

Carey, Gwen

TIMELINESS OF CLAIM (RCW 51.28.050; RCW 51.28.055)

Calculation of time

The one-year time limitation for filing claims under RCW 51.28.050 begins to run on the day of injury, not the day after.*In re Gwen Carey*, BIIA Dec., 03 13790 (2005)
[Editor's Note: To the extent they are inconsistent, *King and Hall* are overruled. The Board's decision was appealed to superior court under Snohomish County Cause No. 05-2-08212-5.]

Scroll down for order.

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

1 **IN RE: GWEN R. CAREY) DOCKET NOS. 03 13790 & 03 21396**
2)
3 **CLAIM NOS. W-700337 & W-700310) DECISION AND ORDER**
4

5 **APPEARANCES:**

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7 Claimant, Gwen R. Carey, by
8 Law Office of Robert M. Keefe, per
9 Robert M. Keefe

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11 Self-Insured Employer, Edmonds School District No. 15, by
12 Reeve Shima, P.C., per
13 Mary E. Shima
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15 Docket No. 03 13790 is an appeal filed by the claimant, Gwen R. Carey, with the Board of
16 Industrial Insurance Appeals on March 26, 2003, from an order of the Department of Labor and
17 Industries dated March 6, 2003, under Claim No. W-700337. In this order, the Department affirmed
18 its order of January 7, 2003, in which it denied the claim because the worker's condition was not the
19 result of the injury alleged. The Department order is **REVERSED AND REMANDED**.
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21
22 Docket No. 03 21396 is an appeal filed by the claimant, Gwen R. Carey, with the Board of
23 Industrial Insurance Appeals on September 29, 2003, from an order of the Department of Labor and
24 Industries dated September 19, 2003, under Claim No. W-700310. In this order, the Department
25 affirmed its order of September 23, 2002, in which it allowed the claim for right elbow strain and
26 found that the self-insured employer was not responsible for cervical, thoracic, and/or lumbar
27 strains. The Department order is **REVERSED AND REMANDED**.
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31 **DECISION**
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33 Pursuant to RCW 51.52.104 and RCW 51.52.106, these matters are before the Board for
34 review and decision on a timely Petition for Review filed by the claimant to a Proposed Decision
35 and Order issued on September 8, 2004, in which the industrial appeals judge affirmed the
36 Department order dated March 6, 2003, issued under Claim No. W-700337, and the Department
37 order dated September 19, 2003, issued under Claim No. W-700310.
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40 We have granted review in order to do the following: (1) Change the evidentiary rulings
41 listed below. (2) Reverse and remand the Department order wherein the Department rejected
42 Claim No. W-700337 because the Department rejected the claim on its merits rather than for the
43 failure to file the claim within the one-year limitation period specified by RCW 51.28.050. Although
44 we need not provide a discussion of the merits of the question of whether Ms. Carey sustained an
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1 industrial injury on November 20, 2001, because of the jurisdictional bar to allowance of the claim,
2 we include such a discussion of that issue in our decision as an aid to the courts should further
3 review be sought. (3) Reverse the Department's September 19, 2003 order issued under Claim
4 No. W-700310 only as to the provision segregating the cervical strain. We conclude that the
5 claimant sustained a cervical strain during treatment of the accepted arm condition and therefore
6 that strain should be covered under this claim. We affirm the provisions of that order wherein the
7 Department allows that claim for a right elbow strain and segregate thoracic and lumbar strains.
8 We remand the order to the Department to direct the self-insured employer to accept responsibility
9 for the cervical strain that occurred during physical therapy on or about June 26, 2002, and to
10 segregate the pre-existing cervical degenerative disc disease.

11 **EVIDENTIARY RULINGS**

12 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
13 no prejudicial error was committed. The rulings are affirmed except as follows.

