

McClinton, Jerald

EVIDENCE

Jurisdictional History

Even if stipulated to, the BIIA's Jurisdictional History document is not intended to be admitted as substantive evidence on issues under appeal unless the parties otherwise agree to do so.*In re Jerald McClinton, Order Vacating Proposed Decision and Order, BIIA Dec., 19 16607 (2021)*

Scroll down for order.

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

1 IN RE: JERALD D. MCCLINTON)	DOCKET NOS. 19 16607, 19 17202, 19 18808,
2)	19 22508, 19 23005 & 19 23206
3)	
4)	ORDER VACATING PROPOSED DECISION
5)	AND ORDER AND REMANDING THE APPEALS
)	FOR FURTHER PROCEEDINGS

CLAIM NO. BC-23536

In 2017, Jerald D. McClinton's right hand was caught in rollers of a machine during the course of his employment with Georgia Pacific, LLC. The Department of Labor and Industries allowed the claim. Mr. McClinton received treatment and time-loss compensation. The Department denied responsibility for complex regional pain syndrome related to his right upper extremity under the claim. The Department also denied responsibility under the claim for major depressive disorder, denied loss of earning power benefits from August 6, 2019, through August 12, 2019, and closed the claim with time-loss compensation as paid through August 5, 2019, and no award for permanent partial disability. Jerald McClinton timely appealed all of these orders and at the time of the hearing limited his issues to allowance of complex regional pain syndrome, major depressive disorder, and post-traumatic stress disorder. He seeks treatment for these conditions as of November 7, 2019. The Department also adjusted time-loss compensation for various periods. Georgia Pacific appealed the time-loss compensation adjustment order and the closing order. It contests all time-loss benefits since November 20, 2017, that were paid as provisional and contests the time-loss payment adjustment orders and periods as referenced in the November 22, 2019 order. Mr. McClinton appealed the other orders.

In the Proposed Decision and Order dated April 2, 2021, our industrial appeals judge held that Mr. McClinton failed to prove by a preponderance of evidence that he suffers from complex regional pain syndrome (CRPS), post-traumatic stress disorder (PTSD), or major depressive disorder caused or aggravated by the industrial injury, or that he was in need of any further treatment under the claim as of November 7, 2019; Mr. McClinton failed to present a prima facie case regarding any entitlement to loss of earning power benefits between August 6, 2019, and August 12, 2019; and Georgia Pacific failed to present a prima facie case regarding the calculation of adjustments to time-loss benefits pursuant to the August 6, 2019 wage order or that there is any legal basis with reference to the closing order to vacate previously paid time-loss benefits in the claim. The judge affirmed the Department orders dated July 1, 2019, July 10, 2019, and November 7, 2019, and dismissed the appeals from

1 the Department orders dated August 23, 2019, and November 22, 2019, for failure to present a prima
2 facie case for relief.

3 Mr. McClinton and Georgia Pacific filed timely petitions for review. The relief each requested
4 remained the same. The Proposed Decision and Order of April 2, 2021, is vacated and this appeal
5 is **REMANDED FOR FURTHER PROCEEDINGS**.

6 **DISCUSSION**

7 Mr. McClinton and Georgia Pacific both indicated the need to supplement the hearing record.
8 Having reviewed the written arguments submitted by the claimant and employer, both before and
9 after the Proposed Decision and Order was issued, we agree and grant this relief. As a result, the
10 record of these appeals will be reopened but only regarding the issues of the finality of payments of
11 time-loss compensation or entitlement to further time-loss compensation for periods for which it was
12 not paid up to November 7, 2019, the date of the closing order. The existence and causal relationship
13 of CRPS, PTSD, and major depressive disorder have been fully litigated. On remand, no further
14 evidence on these issues is needed or will be added to the record.

15 The parties entered into jurisdictional stipulations on December 31, 2019, and February 3,
16 2020. As is normally done with appeals before us, the form of the jurisdictional stipulations was
17 based on a chart prepared by us that pertain to these appeals. The industrial appeals judge certified
18 that "the parties have agreed to include this history in the Board record for jurisdictional purposes
19 only." These charts are not intended to be admitted as evidence on the substantive issues under
20 appeal. The instructions on the first page of the chart notes: "This is a summary of actions relating
21 to this appeal and does not include every action taken by the Department of Labor and Industries."
22 They can be admitted as substantive evidence if the parties agree to do so. The parties have not
23 done that in these appeals.

24 But even if the "jurisdictional history" chart was admitted to the record to provide proof of the
25 finality or lack thereof of payments of time-loss compensation prior to issuance of the claim closure
26 order, it would provide little substantive evidence on this issue. For instance, the December 21, 2017
27 order paid time-loss compensation on an interlocutory basis as the Department had not yet issued
28 an appealable order as described in RCW 51.32.210. As is usually, if not always, the case, the first
29 order issued with the RCW 51.52.050 protest and appeal language is an order allowing or rejecting
30 the claim. In this case, the first determinative order was that issued on April 10, 2018, that allowed
31 the claim for the November 11, 2017 industrial injury. Beyond that, the entries in the chart are
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1 meaningless inasmuch as the Department could have continued to pay time-loss compensation on
2 an interlocutory basis even though RCW 51.32.210 no longer required it to do so.

3 One of the parties also suggested that we take judicial notice of the Department's claim file.
4 This we cannot do. To do so would be contrary to the hearing process mandated by the Legislature
5 in RCW 51.52.100-104 and by our regulations in WAC Chap. 263-12.

