

Schaefer, Elizabeth

DEPARTMENT

Authority to honor support enforcement lien

The Department is under no obligation to notify the worker that it will be honoring a support enforcement lien prior to making payments to the Office of Support Enforcement. ...*In re Elizabeth Schaefer, BIA Dec., 00 12023 (2001)* [Editor's Note: The Board's decision was appealed to superior court under Clallam County Cause No. 01-2-00431-2.]

Scroll down for order.

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

1 **IN RE: ELIZABETH SCHAEFER**) **DOCKET NO. 00 12023**
2)
3 **CLAIM NO. J-483650**) **DECISION AND ORDER**
4

5 **APPEARANCES:**

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7 Claimant, Elizabeth Schaefer, by
8 Casey & Casey, P.S., per
9 Gerald L. Casey and Carol L. Casey

10
11 Employer, Aggies, Inc.,
12 None

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14 Department of Labor and Industries, by
15 The Office of the Attorney General, per
16 Katherine L. Mason and William Garling, Assistants
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19 The claimant, Elizabeth Schaefer, filed an appeal with the Board of Industrial Insurance
20 Appeals on February 25, 2000, from an order of the Department of Labor and Industries dated
21 January 11, 2000. The order dated January 11, 2000 provided as follows:
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25 The order dated 1/8/92 is set aside and held for naught. The orders
26 dated 4/3/98 and 4/14/98 are modified from final to interlocutory. The
27 Department denies responsibility for any psychiatric condition as
28 causally unrelated to the industrial injury. And the following action is
29 taken:

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31 No warrant issued. The worker's permanent partial disability award is
32 for:

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34 Category 2 permanent cervical and cervico-dorsal impairment. The
35 worker's total award for permanent partial disability is \$6,000.00, less
36 deductions: Previously paid permanent partial disability \$6000.00; Net
37 entitlement \$0.00. This claim is closed.
38

39 **AFFIRMED.**

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41 **PROCEDURAL AND EVIDENTIARY MATTERS**

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43 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
44 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order
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1 issued on January 12, 2001, in which the order of the Department dated January 11, 2000, was
2 affirmed.
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5 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
6 no prejudicial error was committed and the rulings are affirmed.
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9 **DECISION**

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11 The issue presented by this appeal and the evidence presented by the parties are
12 adequately set forth in the Proposed Decision and Order. While we agree with the result reached
13 by the Proposed Decision and Order, we have granted review in order to revise the findings and
14 conclusions.
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19 By a "STIPULATION AND ORDER ON AGREEMENT OF PARTIES" the Clallam County
20 Superior Court reversed the Department Order dated August 4, 1992, and directed the Department
21 of Labor and Industries to issue an order "finding that as of August 4, 1992 Elizabeth Schaefer's
22 industrially related condition was fixed and stable and not in need of further treatment and was best
23 expressed as a Category 2 pursuant to WAC 296-20-240, and that there was no psychiatric
24 condition causally related to the industrial injury." In a ministerial order dated April 3, 1998, the
25 Department apparently attempted to conform to the Superior Court order, but instead of paying a
26 permanent partial disability award for cervical impairment the Department paid an award for
27 "dorso-lumbar and/or lumbosacral impairment." (Exhibit No. 3) In accordance with a proviso of
28 RCW 51.32.080(2), since eliminated but in effect at the time of the industrial injury, this award was
29 paid at 75 percent of the monetary value. Following a protest and request for reconsideration by
30 Ms. Schaefer, the Department issued an order on April 14, 1998, that contained all of the normal
31 information and language for a determinative order but was blank in the portion entitled "**PAYMENT**
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ORDER". (Exhibit No. 4) Accompanying that order was a warrant in the amount of \$1,875.
(Exhibit No. 11) Ms. Schaefer's protest and request for reconsideration filed to this order resulted in

1 the Department issuing an order on January 11, 2000, that is the subject of this appeal. (Exhibit
2
3 No. 1)

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5 It is Ms. Schaefer's position that the Department of Labor and Industries was barred from
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7 applying the amounts it paid erroneously as a permanent partial disability award for a low back
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9 impairment, from the permanent partial disability award due her for cervical impairment. This
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11 argument is based on the contention that the Department of Labor and Industries can only recover
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13 funds paid by mistake under RCW 51.32.240(1), and since demand was not made within one year
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15 of the payment, recoupment is barred. Ms. Schaefer also contends that because she was not
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17 provided notice of the Department of Social and Health Services, Office of Support Enforcement
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19 lien, it was not valid.

