BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: CARL G. LANSFORD	DOCKET NOS. 11 20429 & 11 20430 & 11 20527
CLAIM NO. Y-967478	PROPOSED DECISION AND ORDER

INDUSTRIAL APPEALS JUDGE: Christopher G. Swanson

APPEARANCES:

Claimant, Carl G. Lansford, by
Williams Wyckoff & Ostrander, PLLC, per
Wayne L. Williams

Employer, Department of Labor & Industries,
None

Department of Labor and Industries, by
The Office of the Attorney General, per
Judith C. Morton and Michael J. Throgmorton, Assistants

In Docket No. 11 20429, the claimant, Carl G. Lansford, filed an appeal with the Board of Industrial Insurance Appeals on October 3, 2011, from an order of the Department of Labor and Industries dated September 27, 2011. In this order, the Department affirmed a Department order dated June 28, 2011, which affirmed a Remittance Advice dated April 6, 2010, in which the Department denied payment for certain equipment. The Department order is **REVERSED AND REMANDED**.

In Docket No. 11 20430, the claimant, Carl G. Lansford, filed an appeal with the Board of Industrial Insurance Appeals on October 3, 2011, from an order of the Department of Labor and Industries dated September 29, 2011. In this order, the Department denied responsibility for the conditions left below the knee amputation and right below the knee amputation. The Department order is **REVERSED AND REMANDED**.

In Docket No. 11 20527, the claimant, Carl G. Lansford, filed an appeal with the Board of Industrial Insurance Appeals on October 5, 2011, from an order of the Department of Labor and Industries dated October 3, 2011. In this order, the Department ended time loss compensation as paid through July 19, 2011, and closed the claim. The Department order is **REVERSED AND REMANDED**.

ISSUES

1. Whether the claimant's conditions, described as left below the knee amputation and right below the knee amputation, were proximately caused by the industrial injury, and as a result, the Department is responsible for related prosthetic equipment.
2. Whether the claimant's condition, proximately caused by the industrial injury, required further necessary and proper medical treatment, as provided by RCW 51.36.010.
3. What degree of permanent partial disability best describes the claimant's residual impairment, proximately caused by the industrial injury?
4. Whether the claimant was a totally and temporarily disabled worker, due to the residual impairment proximately caused by the industrial injury of January 14, 2005, during the period between July 20, 2011, and October 3, 2011.
5. Whether the claimant was a totally and permanently disabled worker, due to the residual impairment proximately caused by the industrial injury of January 14, 2005, as of October 3, 2011, as contemplated by RCW 51.08.160.

PRELIMINARY MATTERS

At the hearing on May 9, 2009, the parties stipulated to the following:

An appeal in 2008 resulted in an agreement to allow certain conditions and to have certain conditions segregated. The conditions that were allowed at that time were diagnosed as open wound of great toe and methicillin-resistant staphylococcus, MRSA, as proximately caused by the claimant's industrial injury. The conditions that were denied were identified as ingrown left great toenail, cellulitis of left foot, diabetes, diabetic neuropathy, and atrial fibrillation as neither proximately caused nor aggravated by the claimant's industrial injury.

PROCEDURAL AND EVIDENTIARY MATTERS

On December 20, 2011, the parties agreed to include the Jurisdictional History in the Board's record. That history establishes the Board's jurisdiction in this appeal.

The claimant presented the deposition of William A. Gromko, M.D. by way of perpetuation deposition taken May 7, 2012. This deposition is published in accordance with WAC 263-12-117 with all objections overruled and all motions denied except the motion to strike at page 27, lines 14-15 is granted. The testimony at page 27, lines 10-13 is stricken.

The claimant presented the deposition of Michael Matlock, M.D. by way of perpetuation deposition taken May 8, 2012. This deposition is published in accordance with WAC 263-12-117 with all objections overruled and all motions denied.

The Department presented the deposition of Deanna McIntosh by way of perpetuation deposition taken May 14, 2012. This deposition is published in accordance with WAC 263-12-117 with all objections overruled and all motions denied. Deposition Exhibit No. 1 is remarked as Exhibit No. 1 and is admitted.