6 Towards the end of the October 14, 2020 hearing Mr. McClinton rested his case in chief, but
7 only as to his appeals, not the employer's appeals. The claimant contended that he was surprised
8 by the employer's expansion of its appeals to include contesting, potentially, all time-loss
9 compensation benefits that he had received under this claim. He requested that he be permitted to
10 recall Dr. [*sic*-Nurse] Cook to testify on the issue of his ability to work/entitlement to time-loss
11 compensation. The industrial appeals judge issued an oral ruling allowing that testimony, but it was
12 never presented.

13 Under the circumstances, we conclude that the record is not complete until the parties are
14 provided with the opportunity to present evidence, whether documentary or through testimony, on
15 the following matters:

16 (1) For the parties to provide proof of dates of all Department orders from December 21, 2017,
17 through claim closure that pay time-loss compensation or loss of earning power benefits, including
18 adjustments to amounts earlier paid; whether these orders are interlocutory or determinative
19 (appealable); as well as the dates of any protests or appeals to these orders.

20 (2) For Mr. McClinton to recall Nurse Cook and/or Dr. Gullon to provide testimony limited to
21 the claimant's ability to work during all periods from the date of injury through November 7, 2019,
22 including whether the residuals of conditions caused by the industrial injury were a proximate cause
23 of inability to obtain and perform reasonably continuous gainful employment.

24 In his Petition for Review, Mr. McClinton reraised his request to record the Zoom hearings in
25 this appeal. As noted above, we are remanding this appeal for further evidence. The request to
26 record hearings is denied at this time.

27 **ORDER**

28 These appeals are remanded to the hearings process, as provided by WAC 263-12-145(5),
29 for further proceedings as indicated by this order. Unless the matter is settled or dismissed, the
30 industrial appeals judge will issue a new Proposed Decision and Order. The new order will contain
31 findings and conclusions as to each contested issue of fact and law. Any party aggrieved by the new
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1 Proposed Decision and Order may petition the Board for review, as provided by RCW 51.52.104.
2 This order vacating is not a final Decision and Order of the Board within the meaning of
3 RCW 51.52.110.

4 Dated: October 12, 2021.

5 BOARD OF INDUSTRIAL INSURANCE APPEALS

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7 ISABEL A. M. COLE, Member

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1 **Addendum to Order**
2 **In re Jerald D. McClinton**
3 **Docket Nos. 19 16607, 19 17202, 19 18808, 19 22508, 19 23005 & 19 23206**
4 **Claim No. BC-23536**

5 **Appearances**

6 Claimant, Jerald D. McClinton, by Hamrick Palmer, PLLC, per Douglas M. Palmer

7 Employer, Georgia Pacific, LLC, by Javelin Law, PLLC, per Christina Eunson and Brandon L.
8 Rich

9 Retrospective Rating Group, PITB Retro #10626, #10962 & #10010, by Approach Management
10 Services, per Craig Hartley, Lay Representative

11 Department of Labor and Industries, by Office of the Attorney General, per Jason Dickey-North

12 **Department Order(s) Under Appeal**

13 1. In Docket No. 19 16607, the claimant, Jerald D. McClinton, filed an appeal with the Board
14 of Industrial Insurance Appeals on July 3, 2019. The claimant appeals a Department order
15 dated July 1, 2019. In this order, the Department corrected its order dated May 17, 2019,
16 and denied that the claimant had complex regional pain syndrome of the right upper
17 extremity as of April 23, 2019.

18 2. In Docket No. 19 17202, the claimant, Jerald D. McClinton, filed an appeal with the Board
19 of Industrial Insurance Appeals on July 19, 2019. The claimant appeals a Department
20 order dated July 10, 2019. In this order, the Department segregated major depressive
21 disorder as neither caused nor aggravated by the industrial injury.

22 3. In Docket No. 19 18808, the claimant, Jerald D. McClinton, filed an appeal with the Board
23 of Industrial Insurance Appeals on August 29, 2019. The claimant appeals a Department
24 order dated August 23, 2019. In this order, the Department denied loss of earning power
25 benefits from August 6, 2019, through August 12, 2019, because the claimant was able to
26 work.

27 4. In Docket No. 19 22508, the claimant, Jerald D. McClinton, filed an appeal with the Board
28 of Industrial Insurance Appeals on November 14, 2019. The claimant appeals a
29 Department order dated November 7, 2019. In this order, the Department affirmed the
30 order dated September 26, 2019, that closed the claim with time-loss benefits as paid
31 through August 5, 2019, and no award for permanent partial disability.

32 5. In Docket No. 19 23005, the employer, Georgia Pacific, LLC, filed a timely protest with the
Department of Labor and Industries. The Department forwarded it to the Board of Industrial
Insurance Appeals as an appeal. The employer appeals a Department order dated
November 7, 2019. In this order, the Department affirmed the order dated September 26,
2019, that closed the claim with time-loss benefits as paid through August 5, 2019, and no
award for permanent partial disability.

6. In Docket No. 19 23206, the employer, Georgia Pacific, LLC, filed an appeal with the Board
of Industrial Insurance Appeals on December 2, 2019. The employer appeals a
Department order dated November 22, 2019. In this order, the Department reconsidered

1 orders dated September 12, 2019, September 13, 2019, and September 16, 2019, and
2 affirmed those orders.

3 **Petition for Review**

4 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
5 and decision. The claimant and employer filed timely petitions for review of a Proposed Decision and
6 Order issued on April 2, 2021. On June 2, 2021, the claimant filed a response to the employer's
7 petition for review.
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