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21 It is significant to note that even now, no Department Order has become final and
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23 determinative effectuating the provisions of the Clallam County Superior Court order. Protests and
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25 requests for reconsideration were filed, on behalf of Ms. Schaefer, to the Department orders dated
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27 April 3, 1998 and April 14, 1998. The protests rendered these orders interlocutory. Although the
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29 order dated April 14, 1998 (Exhibit No. 4) is described in our industrial appeals judge's Proposed
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31 Decision and Order as a "blank payment order," that is not entirely correct. While it does not
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33 indicate why the money is being paid, it does have a normal heading, including the claim number
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35 and the date of injury. It also contains appeal and protest language, and, absent a protest and
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37 request for reconsideration as filed by the claimant, would have become final and determinative.
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39 Because of protests and requests for reconsideration to the orders dated April 3, 1998 and April 14,
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41 1998, the Department of Labor and Industries was required to issue the order that is the subject of
42
43 this appeal.

44
45 Payments made to the Office of Support Enforcement were pursuant to a lien filed with the
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47 Department of Labor and Industries in December of 1994. Under the provisions of

1 RCW 51.32.040(1) and RCW 74.20A.260, the Department of Labor and Industries was obligated to
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3 honor the lien. Nothing in the record establishes that the Department is under any obligation to
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5 provide notice to a claimant that a lien has been served or that it is making payment in compliance
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7 with a valid lien. Ms. Schaefer did receive notice that funds were being withheld for the support
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9 enforcement lien in the Department order dated April 3, 1998, the initial payment order. (Exhibit
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11 No. 3)

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13 RCW 51.32.240(1) cannot be reasonably interpreted to bar the Department of Labor and
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15 Industries application of funds paid under orders rendered interlocutory, to payment of a different
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17 permanent partial disability award. As long as no overpayment results from the application of
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19 earlier payments to subsequent permanent partial disability awards the provisions of
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21 RCW 51.32.240(1) are not applicable. To hold that the Department was prevented by
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23 RCW 51.32.240(1) from applying the previous **interlocutory** payments to the payment of the
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25 permanent partial disability award made in conformity to the order of the Clallam County Superior
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27 Court would be akin to preventing the Department from recovering any **interlocutory** payments.
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29 To engage in this interpretation would require the Department to demand repayment before a
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31 determination had been made regarding entitlement to the payments, and in this case where there
32
33 is no overpayment.

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35 After consideration of the Proposed Decision and Order, the Petition for Review filed thereto,
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37 and a careful review of the entire record before us, we are persuaded that the Proposed Decision
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39 and Order is supported by the preponderance of the evidence and is correct as a matter of law.

40 41 **FINDINGS OF FACT**

- 42
43 1. On October 2, 1984, Ms. Schaefer filed an application for benefits with
44 the Department of Labor and Industries alleging that she had sustained
45 an industrial injury on September 29, 1984, during the course of
46 employment with Aggies Restaurant and Lounge. On April 24, 1985,
47 the claim was closed with time loss compensation as paid to

1 October 15, 1984, and without further award for time loss compensation
2 or permanent partial disability.
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4 On October 15, 1986, Ms. Schaefer filed an application to reopen her
5 claim for aggravation of condition. On June 8, 1987, the Department
6 reopened the claim effective October 13, 1986. On January 8, 1992, the
7 Department paid time loss benefits to March 3, 1991, and closed the
8 claim. On January 21, 1992, Ms. Schaefer protested that order, and on
9 August 4, 1992, the Department affirmed the order dated January 8,
10 1992. On August 18, 1992, Ms. Schaefer filed a Notice of Appeal from
11 the August 4, 1992 order with the Board of Industrial Insurance Appeals.
12 On August 26, 1992, the Board issued an order granting the appeal,
13 assigned it Docket No. 92 4714, and directed that proceedings be held
14 on the issues raised by the Notice of Appeal. On August 2, 1993, the
15 Board issued a Decision and Order adopting a May 28, 1993 Proposed
16 Decision and Order, and, thereby, denying the Petition for Review filed
17 thereto.
18

19 On August 10, 1993, Ms. Schaefer appealed to Clallam County Superior
20 Court from the August 2, 1993 Board Decision and Order. On
21 February 5, 1998, the Clallam County Superior Court entered an Order
22 on Agreement of Parties. The Order on Agreement of Parties reversed
23 the August 4, 1992 Department order, remanded the case to the
24 Department to issue an order finding that as of August 4, 1992
25 Ms. Schaefer's condition was fixed and stable, not in need of further
26 treatment, and resulted in an impairment best described as Category 2,
27 WAC 296-20-240, and that there was no psychiatric condition causally
28 related to the industrial injury. In an order dated April 3, 1998, the
29 Department reversed its order dated April 4, 1992 [sic], denied
30 responsibility for any psychiatric condition as being unrelated to the
31 industrial injury, paid a permanent partial disability award appropriate for
32 a Category 2 permanent dorso-lumbar and/or lumbosacral impairment,
33 the award was paid at 75 percent of monetary value, less payment of a
34 an Office of Support Enforcement lien, and the claim closed. On
35 April 10, 1998, Ms. Schaefer filed a protest and request for
36 reconsideration to this order. On April 14, 1998, the Department issued
37 an order that contained appropriate language at the top and bottom, but
38 that was blank in the portion titled "**PAYMENT ORDER.**"
39 Accompanying this order was a warrant in the amount of \$1,875. On
40 April 20, 1998, Ms. Schaefer filed a protest and request for
41 reconsideration to this order.
42

