

**Dr. Garber's
DISPENSARY OF COUGH SYRUP, BUFFALO LOTION,
PLEASANT PELLETS, PURGATIVE PECTORAL, SALVE
& WORKERS' COMPENSATION CASES**



Bradley G. Garber's Board Case Update: 04/28/2015

**Laurentino F. Calderon-Flores, 67 Van Natta 634 (2015)
(ALJ Ogawa)**

Claimant requested review of and Order that upheld SAIF's denials of claimant's occupational disease claim for mental disorders.

Claimant works in a large wholesale nursery. In September 2013, he filed a claim for "work related emotional conditions." In October 2013, claimant's primary care physician and a treating nurse practitioner reported that claimant never complained of any emotional problems or symptoms. SAIF denied the claim.

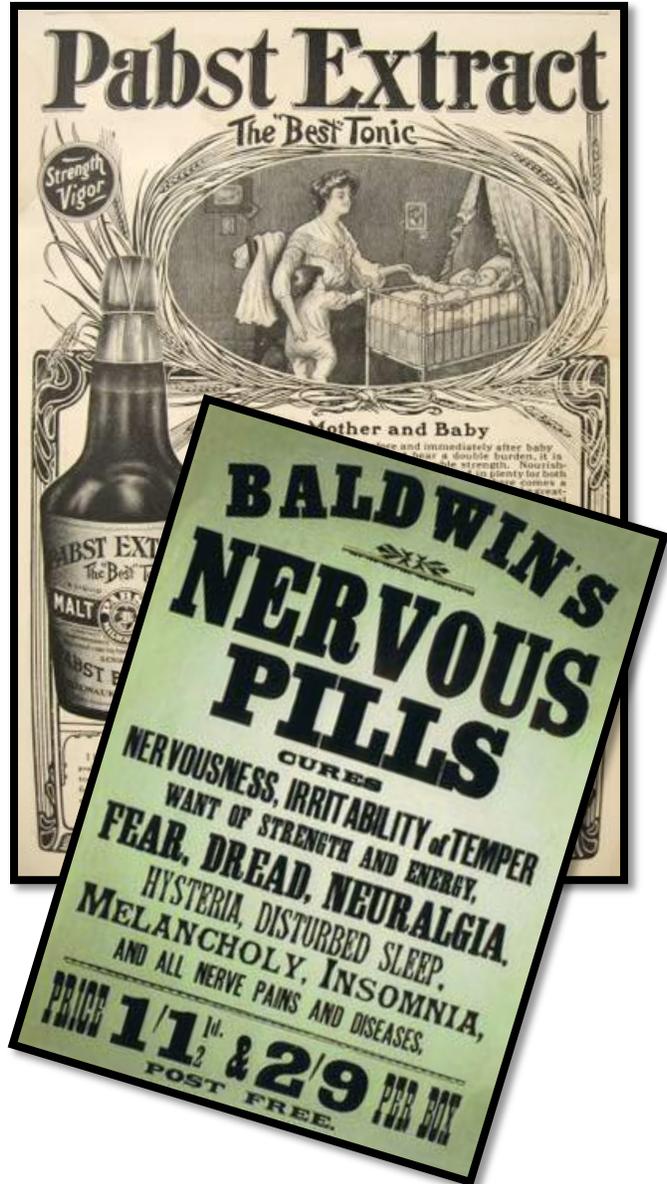
In November 2013, a physician's assistance provided emotional support and behavior intervention related to claimant's trouble sleeping, and his worry that he might lose his job. Claimant also worried about finances due to his hospital bills, and feared that things would be even worse if he lost his earning ability.

Claimant had sustained a crush injury to his right hand, in 2011 and, after becoming medically stationary, returned to light duty work. SAIF apparently had offered him some money to enter into a CDA and he became increasingly convinced that he was going to lose his job.

In December 2013, claimant went to a psychologist who diagnosed "somatic symptom disorder and anxiety disorder 'associated' with physical limitations and specific fear of job loss." Claimant filed a claim for this. SAIF denied it.