14 Dr. Jeff L. Summe's treatment records, renumbered and admitted in the Proposed Decision
15 and Order as Exhibit No. 9, are rejected. These records are inadmissible on a number of grounds,
16 all of which were expressed by the timely objection of the employer's attorney. Much of what is
17 contained in these records is irrelevant to the issues under appeal. Those portions of the records
18 that are relevant are cumulative to the testimony of Dr. Summe, which is the best evidence
19 regarding the subject matter. In addition, the records contain the opinions of non-testifying
20 physicians, such as Dr. Kohler, that constitute inadmissible hearsay.

21 We reject in its entirety the deposition of Dr. Bradley I. Billington as cumulative, as well as for
22 other reasons stated below. The self-insured employer presented the testimony of one doctor each
23 from three separate independent medical examinations (IMEs). The issues in these appeals are
24 allowance and segregation of conditions with disputes over conditions and events that occurred or
25 were alleged to have occurred no later than July 2002. These appeals do not raise issues of
26 permanent disability or involve entitlement to other forms of benefits that would necessitate
27 testimony directed to the dates in 2003 when the orders under appeal were issued. All three of the
28 IMEs took place after July 2002, but Dr. Billington's IME of the claimant occurred in
29 December 2003, more than one year after the other IMEs and after these appeals were filed. The
30 subject matter of these depositions is essentially the same. In fact, the deposition of Dr. William
31 Stump, when compared with that of Dr. Billington, reveals that the testimony in them is identical,
32 with only a couple of exceptions that we note below. Dr. Billington's deposition included references
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1 to opinions of other doctors, most notably Dr. Park, that were without foundation and constituted
2 inadmissible hearsay. Dr. Billington's deposition also included historical information about
3 household problems between the claimant and her spouse, which our industrial appeals judge
4 correctly rejected.
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6 DISCUSSION

7 W-700337: Timeliness of the Application for Benefits

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10 Ms. Carey testified that on November 20, 2001, she sustained an industrial injury while
11 working in the dish room at Mountlake Terrace High School when a stack of large pans fell from a
12 rack and struck her on the head. She testified that she made an oral report of injury. In
13 October 2002, she went into the school district's main office and obtained an application for
14 benefits, but lost it. She obtained another form the next month. On November 20, 2002, the
15 claimant and Dr. Summe, her attending osteopathic physician, filled out a physician's initial report in
16 which she wrote that her industrial injury occurred on November 20, 2001, at 11:50 a.m. That same
17 day, the claimant filled out a "Supervisor's Report of Accident" and she hand delivered the SIF-2 or
18 application for benefits to her employer at its main office. These documents reiterated the date and
19 time of injury as being November 20, 2001, at 11:50 a.m. The application for benefits was date and
20 time stamped as received by "Human Resources/Payroll" at the employer's office on November 20,
21 2002, (a Wednesday), at 3:38 p.m.
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25 The statute of limitations for filing a claim for an industrial injury is found in RCW 51.28.050.
26 It states:
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31 No application shall be valid or claim thereunder enforceable unless filed
32 within one year after the day upon which the injury occurred or the rights
33 of dependents or beneficiaries accrued, except as provided in
34 RCW 51.28.055.
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37 RCW 51.28.050 does not specify where and to whom the application for benefits (a form
38 also referred to as an SIF-2) must be presented in order for it to be legally "filed." We conclude that
39 Ms. Carey's delivery of the completed SIF-2 form at the office of the self-insured employer was
40 sufficient to constitute the "filing" of that document within the meaning of that statute. It was not
41 necessary for her to deliver that form directly to the Department. RCW 51.28.020(1)(b).
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44 The dispositive question in this appeal is whether Ms. Carey filed her application for benefits
45 within the one-year limitation period. The Proposed Decision and Order adopts dictum contained in
46 *Wilbur v. Department of Labor & Indus.*, 38 Wn. App 553 (1984) as the basis for its conclusion that
47 her application for benefits was timely filed. The *Wilbur* dictum contradicts a rule set forth in a

