

## **Williams, Calvin**

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### **BOARD**

#### **Examination by industrial insurance appeals judge**

When securing evidence necessary to fairly and equitably decide an appeal, an industrial appeals judge shall ask those questions necessary to present a prima facie case. ...*In re Calvin Williams*, BIIA Dec., 04 12770 (2005)

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

1 **IN RE: CALVIN WILLIAMS** ) **DOCKET NO. 04 12770**  
2 )  
3 **CLAIM NO. W-903939** ) **ORDER VACATING PROPOSED DECISION**  
4 ) **AND ORDER AND REMANDING THE APPEAL**  
5 ) **FOR FURTHER PROCEEDINGS**  
6 \_\_\_\_\_)

7 **APPEARANCES:**

8 Claimant, Calvin Williams, Pro Se

9 Self-Insured Employer, King County, by  
10 King County Prosecutor's Office, per  
11 Alison M. Bogar, Deputy

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15 The claimant, Calvin Williams, filed an appeal with the Board of Industrial Insurance Appeals  
16 on March 9, 2004, from an order of the Department of Labor and Industries dated March 3, 2004.  
17 In this order, the Department rejected Mr. Williams' application for industrial insurance benefits  
18 because his condition was not an occupational disease within the meaning of RCW 51.08.140. The  
19 appeal is **REMANDED FOR FURTHER PROCEEDINGS**.

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23 **DECISION**

24 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
25 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order  
26 issued on February 22, 2005, in which the industrial appeals judge dismissed the claimant's appeal  
27 from the order of the Department dated March 3, 2004.

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29 Our industrial appeals judge dismissed Mr. Williams' appeal because Mr. Williams failed to  
30 present any medical evidence in support of his appeal. Under most circumstances we would agree  
31 with the judge and not grant Mr. Williams' Petition for Review. The facts of this appeal present  
32 compelling reasons to remand the appeal to the hearings process for further proceedings,  
33 specifically to give Mr. Williams another opportunity to present the testimony of Patrick  
34 Squires, O.D., his treating physician.

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36 Mr. Williams has represented himself throughout these proceedings. At the time notice was  
37 sent for the first mediation conference, a notice was included that briefly explained our procedures.  
38 This notice informed Mr. Williams that "medical witnesses usually have to testify in hearings." We  
39 assume the mediation judge also advised Mr. Williams about our procedures and his obligations,  
40 but there is no record of this in this file.

1 A scheduling conference was held on October 19, 2004. This conference was not reported,  
2 but the hearing judge issued a litigation order on October 22, 2004, in which he informed  
3 Mr. Williams that he was required to present medical testimony, among other things, in support of  
4 his appeal. Mr. Williams confirmed his witnesses in a letter on November 19, 2004. He enclosed a  
5 medical record with his confirmation. The judge responded with a letter telling Mr. Williams that he  
6 would not read the medical report and that Mr. Williams was required to present live testimony from  
7 a medical professional in support of his appeal.  
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11 The first hearing was held on December 7, 2004. Dr. Squires appeared by telephone and  
12 was ready to testify, but the self-insured employer requested a continuance of his testimony, which  
13 was granted. Dr. Squires stated on the record that he would be available to testify if given notice  
14 and he gave the judge his available dates and times. The judge informed the doctor that we would  
15 send him advance notice of the next hearing. The December 7 hearing proceeded with the  
16 testimony of Mr. Williams and a lay witness.  
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20 The Board sent Dr. Squires notice of the next hearing and sent him a letter informing him of  
21 the hearing date. The next hearing was held on February 9, 2005. Dr. Squires was not present  
22 and the judge asked Mr. Williams if he had contacted the doctor. Mr. Williams informed the judge  
23 that he had not and that he did not know that he was allowed to contact the doctor. The judge  
24 attempted to telephone Dr. Squires at two different locations and the only response at both was an  
25 answer machine. The judge closed the record and issued the Proposed Decision and Order in  
26 which he dismissed the appeal.  
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31 The record shows that Mr. Williams appeared at every Board proceeding and was prepared  
32 to present his evidence. Dr. Squires received specific notice from this Board about the February 9,  
33 2005 hearing and this was on a date and time when he had stated he would be available. We see  
34 no fault on the part of Mr. Williams in his failure to present medical evidence. We find that  
35 Mr. Williams should have been given another opportunity to present this crucial testimony. For  
36 whatever reason, Mr. Williams was never informed that he could subpoena the doctor if the doctor  
37 has now decided that he does not want to testify. There is always a risk in subpoenaing a  
38 physician to testify, but Mr. Williams should be given this opportunity. Upon remand, the hearing  
39 judge should convene a conference and inform Mr. Williams that he should contact Dr. Squires to  
40 learn if the doctor still is willing to testify. The judge should also give Mr. Williams the option to  
41 subpoena the doctor if it appears that Dr. Squires will not appear of his own free will. This would  
42 include an explanation of what is required by law to subpoena a witness to a Board hearing.  
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1 We also note that the judge, in his December 9, 2004 letter to Mr. Williams, stated that he  
2 would only be asking questions concerning the doctor's qualifications and not any substantive  
3 questions. We think this is a very narrow interpretation of our obligation to secure additional  
4 evidence to "fairly and equitably decide the appeal." WAC 263-12-045(2)(f). See RCW 51.52.102.  
5 The hearing judge should ask those questions necessary to present a "bare bones" prima facie  
6 case. We do not believe this would constitute "advocacy" on the part of the judge based on our  
7 rules, as well as our legislative mandate. *In re Adeline I. King*, Dckt. No. 92 2380 (January 25,  
8 1994) and *In re Gladys G. Langen*, Dckt. No. 68,404 (January 3, 1986).  
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10 The Proposed Decision and Order of February 22, 2005, is vacated. This appeal is  
11 remanded to the hearings process, pursuant to WAC 263-12-145(4), for further proceedings, as  
12 indicated by this order. The parties are advised that this order is not a final Decision and Order of  
13 the Board within the meaning of RCW 51.52.110. At the conclusion of the further proceedings the  
14 industrial appeals judge shall, unless the matter is dismissed or resolved by an Order on  
15 Agreement of Parties, enter a Proposed Decision and Order containing findings and conclusions as  
16 to each contested issue of fact and law, based on the entire record, and consistent with this order.  
17 Any party aggrieved by the Proposed Decision and Order may petition the Board for review,  
18 pursuant to RCW 51.52.104.  
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20 It is so ORDERED.  
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22 Dated this 20th day of April, 2005.  
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24 BOARD OF INDUSTRIAL INSURANCE APPEALS  
25

26 /s/ \_\_\_\_\_  
27 THOMAS E. EGAN Chairperson  
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29 /s/ \_\_\_\_\_  
30 FRANK E. FENNERTY, JR. Member  
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32 /s/ \_\_\_\_\_  
33 CALHOUN DICKINSON Member  
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