The Department presented the deposition of Mary Higley Carbone, M.D. by way of perpetuation deposition taken May 29, 2012. This deposition is published in accordance with WAC 263-12-117 with all objections overruled and all motions denied.

The Department presented the deposition of William J. Stump, M.D. by way of perpetuation deposition taken May 30, 2012. This deposition is published in accordance with WAC 263-12-117 with all objections overruled and all motions denied.

EVIDENCE PRESENTED

Carl Lansford was 67 years old on the day of the hearing. With his prosthesis Mr. Lansford's height is seventy one inches. He is primarily right handed, has a bachelor's degree from the University of New York at Albany and a master's equivalency in human resources management.

The claimant's work history includes 27 years in the military with 15 years as a personnel warrant officer. After the claimant retired from the military, the claimant worked for the military department at Camp Murray for 15 months and then was hired by the Department of Labor and Industries as a claims manager. At the time of his industrial injury he was a claims consultant and had worked at the Department of Labor and Industries for approximately 11 years.

The claimant's industrial injury occurred on January 14, 2005 when the claimant had gone to the restroom. He stood up to pull up his pants, the floor was a little wet, and he slipped and fell to his left and hit the left side of his body against the wall and twisted his foot. At that time the claimant injured his left arm, left ankle, had a slightly torn big toenail, and had a very small cut on his left big toe.

Ultimately, the claimant developed MRSA in the great toe which resulted in a great toe amputation. Later, he had the index toe amputated, the residual part of the left big toe, part of the foot amputated, and the left below the knee amputation. The claimant understood the amputations were necessary due to the spread of the MRSA.

After the amputations on the left, the claimant developed a pressure sore on the heel of his right foot which ultimately resulted in a right below the knee amputation due to osteomyelitis of the bone in the heel. The claimant believes the pressure sore on the right developed because of the fact that he had to use the right leg more following the left amputations. Prior to the industrial injury, the claimant had diabetes, joint pain, arrhythmia, sleep apnea, some bursitis of the left hip, reactive airway disease, and gall bladder surgery.

The claimant does not believe he could have returned to his claims consultant position with the Department of Labor and Industries because he must be in a wheelchair all the time, he can't bend over and get items out of cabinets, or run the copy machine and fax. He notes that office equipment is at levels he can't reach.

The claimant states that he fatigues easily and needs to take a few naps during the day even when he's not working. He indicates that he uses a raised toilet, needs assistance getting on and off the toilet, and needs assistance cleaning himself. The claimant also states that he needs assistance taking off his clothes, moving into a shower chair, and getting his prosthesis back on. He indicates that the entire shower process takes two hours at a minimum. The claimant states that the showering process is necessary so that he has good hygiene when he shows up for work. The claimant also states that he has numerous medical appointments.

Mr. Lansford does not believe that between July 19, 2011, and October 3, 2011, or after October 3, 2011, he could have returned to his job as a claims consultant.

The claimant is married to Barbara Lansford who is his caregiver. The claimant states that she had to quit her job to take care of him.

On cross examination, the claimant indicated that he had been diagnosed with diabetes in 1970 and diabetic neuropathy in 2006. He admitted that at the time of the industrial injury he told an urgent care doctor that he didn't feel his feet and that's why he fell. He stated that his preexisting sleep apnea caused him to fall asleep at work prior to the industrial injury.

Mr. Lansford indicated that he used an electric wheelchair at work prior to the industrial injury, but explained that at the time it was only to go from place to place and he could get out of it to perform tasks. The claimant states that now he must be in his wheelchair all the time. Following the industrial injury, the claimant stated that he had suffered two strokes.

Barbara Lansford is the claimant's wife. She has been married to him for 15½ years. Ms. Lansford has provided care to the claimant since his industrial injury. In her opinion, the

claimant's pressure sores were caused by the claimant's need to use his right leg more following the amputation of his left leg. Ms. Lansford assisted with care and treatment of the pressure sores. Ms. Lansford has formerly worked for the Department of Labor and Industries as a Level 5 Adjudicator.