ORS 656.802(3)(b) requires that the employment conditions producing the mental disorder are conditions other than: conditions generally inherent in every working situation; reasonable disciplinary, corrective, or job performance evaluation actions by the employer; or cessation of employment or employment decisions attendant upon ordinary business or financial cycles. The phrase "generally inherent in every working situation" means those conditions that are usually present in all jobs and not merely in the specific occupation involved. *Whitlock v. Klamath County Sch. Dist.*, 158 Or App 464 (1999); *Heather D. Whitaker*, 65 Van Natta 1793 (2013)

Worries about job loss or worry about inability to sell oneself in the general labor market are conditions generally inherent in every working situation. See *Bogle v.*

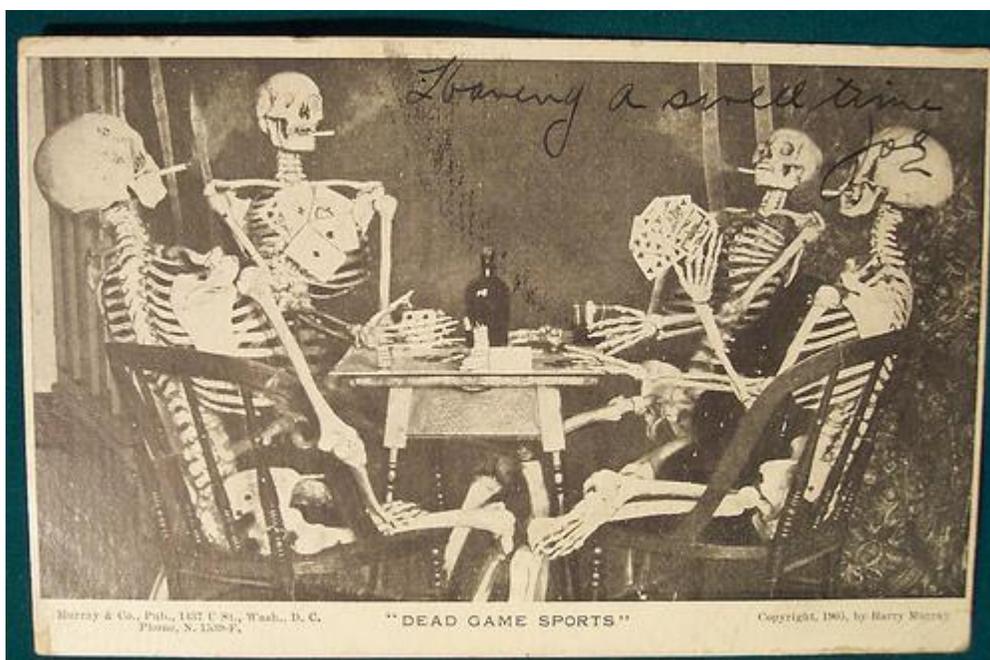


Department of General Services, 136 Or App 351(1995)(stress of actual or anticipated unemployment is not compensable); *see, e.g., Gregory L. Brodell*, 45 Van Natta 924 (1993)(“general stressors such as interpersonal conflict, frustration and boredom at work and stress over termination from job” are nonspecific stressors likely to be generally inherent in every work situation).

In this case, there was no evidence to substantiate claimant’s worries, and the medical evidence was insufficient to carry claimant’s burden of proof. **Affirmed**

**Gaylen J. Kiltow, 67 Van Natta 639 (2015)
(ALJ Fisher)**

SAIF appealed an Order that found claimant entitled to temporary disability (TTD) benefits from May 31, 2011 through December 19, 2014 (a period during which claimant was involved in ATP, even though SAIF had begun paying claimant PTD benefits beginning



on October 24, 2012. The ALJ held that SAIF could not offset and overpayment. The ALJ also determined that SAIF’s Notice of Closure was unreasonable and awarded claimant’s attorney (Fontana) a \$5,400 penalty-related fee.

