

## Squance, Randy

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### BOARD

#### **Motion to vacate order adopting proposed decision and order**

Failure to ensure that the Board has extended the time in which to file a petition for review is not excusable neglect that would warrant vacation of an Order Adopting Proposed Decision and Order. ...*In re Randy Squance*, BIA Dec., 00 17407 (2002)

Scroll down for order.

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

1     **IN RE: RANDY C. SQUANCE**                     )     **DOCKET NO. 00 14707**  
2   )  
3   )     **ORDER DENYING EMPLOYER'S MOTION TO**  
4   )     **VACATE ORDER ADOPTING PROPOSED**  
5     **CLAIM NO. T-689766**                             )     **DECISION AND ORDER**  
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8             The claimant, Randy C. Squance, filed an appeal on July 26, 2000, from an order of the  
9 Department of Labor and Industries dated June 15, 2000. The order affirmed an order dated  
10 December 23, 199, that denied the claimant's application to reopen the claim. On August 7, 2001,  
11 our industrial appeals judge issued a Proposed Decision and Order that reversed the Department  
12 order and remanded the matter with directions to issue an order reopening the claim for medical  
13 treatment and such other action as required. On August 29, 2001, we received from the self-insured  
14 employer a request for extension of time in which to file a petition for review. The time for filing a  
15 petition for review was extended until September 17, 2001. On September 21, 2001, having received  
16 no petition for review, the Board issued an Order Adopting Proposed Decision and Order.  
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18             On September 25, 2001, we received from the self-insured employer a letter requesting us  
19 to vacate the Order Adopting Proposed Decision and Order. The Board has authority to consider a  
20 timely motion filed under CR60(b)(1). *Wells v. Olsten Corp.*, 104 Wn. App. 135 (2001). After  
21 consideration of the self-insured employer's motion, the claimant's response and the records and  
22 files contained herein, we determine that the employer's motion must be denied. The provisions of  
23 RCW 51.52.104 govern the filing of petitions for review. The statute is clear in its mandate, that  
24 absent the filing of a petition for review within either 20 days of communication of the Proposed  
25 Decision and Order or within an extended time allowed by the Board, the Proposed Decision and  
26 Order of our industrial appeals judge shall be deemed adopted as the Board's final determination.  
27 Because a petition for review was not filed within the time for filing a petition for review as extended,  
28 RCW 51.52.104 requires that the Proposed Decision and Order be adopted.  
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30             In this instance, the statement of the self-insured employer's attorney indicates that after a  
31 timely request for an extension of time to file a petition for review no response was received until the  
32 Order Adopting Proposed Decision and Order. Our records reflect that the self-insured employer's  
33 attorney was sent a letter indicating that the time in which to file a petition for review was extended to  
34 September 17, 2001. The representative should have known to follow-up on a request for an  
35 extension of time prior to the expiration of the 20 days. We note that the granting of an extension of  
36 time is permissive and the Board is not required to extend the time merely because a party makes a  
37 request. If a party has not received notification of an extension, it seems that the appropriate manner  
38 in which to proceed for any party requesting an extension of time is to take steps to ensure that the  
39 extension has been granted. Otherwise, a party should proceed as if there had been no extension  
40 and file a petition for review within 20 days of receipt of the Proposed Decision and Order. We  
41 consider it inexcusable to wait more than 30 days, as was done here, without contacting the Board to  
42 verify the status of the request of an extension of time in which to file a petition for review. The  
43 attorney's failure to ascertain whether the request for an extension had been granted does not justify  
44 relief. We do not consider the failure as excusable neglect under CR 60(b)(1). See, e.g., *B&J*  
45 *Roofing v. BIIA*, 66 Wn. App. 871 (1992).  
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1 Accordingly, there has been no showing sufficient to justify relief in this matter. Because the  
2 adoption of the Proposed Decision and Order, as our final order, is the only permissible outcome of  
3 this matter, the employer's motion for relief must be denied.  
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5 It is so ORDERED.  
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7 DATED: January 24, 2002  
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10 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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14 /s/ \_\_\_\_\_  
15 THOMAS E. EGAN Chairperson  
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20 /s/ \_\_\_\_\_  
21 FRANK E. FENNERTY, JR. Member  
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25 /s/ \_\_\_\_\_  
26 JUDITH E. SCHURKE Member  
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