Karin Lynn Larson is a vocational rehabilitation counselor. Ms. Larson noted that no vocational services were provided to the claimant. As part of her evaluation, she reviewed the job analysis for the position of claims consultant, the claimant's former position with the Department of Labor and Industries.

Based upon her review of the claimant's Department of Labor and Industries file, medical information, and interview of the claimant, taking into account his age, education, work experience, and physical limitations resulting from the industrial injury, Ms. Larson opined that the claimant could not return to his claims consultant position. She also opined that the claimant was not capable of obtaining and performing reasonably gainful employment in the competitive labor market from July 19, 2011 to October 3, 2011, and as of October 3, 2011.

On cross examination, Ms. Larson explained that the job analysis for claims consultant did not accurately describe the job requirements because the tasks it lists are inconsistent. She indicated that although she had spoken to the claimant she had not performed any testing.

Michael Matlock, M.D. is a physician who specializes in infectious diseases. Dr. Matlock treated the claimant around 2005 and has since kept up with the claimant's treatment. Dr. Matlock opined, on a more-probable-than-not basis, that the MRSA the claimant originally developed in his great toe spread to his foot and leg and ultimately resulted in amputation.

Dr. Matlock also explained that a patient like the claimant who had a left leg amputation could be more susceptible to infection in other parts of his body, especially where there is access pressure causing skin damage. Dr. Matlock noted that the claimant developed osteomyelitis, a bone infection, in his right foot/heel area and that was what led to the right side amputation.

On cross examination, Dr. Matlock admitted that the claimant had diabetes. Dr. Matlock also stated that diabetics can develop peripheral diabetic neuropathy which can cause damage to nerves in a person's body. He noted that people with this condition can develop a loss of sensation in their extremities. He also acknowledged that diabetic neuropathy can predispose a person to pressure sores and that it is common for those sores to become infected (including causing osteomyelitis).

William Gromko, M.D. is a physician who has treated the claimant since 2000 and continues to treat him. Dr. Gromko confirmed that the following conditions were preexisting: diabetes, joint pain, arrhythmia, sleep apnea, arthritis, bursitis of his right hip, reactive airway disease, and gall bladder surgery. Dr. Gromko stated the following conditions were accepted under the claim: sprain of the left ankle, abrasion of the left forearm, contusion of the left hip, open wound of a left toe, and methicillin susceptible staph aureus septicemia (also known as MRSA).

According to Dr. Gromko, MRSA results because staph on people's skin has become resistant to antibiotics over the years. Dr. Gromko described the concept of colonizing whereby MRSA, in the majority of people, colonizes on the body and it can spread and can occur anywhere at any time. Dr. Gromko opined that the claimant's MRSA colonized after the January 14, 2005 industrial injury.

Dr. Gromko reviewed medical records describing the progression of MRSA in the claimant starting from his left big toe and continuing to a left leg amputation below the knee. Dr. Gromko indicated that later the claimant had his right leg amputated due to MRSA. Dr. Gromko indicated that the claimant is more susceptible to MRSA due to diabetes and poor circulation in the feet. Dr. Gromko indicated that both the claimant's right leg and left leg prostheses were medically necessary.

Dr. Gromko also had the opportunity to review the job analysis for claims consultant. Based upon the claimant's preexisting conditions combined with the claimant's conditions caused by the industrial injury, Dr. Gromko opined that the claimant could not perform the claims consultant job on a five-day-a-week, eight-hour-a-day basis. Dr. Gromko stated that the claimant would have had the same conditions and limitation for the periods July 20, 2011 to October 3, 2011, and after October 3, 2011. On cross examination, Dr. Gromko admitted that complications from preexisting diabetes had impact on the exacerbation of the claimant's conditions and admitted he knew of no lab results that confirmed the presence of MRSA on the claimant's right leg.

Deanna McIntosh is a return-to-work coordinator with the Department of Labor and Industries. Her duties include assisting Department of Labor and Industries employees to get back to work following a worker's compensation claim. She testified that Exhibit No. 1, the physical demands job analysis for Worker's Compensation Claims Adjudicator IV, truly and accurately represents the physical demands of the job of claims consultant except for the fact that microfiche is no longer used.