1 series of Supreme Court cases, including *Nelson v. Department of Labor & Indus.*, 9 Wn.2d 621
2 (1941). We conclude we must follow the rule set forth by the Supreme Court.
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4 In order to determine if Ms. Carey's application for benefits was timely, we must determine
5 the date the one-year limitation period began to run. If this date was November 20, 2001, the date
6 the alleged injury occurred, then the limitation period ran at the end of November 19, 2002.
7 Consider the following self-evident statement: Each calendar year begins on January 1 and ends
8 on December 31, not at the end of the succeeding January 1. It follows, therefore, that in order for
9 an application filed on November 20, 2002, to be timely, the one-year limitation period could not
10 have begun to run until November 21, 2001, the day **after** the alleged injury.
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12 In the series of decisions culminating with *Nelson*, our Supreme Court adopted the
13 interpretation that the RCW 51.28.050 limitation period begins to run on the day of injury. As stated
14 in *Nelson*, at 632, "This court has established the rule that the one year period in which the claim
15 must be filed commences to run on the day of the accident." This rule was stated and accepted by
16 the Supreme Court in *Read v. Department of Labor & Indus.*, 163 Wash. 251 (1931); *Ferguson v.*
17 *Department of Labor & Indus.*, 168 Wash. 677 (1932); *Sandahl v. Department of Labor & Indus.*,
18 *170 Wash. 380 (1932)*; *Crabb v. Department of Labor & Indus.*, 186 Wash. 505 (1936). The
19 application of this rule to this case would mean that the one-year limitation period began to run on
20 November 20, 2001, the date of the alleged work-related injury.
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22 The language in *Wilbur*, at 566, suggests that the one-year limitation period begins to run the
23 day after the industrial injury. The cited language was mere obiter dictum, a characterization of that
24 language that we noted in *In re Freda King*, BIIA Dec., 69,935 (1985). The *Wilbur* dictum has never
25 since been adopted by the courts. In fact subsequent to the publication of *Wilbur*, Division I of the
26 Court of Appeals reiterated the rule set forth in *Nelson*. *Rector v. Department of Labor & Indus.*,
27 61 Wn. App. 385 (1991).
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29 We acknowledge that in other legal contexts, rules have developed either through statute or
30 court decision wherein the time calculation of a limitation period begins to run on the day
31 succeeding a triggering event. The only such "rule" that could apply to this case is RCW 1.12.040,
32 a statute that was first enacted in 1854, that currently states:
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34 The time within which an act is to be done, as herein provided, shall be
35 computed by excluding the first day, and including the last, unless the
36 last day is a holiday, Saturday, or Sunday, and then it is also excluded.
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2 This statute was originally included within acts regulating civil actions. It has since been held
3 to be a statute of general application. See, e.g., *State ex rel. Early v. Batchelor*, 15 Wn.2d 149
4 (1942). Its application to this appeal would support Ms. Carey's position that the one-year limitation
5 period should not begin to run until November 21, 2001. Neither we nor the courts have ever
6 mentioned RCW 1.12.040, or its predecessor statute, Rem. Rev. Stat. §150, in any decision
7 regarding when the one-year limitation period of RCW 51.28.050 begins to run.
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10 Rules of statutory construction favor the application of RCW 51.28.050 over that of
11 RCW 1.12.040 in setting the date upon which the limitation period to file a claim for industrial injury
12 begins to run. RCW 1.12.040 and RCW 51.28.050 both appear to apply in setting the date upon
13 which the one-year limitation period for filing an industrial injury claim begins to run. However, our
14 Supreme Court's interpretation of RCW 51.28.050 leads to an irreconcilable conflict between that
15 statute's language and the language of RCW 1.12.040. When such a conflict between applicable
16 statutes occurs, the rule is that the specific statute supersedes the general statute. *Johnson v.*
17 *Central Valley School Dist. No. 356*, 97 Wn.2d 419 (1982) [*cert. denied*, 103 S. Ct. 732, 459 U.S.
18 1107, 74 L. Ed. 2d 955]; *Waste Management of Seattle, Inc. v. Utilities & Transp. Com'n.*,
19 123 Wn.2d 621 (1994) [*reconsideration denied*]; *Medical Consultants NW, Inc. v. State*, 89 Wn.
20 App. 39 (1997) [*review denied*, 136 Wn.2d 1002]. This rule of statutory construction is even
21 stronger when the specific statute was enacted later than the general statute. *Muije v. Department*
22 *of Social & Health Serv.*, 97 Wn.2d 451 (1982). The predecessor statute to RCW 51.28.050 was
23 first enacted by Laws of 1911, ch. 74, §12.
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27 Having noted the near-unanimity of the court decisions in our state, we admit that in past
28 decisions we have favored the interpretation found in the *Wilbur* dictum. In *In re Stan Hall*,
29 BIIA Dec. 36,628 (1971), the worker sustained an injury at work on March 3, 1969. His doctor
30 mailed the application for benefits on March 2, 1970, but the Department did not receive it until
31 March 5, 1970. We found the application for benefits was not timely, but in dictum of our own we
32 cited RCW 51.28.050 for the proposition that had the Department received the application for
33 benefits on March 3, 1970, it would have been timely. In *Freda King*, the worker sustained an injury
34 on October 6, 1983. She filed her application for benefits on Monday, October 8, 1984. We stated
35 that October 6, 1984, a Saturday, was the last day of the one-year filing period and cited WAC 296-
36 08-070 and *Wilbur*, as support for extending the filing period to the next Monday, when the last day
37 of the filing period fell on a weekend. The *Nelson* rule was not discussed in either of these
38 decisions.
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1 WAC 296-08-070, cited by *Freda King*, states, in part:

2 In computing any period of time prescribed or allowed by the rules or by
3 the order of the department or any division, board, commission or
4 council thereof or by any applicable statute, the day of the act, event, or
5 default after which the designated period of time begins to run is not to
6 be included.
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8 The application of this regulation would support Ms. Carey's position that the limitation period
9 for her claim should not begin to run until November 21, 2001, the day after her industrial injury.
10 However, applying this regulation in that manner clearly conflicts with the language of
11 RCW 51.28.050, as interpreted by the *Nelson* line of cases. The Department does not have the
12 power to revise a validly enacted statute, nor can it overturn the interpretation of a statute by the
13 Supreme Court through rule making absent a legislative enactment giving it that authority. The
14 Legislature itself has amended RCW 51.28.050 on two occasions since the *Nelson* line of cases
15 were decided. Yet it has not changed the language in the statute that is applicable to this
16 controversy. Such legislative inaction tends to show its tacit approval of the Supreme Court's
17 interpretation of the statutory language.
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23 There are factual differences between the previously cited Supreme Court cases and the
24 one before us today. In those cases the applications for benefits were either filed months or years
25 late or were attempts to file a second claim in order to bring new conditions into an earlier, timely
26 claim. In Ms. Carey's case, the issue involves alleged untimeliness of filing the application for
27 benefits of only a few hours to one day. However, any claim for which an application for benefits is
28 filed that is one day late (*Wilbur*) or two days late (*Stan Hall*) is still jurisdictionally barred; whether it
29 is one day late or one year late makes no difference.
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34 Therefore, we conclude that Ms. Carey's application for benefits under Claim No. W-700337
35 was filed one day late.¹ To the extent that language within *Freda King* and *Stan Hall* conflicts with
36 this decision, such language is overruled. We reverse the Department's January 7, 2003 order in
37 Claim No. W-700337 because it rejected the claim for an incorrect reason. This claim should have
38 been rejected because the application for benefits was not filed within the time limit specified by
39 RCW 51.28.050.
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46 ¹ One unusual aspect of this appeal is that the record includes the exact hour and minute that the alleged injury
47 occurred (11:50 a.m. on November 20, 2001) and the application for benefits was filed (3:38 p.m. on November 20,
2002). Even if the RCW 51.28.050 limitation period was interpreted to begin running at the exact moment of the injury,
as opposed to the day the injury occurred, the application for benefits still was filed late, by 3 hours and 48 minutes.

