

## **Robinovitch, Linda**

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### **[TIME-LOSS COMPENSATION \(RCW 51.32.090\)](#)**

#### **Eligibility while attending medical evaluation**

A physical capacities evaluation conducted relative to a medical condition is considered a medical evaluation for purposes of RCW 51.32.110, which allows for reimbursement of lost wages while attending a medical evaluation. ...*In re Linda Robinovitch, BIA Dec., 01 24949 (2003)*

Scroll down for order.

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

1 **IN RE: LINDA L. ROBINOVITCH ) DOCKET NO. 01 24949**  
2 )  
3 **CLAIM NO. N-755972 ) DECISION AND ORDER**  
4 \_\_\_\_\_)

5 **APPEARANCES:**

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7 Claimant, Linda L. Robinovitch, by  
8 Grutz, Scott, Kinney & Fjelstad, per  
9 Brian D. Scott

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11 Employer, University of Washington,  
12 None

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14 Department of Labor and Industries, by  
15 The Office of the Attorney General, per  
16 Steven T. Camilleri, Assistant  
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18 The claimant, Linda L. Robinovitch, filed an appeal with the Board of Industrial Insurance  
19 Appeals on December 31, 2001, from an order of the Department of Labor and Industries dated  
20 November 2, 2001. The order affirmed Remittance Advice No. 268193 dated June 12, 2001. The  
21 Department order is **REVERSED AND REMANDED**.  
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24 **DECISION**

25 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
26 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order  
27 issued on February 3, 2003, in which the order of the Department dated November 2, 2001, was  
28 affirmed.  
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31 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
32 no prejudicial error was committed. The rulings are affirmed. We have granted review, however,  
33 because we believe that Ms. Robinovitch should be reimbursed her lost wages for the 8 hours she  
34 spent participating in a physical capacities evaluation pursuant to RCW 51.32.110(4)(a)(i).  
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37 The facts are simple and were stipulated. Ms. Robinovitch's claim was allowed as an  
38 occupational disease; her attending physician was Steven Fuhs, M.D. In May 2001, Dr. Fuhs  
39 requested that a physical capacities evaluation (PCE) be done, in order to determine  
40 Ms. Robinovitch's ability to work. The Department authorized this PCE. The Department had  
41 assigned a vocational counselor to Ms. Robinovitch, Jessica Yates, who is a Department vocational  
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1 consultant. Ms. Yates scheduled the PCE, and Ms. Robinovitch attended it. As a result of her  
2 attendance at the PCE, Ms. Robinovitch lost 8 hours of work, and submitted an expense voucher  
3 seeking reimbursement. The Department denied payment for the lost wages, stating that "time lost  
4 from work is payable only when an examination is requested by the Department." This  
5 order/remittance advice is the subject matter of this appeal.  
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8 It is certainly axiomatic that the Department can pay time loss compensation only by specific  
9 grant of authority. There are three situations in which time loss is payable. The first,  
10 RCW 51.32.090, payment for total temporary disability, is not applicable in this situation. The  
11 second, found in RCW 51.32.095(3)(a), permits the Department to pay temporary total disability  
12 benefits "while the worker is actively and successfully undergoing a formal program of vocational  
13 rehabilitation." Nowhere in this stipulation is there any indication that the PCE was done as part of  
14 a formal program. In *In re David Potts*, BIIA Dec., 88 3822 & 88 3115 (1989), this Board observed  
15 that RCW 51.32.095(3) contemplates payment of time loss compensation only when the injured  
16 worker is under an "approved rehabilitation plan," not during the period of time the plan is being  
17 developed. There is nothing in this stipulation that so states or even permits such an inference.  
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23 Finally, the third source of authority to pay for lost wages is in RCW 51.32.110, the pertinent  
24 sections of which are set forth below:  
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26 (1) Any worker entitled to receive any benefits or claiming such  
27 under this title shall, if requested by the department or self-insurer,  
28 submit himself or herself for medical examination, at a time and from  
29 time to time, at a place reasonably convenient for the worker and as  
30 may be provided by the rules of the department.  
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32 . . .

33 (2) If the worker refuses to submit to medical examination, or  
34 obstructs the same, or, if any injured worker shall persist in unsanitary or  
35 injurious practices which tend to imperil or retard his or her recovery, or  
36 shall refuse to submit to such medical or surgical treatment as is  
37 reasonably essential to his or her recovery or refuse or obstruct  
38 evaluation or examination for the purpose of vocational rehabilitation or  
39 does not cooperate in reasonable efforts at such rehabilitation, the  
40 department or the self-insurer upon approval by the department, with  
41 notice to the worker may suspend any further action on any claim of  
42 such worker so long as such refusal, obstruction, non cooperation, or  
43 practice continues, and reduce, suspend, or deny any compensation for  
44 such period: . . .  
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2 (4)(a) If the medical examination required by this section causes the  
3 worker to be absent from his or her work without pay:  
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5 (i) In the case of a worker insured by the department, the worker  
6 shall be paid compensation out of the accident fund in an amount equal  
7 to his or her usual wages for the time lost from work while attending the  
8 medical examination: or . . . .  
9