She stated she was familiar with the claimant's personnel file and knew that he used a scooter, as needed, when he worked at the Department. She stated that the Department has a number of other employees who use scooters. She also stated that the Department has made accommodations for workers who cannot reach, such as adding a personal printer for an employee, or having other employees perform tasks that a particular employee cannot perform. She stated that those accommodations would have been available to the claimant as of October 3, 2011. She also stated that the Department has a plan to evacuate employees with mobility problems.

On cross examination, Ms. McIntosh stated there are limitations on the Department's ability to accommodate.

Mary Higley Carbone, M.D. is a physician whose practice includes independent medical examinations. Dr. Carbone stated that her practice focused on endocrinology – the study of hormones, including insulin. She also stated that 80 percent of her practice consisted of treating patients with diabetes.

Dr. Carbone explained that diabetes is a deficiency in insulin which is necessary to keep the blood glucose level in a fairly narrow range. She noted that diabetics tend to have high blood sugars which can cause damage to nerves, particularly in the feet and lower extremities. As a result, a patient will have reduced sensation leading to the failure of a patient to take steps to avoid pain, for example, correcting for pain in the foot, by adjusting gait. According to Dr. Carbone, this process can result in fairly severe injuries, such calluses that won't heal. Dr. Carbone also explained that diabetes can cause damage to the bladder, kidneys, and skin problems.

Dr. Carbone reviewed the claimant's medical records without physical examination on April 26, 2011. Dr. Carbone noted that ordinarily she would conduct a physical examination in addition to record review in making a diagnosis. As part of the records review she conferred with a panel of doctors, including Dr. Champoux, Dr. Stump, and Dr. Thompson.

In explaining her review of the claimant's records, she noted that the claimant had preexisting diabetic neuropathy (nerve damage towards the ends of the extremities). She also noted faint metallic densities around the second and third metatarsals and some degenerative changes in the first metatarsal phalangeal and interphalangeal joints rather than any facture on foot x-ray. On review of follow up x-ray, she noted some swelling around the ankles, but no fractures and no significant tendon injury.

Dr. Carbone explained the following medical history for the claimant (summarized):

- On March 7, 2005, six weeks following the industrial injury, the claimant was diagnosed with a painful, swollen left big toe with fever and chills.
- The claimant did not have any pulse in his feet indicating poor circulation and redness of his left big toe.
- Dr. Carbone found the fact that the claimant had poor circulation to be significant because poor circulation results in poor healing of any infection which can result in amputation.
- The claimant was diagnosed with methicillin-resistant staph, and had blood pus draining from the tip of this toe.
- X-rays at this time showed a pathologic fracture in the distal phalanx of the great toe, which was consistent with osteomyelitis.
- Dr. Carbone stated that osteomyelitis is a bone infection that is very difficult, if not impossible, to treat without antibiotics and requires amputation to totally clear the infection.
- The tip of the claimant's great toe was amputated on March 31, 2005, and on June 6, 2005, a greater portion of the claimant's left toe was amputated.
- On May 24, 2005, tests showed that the claimant had very poor control of his diabetes and October 2005 tests showed the claimant's control of his diabetes was even worse.
- On August 29, 2007, tests showed that his diabetes was in better control than the previous two tests, but was still in very poor control.
- On March 19, 2007, the claimant had an ulcer of his right great toe, right shin, and an ulcer on the bottom of the left great toe stub. The culture from the left great toe grew MRSA again.
- In May 2007, the claimant had a great left toe amputation at the first metatarsal phalangeal joint (where the toe joins the foot).
- Dr. Carbone noted no further mention of infection of the left foot or toe.
- The claimant developed a left heel wound in December 2007. The wound was debrided (excised to remove the dead tissue).
- On December 20, 2007, the claimant was diagnosed with a superficial heel ulcer and prescribed a posterior hindfoot molded splint to protect the heel from pressure and was referred to podiatry for serial debridement.
- The claimant's heel was debrided further on December 27. 2007, and he was advised not to put further weight on it. On January 7, 2008, the wound was necrotic (the tissue was dead all the way down to the bone). It was felt that the claimant had ostemyelitis or bone infection.