43 On January 11, 2000, the Department issued an order in conformity to
44 the Clallam County Superior Court that provided, as follows: set aside
45 and held for naught an order dated January 8, 1992, modified the
46 April 3, 1998 and April 14, 1998 orders from final to interlocutory, denied
47 responsibility for any psychiatric condition as being causally unrelated to
the industrial injury, determined that Ms. Schaefer's permanent partial

1 disability was for a Category 2 permanent cervical and cervico-dorsal
2 impairment, determined that her total award for permanent partial
3 disability is \$6,000 and that this amount had been paid, and closed the
4 claim without further payment.

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6 On February 25, 2000, Ms. Schaefer filed a Notice of Appeal from the
7 January 11, 2000 order with the Board of Industrial Insurance Appeals.
8 On March 29, 2000, the Board issued an order granting the appeal,
9 assigned it Docket No. 00 12023 and directed that proceedings be held
10 on the issues raised by the Notice of Appeal.

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12 2. On September 29, 1984, Ms. Schaefer sustained an industrial injury
13 while in the course of her employment with Aggies Restaurant and
14 Lounge.
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16 3. As a proximate result of the industrial injury on September 29, 1984,
17 Ms. Schaefer suffered neck and cervical injuries.
- 18
19 4. As of August 4, 1992, Ms. Schaefer's industrially related condition was
20 fixed and stable, not in need of further treatment, and was best
21 expressed by Category 2 pursuant of WAC 296-20-240, Categories of
22 permanent cervical and cervico-dorsal impairment.
- 23
24 5. On April 3, 1998, the Department issued an order closing Ms. Schaefer's
25 claim with payment of a permanent partial disability award for a
26 Category 2 low back impairment, paid at 75 percent of monetary value
27 in the amount of \$2,250, less \$1,125 for an Office of Support
28 Enforcement lien.
- 29
30 6. On April 14, 1998, the Department issued an order; containing appeal
31 language, protest and request for reconsideration instructions, a claim
32 number, date of injury and the name of the claimant; but with nothing in
33 the portion of the order entitled **PAYMENT ORDER**. Accompanying this
34 order was a warrant issued to Ms. Schaefer in the amount of \$1,875.
35 On the same date the Department also issued a warrant to the Office of
36 Support Enforcement for \$1,875 pursuant to a lien filed in
37 December 1994. The total amount paid on April 14, 1998, was \$3,750.
- 38
39 8. By the orders dated April 3, 1998 and April 14, 1998, Ms. Schaefer was
40 paid a total of \$6,000 for permanent partial disability, less \$3,000 paid to
41 the Office of Support Enforcement pursuant to their lien.
- 42
43 9. The Department order dated January 11, 2000, held for naught an order
44 dated January 8, 1992, modified the orders dated April 3, 1998 and
45 April 14, 1998 from final to interlocutory, denied responsibility for any
46 psychiatric condition as being causally unrelated to the industrial injury,
47 determined that Ms. Schaefer's permanent partial disability was for a
Category 2 permanent cervical and cervico-dorsal impairment,

1 determined that her total award for permanent partial disability is \$6,000
2 and that this amount had been paid, and closed the claim without further
3 payment.
4

5 **CONCLUSIONS OF LAW**
6

- 7 1. The Board of Industrial Insurance Appeals has jurisdiction over the
8 parties and the subject matter of this timely filed appeal.
9
10 2. Pursuant to the February 5, 1998, Clallam County Superior Court Order
11 on Agreement of Parties, as of August 4, 1992, Ms. Schaefer's condition
12 proximately caused by the industrial injury was fixed and stable, resulted
13 in a Category 2 impairment under WAC 296-20-240, Categories of
14 permanent cervical and cervico-dorsal impairments, and any psychiatric
15 condition was not caused by or related to the industrial injury.
16
17 3. The Department of Labor and Industries did not recoup funds under the
18 provisions of RCW 51.32.240(1) from Ms. Schaefer for an overpayment
19 of permanent partial disability.
20
21 4. Under the provisions of RCW 51.32.040(1) and RCW 74.20A.260, the
22 Department of Labor and Industries was obligated to honor the
23 Department of Social and Health Services, Office of Support
24 Enforcement lien filed with the Department in December of 1994.
25
26 5. The January 11, 2000 order of the Department of Labor and Industries
27 is correct and is affirmed.
28

29 It is so **ORDERED**.

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31 Dated this 14th day of May, 2001.
32

33 BOARD OF INDUSTRIAL INSURANCE APPEALS
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36
37 /s/ _____
38 THOMAS E. EGAN Chairperson
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41 /s/ _____
42 JUDITH E. SCHURKE Member
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