 1987. On December 31, 1987 the  
7 Board issued an order granting the appeal, assigning it Docket No. 87  
8 4017 and directing that further proceedings be held in the matter.  
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- 10 2. In 1982 claimant sustained an injury to her low back which resulted in  
11 laminectomy surgery in 1983. Prior to February 10, 1984, claimant's  
12 condition causally related to the 1982 injury was fixed and stable and  
13 productive of no permanent impairment.
- 14 3. On February 10, 1984 while in the course of her employment as a bingo  
15 monitor with Boys & Girls Clubs of Tacoma/Pierce County, the claimant  
16 tripped on a wire and fell, injuring her low back. The claimant experienced  
17 pain in her back and legs, with the left being worse than the right.
- 18 4. The industrial injury of February 10, 1984 aggravated claimant's  
19 preexisting perineural scarring from laminectomy surgery performed in  
20 1983 as well as her preexisting degenerative disc disease, and  
21 necessitated further laminectomy surgery on July 31, 1985.
- 22 5. As of November 23, 1987, the claimant's condition causally related to her  
23 industrial injury of February 10, 1984 was a low back injury superimposed  
24 upon the previous low back injury of 1982 and surgery of 1983. As of  
25 November 23, 1987, claimant's condition causally related to the industrial  
26 injury of February 10, 1984 was fixed and no further treatment was  
27 available which would be reasonably likely to improve her condition.
- 28 6. As of November 23, 1987, the claimant exhibited back and leg pain,  
29 diminished deep tendon reflex at the knee, loss of deep tendon reflex at  
30 the ankle, and significant x-ray findings.
- 31 7. As of November 23, 1987, the claimant had significant limitations with  
32 respect to bending, lifting, twisting and standing, with lifting and carrying  
33 limited to five to ten pounds and with repeated twisting and standing to be  
34 avoided.
- 35 8. The claimant is a 64 year old woman with a ninth grade education, low  
36 average intelligence and no transferable skills. Her work history is that of  
37 a bingo caller, waitress, cook, house cleaner, and, more remotely, cannery  
38 worker and riveter.
- 39 9. For six years prior to the industrial injury of February 10, 1984 claimant  
40 was employed as a bingo caller. From 1980-1984 she was employed 3.3  
41 hours per day, three days a week, for Boys & Girls Clubs Tacoma/Pierce  
42 County.
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10. As of November 23, 1987, the claimant's impairment causally related to her industrial injury of February 10, 1984 was best described by Category 4 of WAC 296-20-280.
  11. As a result of her February 10, 1984 injury, and taking into account her age, education, work history and physical restrictions, the claimant was not precluded, as of November 23, 1987, from returning to her previous occupation as a a bingo caller or from engaging in reasonably continuous gainful employment in other work generally available in the State of Washington for which the claimant had qualifications by way of education and experience.

**CONCLUSIONS OF LAW**

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and the subject matter to this appeal.
2. As of November 23, 1987, the claimant was entitled to an award for permanent partial disability equal to 15% as compared to total bodily impairment pursuant to WAC 296-20-680(3).
3. As of November 23, 1987 claimant was not a permanently totally disabled worker within the meaning of RCW 51.08.160.
4. The November 23, 1987 Department order, which closed the claim with an award for permanent partial disability equal to 10% as compared to total bodily impairment, is incorrect and should be reversed, and this matter remanded to the Department with directions to make an award to the claimant for permanent partial disability equal to 15% as compared to total bodily impairment, paid at 75% of the monetary value pursuant to RCW 51.32.080(2), and thereupon close the claim.

It is so ORDERED.

Dated this 7<sup>th</sup> day of July, 1989.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/ \_\_\_\_\_  
SARA T. HARMON Chairperson

/s/ \_\_\_\_\_  
PHILLIP T. BORK Member