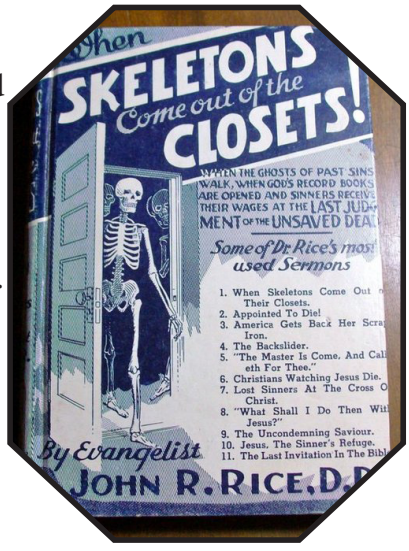
DR. GARBER'S

Dispensary of Cough syrup, Buffalo Lotion,
Pleasant Pellets, Purgative Pectoral, Salve
& Workers' Compensation Cases

Bradley G. Garber's Board Case Update: 10/07/11

Gregory N. Ketner, 63 Van Natta 1904 (2011)
(ALJ Reicher)

SAIF requested review of the judge's order that awarded 15% work disability on a wrist injury claim.



Claimant was a middle school teacher. He also coached track and field. On April 10, 2008, while engaged in his coaching activities, he experienced pain in his right hand. Eventually, he underwent wrist surgery. SAIF accepted a disabling right wrist scapholunate ligament tear.

Claimant's claim was closed on June 16, 2009. He was awarded an 11% whole person award, but no work disability. He requested reconsideration. The Order on Reconsideration, also, did not award work disability, reasoning that Claimant had not established that his work restrictions precluded him from returning to his job-at-injury. Claimant requested a hearing.

On appeal, SAIF argued that Claimant's track coach position did not require him to throw the discus or shotput. SAIF argued that Claimant

was, therefore, capable of performing his at-injury job.

Claimant's job description included that he might "also demonstrate and/or participate in correct methods of the sport." It did not record that "throwing a discus" was part of Claimant's job duties. The Board decided that throwing a discus was part of Claimant's duties to demonstrate correct methods of the sport of track and field. Because Claimant was not released to return to that activity, he was not released to his "regular work." ORS 656.214(1)(d); OAR 436-035-0005(15). **Affirmed**

Moral:

If the employee lifts a pen, when he/she is hired to lift a shovel, be sure to include the pen-lifting activity in the job description when closing the claim.

Jonathan J. Lee, 63 Van Natta 1913 (2011)
(ALJ Jacobson)

Employer denied Claimant's claim. Then, it rescinded its denial. Claimant requested a hearing and the ALJ decided that Employer impermissibly rescinded its denial. Claimant's attorney was awarded $6,000.

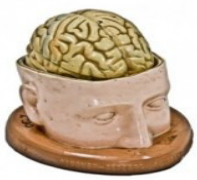
Claimant filed a claim for a right shoulder injury. The claim was accepted for the condition of "right shoulder anterior dislocation." Claimant requested acceptance of a head injury. Employer denied a head injury. Subsequently, Employer rescinded its denial, after Claimant, pro se, requested a hearing from the denial. On the same date of the rescission of its denial, Claimant's newly-retained attorney filed a Notice of Appearance with the Hearings Division. About a month later, Claimant's attorney filed an amended request for a hearing and asked for attorney fees and penalties.

On review, the Board observed, as follows: "Nevertheless, by rescinding the January 14, 2010 denial of [Claimant's] head injury claim, the employer did not accept or deny the claim within the 60-day time period. * * * Therefore, the employer's failure to timely denial."

Even though Employer rescinded its denial before Claimant's counsel became involved, Claimant's counsel was awarded a fee of $6,000. **Affirmed**

Moral:

Moral: Once you said it, you can't take it back; once the injured worker gets an attorney, you'll pay a fee.



Sonya Lonergan, 63 Van Natta 1922 (2011)
(ALJ Lipton)

The self-insured employer requested review of the ALJ's order that increased Claimant's PPD award, from zero to 24%.

Claimant fell at work and filed a claim for benefits. Employer accepted a disabling lumbosacral strain, a right trochanteric bursitis, and a right sacroiliac strain. Based on a closing evaluation by Claimant's attending physician, Claimant was awarded 9% PPD, based on a reduced range of motion in the low back. Claimant requested reconsideration.

A medical arbiter panel examined Claimant and found her range of motion values to be invalid. By Order on Reconsideration, Claimant's PPD award was reduced to zero. She requested a hearing. Reasoning that Claimant's attending physician's findings were more accurate than those of the arbiter panel, the ALJ increased Claimant's PPD award to 24% (9% for impairment, and 15% for work disability).

The medical arbiters felt that their findings were invalid. They observed that Claimant's range of motion values "did not reflect the values seen with her movement about the room and are not considered to be valid or reflect full effort." They concluded, "There is no impairment due to the accepted condition(s)."

Because the arbiters' conclusion was based on observation of Claimant's demonstrated range of motion, at other times during the examination, their conclusion was deemed to by most accurate. **Reversed**