- On January 23, 2008, a left below the knee amputation was performed.
- On February 1, 2008, his left knee was healing well.
- On December 11, 2008, the claimant had fluid and congestive heart failure.
- In February 2010, the claimant was diagnosed with a right foot ulcer, and a decubitus ulcer on the right heel. On June 24, 2010, he was found to have an ulcer on the right heel of the foot and was found to have ostemyelitis (bone infection) and had a right below the knee amputation on July 2, 2010.

Based upon Dr. Carbone's review of the medical records, she opined that the claimant's left below the knee amputation was a consequence of a left heel ulcer and infection because the heel infection led to an infection in the bone which led to need for the amputation. Dr. Carbone opined that the claimant's right below the knee amputation was a consequence of an infection in the right heel that developed into a bone infection that led to the need for amputation.

She also opined the left knee amputation was unrelated to the industrial injury or the accepted conditions under the claim because it occurred after a heel infection at a time that was later than the toe infection. She opined that the right below the knee amputation was unrelated to the industrial injury or the accepted conditions under the claim because the heel infection on the right side led to the amputation which was not related to the left toe infection.

Dr. Carbone also opined that as of April 2011, the claimant had no residual medical conditions related to his industrial injury that required further treatment. She stated her opinion would be the same as of October 3, 2011, assuming the condition did not change materially.

Dr. Carbone also reviewed the job analysis for the job of injury and opined that the claimant could return to his job of injury without restriction, taking into consideration his work injury conditions. She also opined that the claimant did not have a permanent partial disability as a result of his industrial injury.

William J. Stump, M.D. is a physician whose practice includes independent medical examinations. Dr. Stump performed a records review regarding the claimant on May 2, 2011. Based upon his review of the records, Dr. Stump's opinion was that the claimant's right below the knee amputation was not a consequence of the injury to his left lower extremity, and instead, was caused by the claimant diabetes mellitus, severe diabetic neuropathy, and peripheral vascular disease.

Dr. Stump explained that diabetic neuropathy occurs when excess glucose gets shunted into other pathways and waste material gets deposited in the nerves and builds up over time interfering with the function of the nerve. Dr. Stump explained that peripheral vascular disease is a buildup of material in the blood vessels leading to plaque resulting in a decreased flow of blood to the tissues. Dr. Stump opined that the result of the claimant's peripheral diabetic neuropathy and peripheral vascular disease was the necessity of amputation of both lower extremities.

Dr. Stump explained that diabetic patients have decreased blood flow to the area, so there is not the ability to remove waste products of infection, nor is there the ability to deliver normal nutrition. The result is tissue damage and increased risk of poor healing after injury. This also can result in pressure sores (because diabetics have reduced sensation stimuli causing them not to address pain or discomfort) and, infection.

Dr. Stump noted that the claimant was at increased risk of pressure sores and developed a pressure sore on his right heel. Dr. Stump also stated that the fact that the claimant was not using his left leg would not be consistent with a pressure sore. Instead, the lack of movement produces a pressure sore. Dr. Stump opined further that a person with diabetic peripheral neuropathy would be just as likely to develop pressure sores on the toes and heel if they had two legs as opposed to one because it is the lack of movement that causes pressure sores.

Dr. Stump noted that the claimant had a decubitus ulcer (breakdown of the skin exposing the underlying tissue) on the right heel. Dr. Stump also noted that the claimant developed osteomyelitis (bone infection).

Dr. Stump opined that the amputation of the claimant's left leg below the knee was due to the development of MRSA in his left great toe. Dr. Stump indicated that although he didn't find documentation that the MRSA in his left great toe spread to the claimant's right side of his body, he opined that it is possible that once you get MRSA it goes throughout the body and can spread to other areas.

Dr. Stump opined that enterococcus is a bacteria entirely separate from MRSA. Dr. Stump reviewed a lab report dated February 8, 2010 relating to a culture of the right heel wound which grew an enterococcus bacterium. Dr. Stump also referred to a June 24, 2010 note discussing a pressure ulcer on the right heel that had been present for six months. The note indicated that the heel was under pressure from the claimant's bedding, that the claimant walks minimally and uses

his right leg for transfers. Dr. Stump noted that the right below amputation occurred on July 2, 2010.