1 Did Ms. Carey Sustain an Industrial Injury on November 20, 2001?

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3 Because we have determined that Claim No. W-700337 should be rejected since no
4 application for benefits was filed within the time limit specified by RCW 51.28.050, it is not
5 necessary for us to determine whether Ms. Carey sustained an industrial injury on November 20,
6 2001. Therefore, we are including neither findings of fact nor conclusions of law regarding that
7 issue with this decision. However, we include the discussion below as a guide for the courts should
8 further review be sought and granted by them. It is our conclusion that Ms. Carey did not sustain
9 any injury on that date during the course of her employment with the Edmonds School District.

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11 Ms. Carey testified that she sustained an industrial injury on November 20, 2001, when large
12 pans she was stacking on a rack next to an institutional dishwasher, fell and struck her on the head.
13 Ms. Carey's application for benefits and the Supervisor's Report of Accident she filled out on
14 November 20, 2002, listed the only witness as a "dishroom attendant." All three of the other
15 employees who worked in the Mountlake Terrace High School dish room that day testified that they
16 did not hear or see the accident and that the claimant did not tell them about it that day or any other
17 day. She sought treatment from Dr. Summe on December 5, 2001, for right elbow pain, but not
18 neck pain. On the intake form the claimant filled out that day she did not endorse neck or back
19 complaints. She checked both "yes" and "no" in answer to the question about whether she was
20 being seen for an on-the-job injury, but she did not fill out the information that form requested about
21 date of injury, claim number, etc.

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23 Dr. Zimmerman, who did not testify, treated Ms. Carey throughout the spring of 2002. She
24 did not inform him of a November 2001 injury at work. On May 7, 2002, the claimant sustained an
25 industrial injury to her right elbow, for which she filed the appropriate claim form on May 20, 2002.
26 On July 3, 2002, Ms. Carey reported to Dr. Summe that she had developed neck pain on June 26,
27 2002, while doing exercises under the direction of a physical therapist. The first time Ms. Carey
28 mentioned the alleged November 20, 2001 injury at work was during the independent medical
29 examination conducted by Dr. Richard E. Marks on August 13, 2002. Dr. Summe treated the
30 claimant's neck on multiple occasions between July and November 20, 2002, before the claimant
31 told him of the alleged November 20, 2001 injury at work.

