



What is the correct wage rate for a second injury sustained while on light duty in Washington?

By Anna M. McFaul ■ May 11, 2018

In a September 17, 2017 decision, the Washington Board of Industrial Insurance Appeals addressed the appropriate wage rate for a worker who sustains a second injury while working light duty under an open claim. In this claim, the worker was employed for some time as a truck driver and filed a 2014 occupational disease claim, which was allowed. The worker subsequently began a light duty job that accommodated his 2014 claim restrictions. The light duty wages were substantially less than the wages the worker earned as a truck driver. In late 2015, the worker sustained another industrial injury while working the light duty job and this claim was allowed.



Anna M. McFaul is an attorney at Reinisch Wilson Weier PC. She may be reached at 503.452.7250 or AnnaM@rwwcomplaw.com.

The parties disagreed as to how the wage rate for the 2015 claim should be calculated. The worker requested that the calculations be based on his higher wages as a truck driver and not on the lower light duty job wages. The worker contended that if the 2014 claim had not occurred, he would have been earning the higher truck driver wages at the time of the 2015 injury. The employer's position was that the wage rate for the 2015 claim should be based on the worker's light duty wages at the time of the 2015 injury.

The Board determined that the worker's wages at the time of the 2015 claim were correctly calculated based on the wages he was receiving as of the date of the 2015 injury. In response to the worker's argument that his wages were temporarily reduced as a result of his first claim, the Board pointed out that the worker may qualify to receive loss of earning power benefits under the first claim while simultaneously receiving time loss benefits under the second claim. However, the Board stated that regardless of whether the worker received loss of earning power benefits under the first claim or not, this amount should not be included in the wage calculation for the second claim. The Board concluded that the wage rate at the time of injury for the second claim should be based on the wages earned while performing the light duty job.

Time loss, loss of earning power and return to work questions are complicated. The attorneys at Reinisch Wilson Weier PC have decades of experience with these issues and related workers' compensation questions. If you need help with these tough topics, please contact our firm and we would be happy to assist you. ■

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¹ *In re Brian Carlson*, BIIA Dec., 16 16567 (2017).



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Wilson Weier PC**
LAW OFFICES

OREGON: 10260 SW Greenburg Rd., Suite 1250, Portland, OR 97223 • T 503-245-1846 / F 503-452-8066
WASHINGTON: 15395 SE 30th Place, Suite 230, Bellevue, WA 98007 • T 206-622-7940 / F 206-622-5902
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