The Board distinguished between PTD and TTD benefits as follows:

“Permanent total disability” means ‘the loss, including preexisting disability, of use or function of any portion of the body which permanently incapacitates the worker from regularly performing work at a gainful and suitable occupation.’ ORS 656.206(1)(d). A claimant is entitled to PTD wage replacement benefits during the period of such disability. ORS 656.206(2).

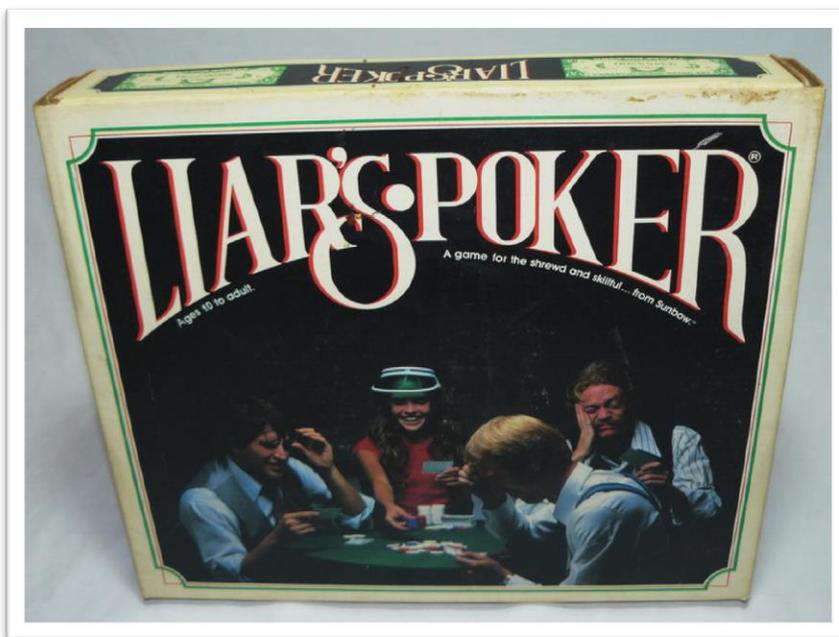
“Temporary total disability’ means that ‘a worker meets the test of being totally disabled but that it cannot be said that the disability is permanent.’ *Gwynn v. SAIF*, 304 Or 345, 351 (1987); *see also* ORS 656.210(1)(providing for TTD benefits ‘[w]hen the total disability is only temporary’). A claimant is entitled to TTD wage replacement benefits during the period of such disability, which are calculated at the same rate as PTD benefits. ORS 656.206(2); ORS 656.210(1)”

A worker may not be both permanently totally disabled and temporarily disabled, because “permanent” and “temporary” are mutually exclusive categories of disability based on the duration of the disability. In short, a worker cannot received PTD and TTD for the same period.

The Board found that claimant was entitled to TTD benefits for the period in question, while he was in the ATP, but that SAIF could offset overpaid PTD benefits paid before December 24, 2013.

The Board went on to find that SAIF had not acted unreasonably in closing claimant’s claim and awarding PTD benefits. So, it reversed the \$5,400 attorney fee. **Modified in part, and reversed in part**

**James Blaine, 67 Van Natta 650 (2015)
(ALJ Pardington)**



Claimant appealed an Order that upheld the employer’s denial of his low back injury claim.

I love the first line: “In upholding the employer’s denial, the ALJ determined that the history claimant provided to the physicians was not materially accurate.” (emphasis added). In short, claimant LIED!

Claimant, a bus driver,

testified the he injured his low back when he “bounced” in his seat as the bus proceeded through an intersection. He stated that he accelerated through an intersection and that he went over a “mound” and the bus “rebounded down on the downhill side of the mound and bounced back up.”

The bus, equipped with cameras, revealed that claimant stopped at the intersection for a red light. Photographs of the intersection revealed no “mound” or defect in the road that might cause a bus to “bounce.”

Considering the discrepancies/inconsistencies with claimant’s account of his work injury, the Board concluded that he did not establish legal causation of his injury.

Affirmed

