

## **Workman, Donald**

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### **AGGRAVATION (RCW 51.32.160)**

#### **First terminal date: effect of Board's determination of effective date of closure**

A Department order issued in response to an Order Adopting Proposed Decision and Order is a ministerial order and the effective date of the closure of the claim is the effective date recited in the Board's order. It is not the date of the Order Adopting Proposed Decision and Order. ...*In re Donald Workman, BIA Dec., 00 24102 (2001)*

Scroll down for order.

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

1   **IN RE: DONALD L. WORKMAN**            )   **DOCKET NO. 00 24102**  
2    )  
3    )  
4    )  
5   **CLAIM NO. N-058239**                    )   **ORDER DENYING APPEAL**  
6 \_\_\_\_\_)

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8       The claimant filed an appeal on December 7, 2000, from an order of the Department of  
9 Labor and Industries dated October 12, 2000. The order affirmed the provisions of a July 11, 2000  
10 order that indicated that it was entered to comply with the Board's decision of June 12, 2000, noted  
11 that the claim remains closed as of May 25, 1999, and paid a permanent partial disability award  
12 equal to category 2, permanent cervical and cervico-dorsal impairments.

13  
14       The Department's order takes no action other than what was directed by our Order Adopting  
15 Proposed Decision and Order of June 12, 2000. We adopted as our final order the Proposed  
16 Decision and Order issued on May 10, 2000. That order directed the Department to accept certain  
17 conditions<sup>1</sup> and to close the claim with an award for permanent partial disability consistent with  
18 category 2, permanent cervical and cervico-dorsal impairments. The order also concluded that Mr.  
19 Workman's conditions were medically fixed and stable as of May 25, 1999. For that reason, the July  
20 11, 2000 order<sup>2</sup>, as affirmed by the October 12, 2000 order, was nothing more than a ministerial act  
21 taken in compliance with our order of June 12, 2000. This appeal is therefore denied with prejudice.  
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23       The notice of appeal, which incorporates a prior protest, asserts that the Department should  
24 not have indicated that the "claim remains closed as of 05/25/99." Citing our decision of *In re*  
25 *Jimmy Storer, BIIA* Dec., 86 4436 (1988), the claimant argued that the effective date of claim  
26 closure should be July 11, 2000, not May 25, 1999. In the protest, claimant seems to argue that the  
27 *Storer* decision is limited to Orders on Agreement of Parties. That is not the case.  
28

29       The principle set forth in *Storer* is that the first terminal date, for purposes of establishing  
30 aggravation of a particular condition, is the date of the appealed order closing the claim, not the  
31 date of the ministerial order entered after resolution of the appeal. What we noted is that "[a]ll  
32 matters related to the claim were conclusively determined up to [the date of the appealed order]  
33 and no further." *Storer*, at 2. As a result, the date of medical fixity was the date of the appealed  
34 order.  
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36       The type of final Board order does not affect the effective date of our action. Instead, the  
37 question is whether the Board's final order determined all matters related to the claim. It is certainly  
38 possible that disputes may arise from Department efforts to comply with our final orders – had there  
39 been a dispute regarding the medical treatment benefits to be paid for the cervical condition in this  
40 case, it could have been pursued on appeal.  
41

42       In this instance, our final order directed the Department to find the condition medically fixed  
43 and stable as of May 25, 1999, and to close the claim with a permanent partial disability award. As  
44  
45

46 \_\_\_\_\_  
47 <sup>1</sup> By an order dated July 6, 2000, the Department accepted the conditions identified in our order.

<sup>2</sup> The July 11, 2000 Department order is, itself, a ministerial order, but in issuing the order the Department included a statement of protest rights. The claimant filed a protest on September 13, 2000, so the Department was obligated to issue a further order.

1 a result, for purposes of determining the effective date of the Department's ministerial order, we  
2 conclude that it relates back to the date of the appealed order. Any other conclusion would be  
3 inconsistent with our final order determining the date of medical fixity.  
4

5 Because the Department order of October 12, 2000 is a ministerial order, the appeal is  
6 denied with prejudice.  
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8 Dated this 5th day of January, 2001.  
9

10 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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14 /s/ \_\_\_\_\_  
15 THOMAS E. EGAN Chairperson  
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19  
20 /s/ \_\_\_\_\_  
21 FRANK E. FENNERTY, JR. Member  
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25 /s/ \_\_\_\_\_  
26 JUDITH E. SCHURKE Member  
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