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33 Based on the evidence above, we conclude that Ms. Carey's latter-day history of an
34 industrial injury occurring on November 20, 2001, is not believable. Even if some incident at work
35 involving falling pans actually occurred, there is no evidence Ms. Carey sustained any neck or other
36 condition or disability from such an incident. She did not seek treatment for any neck condition until
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1 almost nine months afterwards and then only after she had an onset of symptoms during a physical
2 therapy appointment.
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5 Segregation of Cervical, Thoracic, and Lumbar Strains Under Claim No. W-700310
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7 Ms. Carey sustained right arm strain or extensor tendonitis of the right elbow as a result of
8 her May 7, 2002 industrial injury. She made no complaints of spinal problems and received no
9 treatment for any such condition until she saw Dr. Summe almost two months later, at which time
10 she gave a history of an onset of neck symptoms during a session of physical therapy. Ms. Carey
11 reiterated this history to a consulting physician, Dr. Murphy, who saw her on July 31, 2002.
12 Dr. Summe testified that this physical therapy session had been prescribed by Dr Zimmerman as
13 treatment for the claimant's right arm condition, proximately caused by the May 7, 2002 industrial
14 injury.
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18 Conditions or disabilities sustained while undergoing treatment for a covered condition or
19 injury are also covered by the same claim under which the treatment was authorized. *In re Arvid*
20 *Anderson*, BIIA Dec., 65,170 (1986); *In re Iris Vandorn*, BIIA Dec., 02 11466 (2003). This is true
21 whether the condition newly arose or was an aggravation of a prior condition. In Ms. Carey's case,
22 the conditions at issue are cervical strain and cervical degenerative disc disease. We conclude that
23 Ms. Carey's cervical strain should be covered under the claim for the May 7, 2002 right elbow injury
24 because the cervical condition was sustained during treatment for the elbow injury.
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29 The medical evidence in the record supports a conclusion that Ms. Carey's cervical strain
30 was caused by the injury she sustained during that therapy session. As explained by the doctors
31 who testified, a cervical strain is a soft tissue condition, *i.e.*, muscular or ligamentous, in contrast to
32 an arthritic or disc condition. Dr. Summe diagnosed a cervical strain among other conditions, and
33 attributed her neck condition to that injury (as well as to other injuries). He believed that the
34 physical therapy incident aggravated cervical problems that were already present. Dr. Marks was
35 very skeptical of any neck condition Ms. Carey described; however, he acknowledged that she
36 could have sustained some neck discomfort due to the activities she performed as part of her
37 therapy. Dr. Stump testified that Ms. Carey's complaints were primarily muscular and could have
38 been anticipated in someone who was initiating an exercise program. He noted that while her
39 examination findings were non-dermatomal, her neck pain followed a muscular distribution.
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45 An MRI study taken on July 12, 2002, showed that Ms. Carey had minor degenerative disc
46 disease at the C5-6 and C6-7 levels consistent with her age. There is no credible medical evidence
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1 that these conditions were caused or aggravated by either the May 7, 2002 industrial injury or the
2 physical therapy the claimant underwent on June 26, 2002. The claimant's description of that injury
3 clearly shows that it was limited to muscles and tendons attached to her right elbow. While
4 Dr. Summe believed that the industrial injury caused a flare-up in a pre-existing neck condition, he
5 did not explain the mechanism by which an elbow tendonitis could have aggravated a disc condition
6 in the neck. We accept the conclusion of Dr. Marks and Dr. Stump, that there was no causal
7 connection between the MRI findings and the May 7, 2002 industrial injury and treatment therefor.
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11 Even though Dr. Summe diagnosed thoracic and lumbar strains that he attributed to the
12 May 7, 2002 industrial injury or the physical therapy Ms. Carey received for that injury, we do not
13 find any factual foundation to support such a causal connection. There was no foundation from the
14 claimant, either in her testimony or in the multiple medical histories she provided to the doctors that
15 suggests she had any thoracic or lumbar problems until late in July 2002. She certainly did not
16 mention that she experienced any mid or low back symptoms after undergoing the physical therapy.
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19 We reverse the September 19, 2003 order issued under Claim No. W-700310 and direct the
20 Department to issue an order in which it allows the claim for the right elbow strain and a cervical
21 strain and segregates as unrelated to this claim the conditions of thoracic and lumbar strains and
22 cervical degenerative disc disease. The segregation of this latter condition is within the scope of
23 our review in this appeal because acceptance/segregation of spinal conditions in general was at
24 issue in the appeal.
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29 **FINDINGS OF FACT**

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31 1. At 3:38 p.m. on Wednesday, November 20, 2002, Gwen R. Carey filed
32 an application for benefits in Claim No. W-700337 (Docket
33 No. 03 13790) with Edmonds School District No. 15, the self-insured
34 employer. Ms. Carey alleged she sustained an industrial injury to her
35 back and neck at 11:50 a.m. on November 20, 2001, during the course
36 of her employment with the self-insured employer.
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38 On January 7, 2003, the claim was denied because the worker's
39 condition was not the result of the injury alleged.
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41 On January 27, 2003, the claimant filed a Protest and Request for
42 Reconsideration of the January 7, 2003 Department order.
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44 On March 6, 2003, the January 7, 2003 Department order was affirmed.
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46 On March 26, 2003, the claimant filed an appeal of the March 6, 2003
47 Department order with the Board of Industrial Insurance Appeals.