After reviewing the job analysis for the job of claims consultant, Dr. Stump opined that the claimant was capable of performing the job of claims consultant because the claimant was performing the job at the time of the industrial injury, he used a wheelchair at that time to perform the job, and there was no indication from the job analysis that the job could not be performed in a wheelchair.

ANALYSIS

Conditions

At issue in this appeal is whether the industrial injury of January 14, 2005 is a proximate cause of claimant's conditions diagnosed as left below the knee amputation and right below the knee amputation. The term "proximate cause" means a cause which in a direct sequence, unbroken by any new independent cause, produces the condition complained of and without which the condition would not have happened. There may be one or more proximate causes of a condition. A worker is entitled to benefits under the Industrial Insurance Act if the industrial injury is a proximate cause of the alleged condition for which benefits are sought. The law does not require that the industrial injury be the sole proximate cause of the condition. *Wendt v. Department Labor & Indus.*, 18 Wn. App. 674, 571 P.2d 229 (1977).

It has long been the rule in Washington that if an injury "lights up or makes active a latent or quiescent infirmity or weakened physical condition occasioned by disease, then the resulting disability is to be attributed to the injury, and not to the preexisting physical condition." *Miller v. Department of Labor & Indus.*, 200 Wash. 674, 682, 94 P.2d 764 (1939) (citations omitted). Preexisting infirmities, such as arthritis, which "may have contributed to the disability are regarded as conditions upon which the injury operated, not causes of the disability." *Champion v. Department of Labor & Indus.*, 50 Wn. App. 91, 93, 746 P.2d 1244 (1987) (citations omitted).

I am convinced that the claimant's left leg below the knee amputation was proximately caused by the industrial injury. The parties stipulated that the claimant's open wound of great toe and methicillin-resistant staphylococcus, MRSA, were proximately caused by the claimant's industrial injury. The Department's expert, Dr. Stump, opined that the claimant's left below the knee amputation resulted from the spread of MRSA from the claimant's great toe. There was consistent testimony among the experts that once MRSA infects a person, it can colonize in or on the body and spread at

any time. The spread of MRSA from the claimant's toe ultimately to the left below the knee amputation fits the unbroken sequence of events in this case. There was no persuasive evidence offered of intervening cause within that sequence. It is true, as testified by the experts, that the claimant was more susceptible to infections due to his preexisting health conditions, including complications from diabetes. However, I am convinced that based upon the accepted conditions, as well as timeline and sequence of events, it is more probable than not that the industrial injury lighted up the claimant's preexisting infirmity.

I am not, however, convinced that the claimant's right below the knee amputation was proximately caused by the industrial injury. The claimant was susceptible to infections but there is no evidence that the claimant's MRSA spread to his right leg. On the contrary, there is evidence of record that the infection causing the right below the knee amputation was entirely different from MRSA. Nor is there expert testimony, beyond mere speculation, that the pressure sore on the claimant's right extremity that became infected and led to amputation was caused or brought on by the claimant's left leg amputation. In fact, there was persuasive testimony that pressures sores are brought on by lying in one position too long rather than ambulating.

Since the need for prosthetic equipment regarding the claimant's left below the knee amputation was proximately caused by the industrial injury, I am also convinced that such equipment should be included under the claim. See WAC 296-23-165(1). Because I am not convinced the claimant's right below the knee amputation was proximately caused by the industrial injury, any prosthetic equipment related to the claimant's right below the knee amputation should not be included under the claim.

Treatment

Upon the occurrence of an industrial injury a worker covered by industrial insurance in the state of Washington is entitled to receive proper and necessary medical services during the period of disability from the injury. RCW 51.36.010. Our courts have stated in the past that before a claim can be closed the medical condition must be "fixed." The term "fixed" does not necessarily imply static:

> It is clear that where a claimant's condition is deteriorating **or further medical treatment is contemplated,** the condition is not 'fixed' and the claim remains open so that treatment can be provided. However, if a claimant's condition has stabilized to the point where no further medical treatment is required, the condition is 'fixed' for purposes of closing the claim and determining the disability award.