10 The claimant argues that this was an examination requested by the Department, and further  
11 that this is a "medical examination" within the meaning of the statute.  
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13 With regard to the first issue, we believe that this PCE was indeed requested by the  
14 Department. While the request came initially from Dr. Fuhs, the Department not only authorized the  
15 PCE, the Department-assigned vocational counselor arranged the PCE. Moreover, had  
16 Ms. Robinovitch failed to attend the PCE, she would have risked suspension of benefits for  
17 non-cooperation.  
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20 However, that is not the end of the inquiry. RCW 51.32.110(4)(a) requires that this be a  
21 "medical examination." Nowhere in the regulations or the statute is this term defined. We are  
22 mindful, however, of the mandate to construe the provisions of the Industrial Insurance Act liberally,  
23 in favor of the worker. In view of this mandate, we do not believe a physician must perform the  
24 examination in order that it may be deemed a "medical examination" within the meaning of the  
25 statute. Indeed, we believe that it is sufficient that the examination be undertaken for medical  
26 purposes. In this situation, Ms. Robinovitch's physician requested this PCE to determine  
27 Ms. Robinovitch's physical capabilities relative to her medical condition. It is exactly this type of  
28 examination contemplated by RCW 51.32.110(1). Accordingly, Ms. Robinovitch should be  
29 compensated for time she spent away from her work, pursuant to RCW 51.32.110(1)(a)(i).  
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36 **FINDINGS OF FACT**

- 37 1. On July 6, 1995, the Department of Labor and Industries received an  
38 application for benefits filed on behalf of the claimant, Linda L.  
39 Robinovitch, alleging that she sustained an occupational disease arising  
40 naturally and proximately out of her employment with the University of  
41 Washington. The claim was subsequently allowed, and on November 2,  
42 2001, the Department issued an order affirming Remittance Advice  
43 No. 268193 dated June 12, 2001, that denied the claimant's payment for  
44 time loss compensation for May 16, 2001. On December 31, 2001, the  
45 Board of Industrial Insurance Appeals received a Notice of Appeal filed  
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1 on behalf of the claimant. On February 7, 2002, the Board of Industrial  
2 Insurance Appeals issued an order granting the appeal and assigning  
3 Docket No. 01 24949.  
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- 5 2. Dr. Fuhs, the claimant's attending physician, requested a physical  
6 capacities evaluation to be performed on the claimant, Linda L.  
7 Robinovitch, which was authorized by the Department of Labor and  
8 Industries. Jessica R. Yates, the claimant's vocational counselor,  
9 arranged for and scheduled a physical capacities evaluation for May 16,  
10 2001, and the claimant attended on that day.  
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- 12 3. Due to the claimant's attendance at the physical capacities evaluation of  
13 May 16, 2001, she missed 8 hours of work for which she submitted a  
14 voucher to the Department of Labor and Industries.  
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- 16 4. The Department of Labor and Industries requested the claimant to  
17 attend the physical capacities evaluation on May 16, 2001.  
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- 19 5. The physical capacities evaluation was done for medical purposes in  
20 order to determine the claimant's physical restrictions relative to her  
21 medical condition.  
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### CONCLUSIONS OF LAW

- 23 1. The Board of Industrial Insurance Appeals has jurisdiction over the  
24 parties to and the subject matter of this appeal.  
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- 26 2. Linda L. Robinovitch was not a totally and temporarily disabled worker  
27 within the meaning of RCW 51.32.090 on May 16, 2001.  
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- 29 3. Linda L. Robinovitch was not in a qualified vocational rehabilitation plan  
30 within the meaning of RCW 51.32.095 on May 16, 2001.  
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- 32 4. Linda L. Robinovitch attended a medical examination at the request of  
33 the Department of Labor and Industries on May 16, 2001, within the  
34 meaning of RCW 51.32.110.  
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- 36 5. The order of the Department of Labor and Industries dated November 2,  
37 2001, is incorrect and is reversed. This matter is remanded to the  
38 Department with direction to issue a further order reimbursing the  
39 claimant in an amount equal to her usual wages for the time she lost  
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1 from work while attending the physical capacities evaluation on May 16,  
2 2001, pursuant to RCW 51.32.110(a)(i).

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4 It is so ORDERED.

5 Dated this 28th day of April, 2003.

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7 BOARD OF INDUSTRIAL INSURANCE APPEALS

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9  
10 /s/ \_\_\_\_\_  
11 THOMAS E. EGAN Chairperson

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14 /s/ \_\_\_\_\_  
15 FRANK E. FENNERTY, JR. Member

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