1 On April 7, 2003, the Board granted the appeal and assigned it Docket
2 No. 03 13790.

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4 2. On June 5, 2002, Gwen R. Carey filed an application for benefits in
5 Claim No. W-700310 (Docket No. 03 21396), in which she alleged she
6 suffered an injury to her right arm on May 7, 2002, while in the course of
7 her employment with Edmonds School District No. 15.

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9 On June 13, 2002, the claim was allowed.

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11 On September 23, 2003, the Department issued an order in which it
12 allowed the claim for a right elbow strain and found the self-insured
13 employer is not responsible for cervical, thoracic, and/or lumbar strain.

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15 On October 29, 2002, the claimant filed an appeal of the September 23,
16 2002 Department order, which was received at the Board of Industrial
17 Insurance Appeals and forwarded to the Department of Labor and
18 Industries as a Protest and Request for Reconsideration and returned to
19 the Board with the request to treat it as a direct appeal.

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21 On December 19, 2002, the Board denied the appeal.

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23 On September 19, 2003, the September 23, 2002 Department order
24 was affirmed.

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26 On September 29, 2003, the claimant filed an appeal of the
27 September 19, 2003 Department order with the Board of Industrial
28 Insurance Appeals.

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30 On October 15, 2003, the Board granted the appeal and assigned it
31 Docket No. 03 21396.

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33 3. On May 7, 2002, while in the course of her employment as a food
34 service worker for Edmonds School District No. 15, Gwen R. Carey
35 injured her right arm while chopping fruit. She felt a sudden popping
36 sensation in the arm that required medical treatment.

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38 4. On June 26, 2002, Gwen R. Carey was involved in a physical therapy
39 program authorized under Claim No. W-700310, and while performing
40 prescribed exercises, sustained a cervical strain that required medical
41 treatment.

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43 5. Prior to May 7, 2002, Gwen R. Carey was suffering from degenerative
44 changes in her cervical spine, including a disc protrusion at C5-6 and a
45 dorsal annular tear at C6-7; those conditions were neither caused by nor
46 aggravated by the industrial injury of May 7, 2002.

- 1 6. Prior to May 7, 2002, Ms. Carey's degenerative disc disease of the
2 cervical spine was symptomatic.
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4 7. Ms. Carey's pre-existing disc protrusion at C5-6 and dorsal annular tear
5 at C6-7 were not aggravated by physical therapy activities engaged in
6 by Ms. Carey in June 2002.
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8 8. Ms. Carey did not suffer any injury to her thoracic or lumbar spine that
9 was proximately caused by physical therapy activities engaged in by
10 Ms. Carey under the auspices of Claim No. W-700310 during the month
11 of June 2002.
12

13 CONCLUSIONS OF LAW

- 14 1. The Board of Industrial Insurance Appeals has jurisdiction over the
15 parties to and the subject matter of these appeals.
16
17 2. Gwen R. Carey's application for benefits in Claim W-700337 is not valid
18 nor is that claim for benefits enforceable due to her failure to file the
19 application within the one-year limitation period prescribed in
20 RCW 51.28.050.
21
22 3. Docket No. 03 13790: The order of the Department of Labor and
23 Industries dated March 6, 2003, in Claim W-700337, is incorrect and is
24 reversed. The claim is remanded to the Department to reject the claim
25 because the application for benefits was not filed within the one-year
26 limitation period prescribed by RCW 51.28.050.
27
28 4. Docket No. 03 21396: The order of the Department of Labor and
29 Industries dated September 19, 2003, in Claim No. W-700310, is
30 incorrect and is reversed. The claim is remanded to the Department to
31 allow the claim for right elbow and cervical strains and segregate as
32 unrelated to this claim the conditions of thoracic and lumbar strains and
33 cervical degenerative disc disease.
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35 It is so **ORDERED**.

36 Dated this 30th day of March, 2005.

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38 BOARD OF INDUSTRIAL INSURANCE APPEALS

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41 /s/ _____
42 THOMAS E. EGAN Chairperson

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45 /s/ _____
46 CALHOUN DICKINSON Member
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