(Emphasis added.) *Pybus Steel v. Department of Labor & Indus.*, 12 Wn. App. 436, 439, 530 P.2nd 350 (1975). Under WAC 296-20-01002 health services are permitted which are proper and necessary for both diagnosis and curative or rehabilitative treatment of an accepted condition.

The claimant presented no evidence that further medical treatment was required. Dr. Carbone opined that the claimant had no residual medical conditions that related to the claimant's industrial injury requiring further treatment. Based upon the evidence of record, I am convinced that the claimant was fixed and stable and not in need of further treatment as of October 3, 2011.

Total Temporary Disability and Total Permanent Disability

A worker is permanently and totally disabled within the meaning of the industrial insurance laws of this state when, as a result of an industrial injury, he or she is unable to perform any substantial gainful employment existing in the labor market within the worker's qualifications. *Allen v. Department of Labor & Indus.*, 30 Wn. App. 693, 697-98, 638 P.2d 104 (1981). In determining whether a worker is permanently and totally disabled it is appropriate to study the whole person - weaknesses, strengths, age, education, training, experience, and any other relevant factors which contribute to the ultimate conclusion as to whether the person is disqualified from substantial gainful employment generally available in the labor market. *Fochtman v. Department of Labor & Indus.*, 7 Wn. App. 286, 292, 499 P.2d 255 (1972). Pre-existing conditions not related to the immediate injury may be considered in the analysis. *Allen*, 30 Wn. App. at 701. To qualify as permanently and totally disabled a person need not be helpless and "physically broken and wrecked for all purposes except merely to live." *Kuhnle v. Department of Labor & Indus.*, 12 Wn.2nd 191, 197, 120 P.2d 1003 (1942); *Spring v. Department of Labor & Indus.*, 96 Wn.2d 914, 919, 640 P.2d 1 (1982). Temporary total disability, which would warrant payment of time loss compensation, differs from permanent total disability only in duration. *Bonko v. Department of Labor & Indus.*, 2 Wn. App. 22, 466 P.2d 526 (1970). Finally, as also noted in *Shea v. Department of Labor & Indus.*, 12 Wn. App. 410, 415, 529 P.2d 1131 (1974):

> When a significantly contributing cause of that inability [to perform reasonably obtainable work] is an industrial injury or disease, the workman is entitled to receive total disability benefits under the workmen's compensation act, regardless of the fact that other circumstances and conditions may also be contributing causes of that inability.

The claimant is 67 years old. He cannot walk and uses a scooter or wheelchair to get around.

The allowed conditions include open wound of great toe and methicillin-resistant staphylococcus, MRSA, and left below the knee amputation. The conditions that were not allowed

included left great toenail, cellulitis of left foot, diabetes, diabetic neuropathy, atrial fibrillation, and right below the knee amputation. During the testimony a number of other medical conditions and complications for the claimant were discussed, including, according to the claimant, several strokes. It is uncontested by the parties that the claimant is susceptible to infections due to his diabetic neuropathy and his lifestyle limitations, including the fact that he has a difficult time otherwise moving himself causing recurring pressure sores.

The claimant testified that he would have a difficult time working due to his multiple medical appointments. This testimony was not contradicted and is logical and persuasive based upon the claimant's history of multiple and recurring health problems, and his physical appearance and health condition as documented by the testimony of his physicians. The claimant has testified that he has sleep apnea which may cause him to get drowsy at work. He has testified he needs to take several naps during the day. He has testified that he has a difficult time using the restroom and showering. He has stated that he needs assistance and it takes a significant period of time to complete these tasks. This testimony is persuasive due to his long list of health conditions.

Taking into account the claimant's age, health conditions, susceptibility to infection, need for daily breaks during work hours to rest, probable need to take periodic time off work for health appointments, probable need to take extended time off work should infections or other conditions reoccur, need for assistance to complete certain job duties, such as reaching, need for assistance using the restroom, need for assistance and time involved in showering, and need to use an electric wheel chair to move around, I am persuaded that the claimant is, practically speaking, permanently disqualified from substantial gainful employment.

Permanent Partial Disability

Neither the claimant nor the employer presented evidence regarding rating for permanent partial disability. This issue is moot because the claimant has been granted a pension.

FINDINGS OF FACT

1. On December 20, 2011, an industrial appeals judge certified that the parties agreed to include the Jurisdictional History in the Board record solely for jurisdictional purposes.

2. Carl G. Lansford sustained an injury during the course of his employment on January 14, 2005, when he slipped in the bathroom, fell and injured his left foot. The conditions accepted under the claim were wound of great toe and methicillin-resistant staphylococcus, MRSA. The conditions rejected under the claim were ingrown left great toenail, cellulitis of left foot, diabetes, diabetic neuropathy, and atrial fibrillation.

3. Carl G. Lansford's left below the knee amputation and related prosthetic equipment was proximately caused or aggravated by his industrial injury.

4. Carl G. Lansford's right below the knee amputation and related prosthetic equipment was not proximately caused or aggravated by his industrial injury.

5. As of October 3, 2011, Carl G. Lansford's conditions had reached maximum medical improvement and did not need proper and necessary medical treatment.

6. On October 3, 2011, Carl G. Lansford did not have a permanent partial disability, within the meaning of RCW 51.32.080, proximately caused by the industrial injury.

7. The claimant is 67 years old. He has a college education. He has been in the military and worked for the Department of Labor and Industries processing worker's compensation claims. He has methicillin-resistant staphylococcus, diabetes, diabetic neuropathy, atrial fibrillation, left below the knee amputation, and right below the knee amputation, among other conditions. The claimant is susceptible to sores and infections due to his health problems.

8. The claimant uses an electric wheelchair or scooter to get around. The claimant has trouble sleeping at night and needs sleep breaks during the day. The claimant needs assistance and takes an extended period of time to use the restroom or shower. The claimant has trouble reaching for things. The claimant has frequent medical appointments and requires time off work to address his multiple recurring health problems.

9. Carl G. Lansford was unable to perform or obtain gainful employment on a reasonably continuous basis from July 20, 2011, to October 3, 2011, due to the residuals of the industrial injury and taking into account the claimant's age, education, work history, and preexisting conditions.

10. Carl G. Lansford was unable to perform or obtain gainful employment on a reasonably continuous basis as of October 3, 2011, due to the residuals of the industrial injury and taking into account the claimant's age, education, work history, and preexisting medical conditions.

CONCLUSIONS OF LAW

1. Based on the record, the Board of Industrial Insurance Appeals has jurisdiction over the parties to and the subject matter of these appeals.

2. Carl G. Lansford's conditions had reached maximum medical improvement as of October 3, 2011, and he is not entitled to further proper and necessary medical treatment as authorized by RCW 51.36.010.

3. On October 3, 2011, Carl G. Lansford did not have a permanent partial disability, within the meaning of RCW 51.32.080, proximately caused by the industrial injury

4. Carl G. Lansford was a temporarily totally disabled worker within the meaning of RCW 51.32.090 from July 20, 2011, to October 3, 2011.

5. Carl G. Lansford was a permanently totally disabled worker within the meaning of RCW 51.08.160, as of October 3, 2011.

6. Department order dated September 27, 2011, is incorrect and is reversed.

7. Department order dated September 29, 2011, is incorrect and is reversed.

8. Department order dated October 3, 2011, is incorrect and is reversed.

9. This matter is remanded to the Department to issue an order:

   a. accepting the condition described as left below the knee amputation and paying for the related prosthetic equipment;
   b. denying the condition described as right below the knee amputation;
   c. denying further treatment;
   d. paying time-loss compensation benefits from July 20, 2011 to October 3, 2011;
   e. finding Carl G. Lansford permanently totally disabled as of October 3, 2011
   f. taking such further action as appropriate according to the facts and the law.

DATED: AUG 22 2012

CHRISTOPHER G. SWANSON
Industrial Appeals Judge
Board of Industrial Insurance Appeals