

Paterson, Alta

PENALTIES (RCW 51.48.017)

Side bar agreements

Private agreements to pay an amount not required as a benefit under the Industrial Insurance Act are not contemplated by the Act, and no penalty can be awarded for a delay in the payment.*In re Alta Paterson*, BIIA Dec., 05 15987 (2005)

Scroll down for order.

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

1 **IN RE: ALTA D. PATERSON) DOCKET NO. 05 15987**
2 **CLAIM NO. W-373602) DECISION AND ORDER**
3

4 **APPEARANCES:**

5 Claimant, Alta D. Paterson, by
6 Law Office of William D. Hochberg, per
7 William D. Hochberg

8 Self-Insured Employer, The Boeing Company, by
9 Reinisch, Weier & Mackenzie, P.C., per
10 Renee M. Bliss

11 The claimant, Alta D. Paterson, filed an appeal with the Board of Industrial Insurance
12 Appeals on June 1, 2005, from an order of the Department of Labor and Industries dated May 17,
13 2005. In this order, the Department denied the claimant's April 18, 2005, request for a penalty
14 against The Boeing Company, a self-insured employer, for delay in payment of money in accord
15 with a sidebar agreement between the claimant and the self-insured employer. The Department
16 order is **AFFIRMED**.

17 **DECISION**

18 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
19 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order
20 issued on November 8, 2005, in which the industrial appeals judge affirmed the order of the
21 Department dated May 17, 2005. The issue presented in this appeal is whether penalties, as
22 contemplated by RCW 51.48.017, are applicable if the employer has delayed fulfilling the terms of a
23 sidebar agreement.

24 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
25 no prejudicial error was committed and the rulings are affirmed.

26 We agree with our industrial appeals judge and affirm the Department order dated May 17,
27 2005. We have granted review to address the cross motions for summary judgment that each of
28 the parties filed. Our decision is based upon a careful review of the following materials:

- 29 1. Claimant's Motion for Summary Judgment and Trial Brief, dated
30 September 2005;
- 31 2. Stipulation of Facts signed by the parties and dated September 9, 2005;
- 32 3. A December 15, 2004, letter from the employer's attorney to the
claimant's counsel, attached to Claimant's Motion as Exhibit 1;

- 1 4. Department order dated January 21, 2005, attached to Claimant's
- 2 Motion as Exhibit 2;
- 3 5. Declaration of Alta Peterson In Support of Motion for Summary
- 4 Judgment;
- 5 6. Employer's Reply Brief and Cross Motion for Summary Judgment, dated
- 6 September 30, 2005;
- 7 7. Claimant's Response to Employer's Reply Brief and Cross Motion for
- 8 Summary Judgment, dated October 5, 2005;
- 9 8. Declaration of William D. Hochberg in Support of Claimant's Response
- 10 to Employer's Reply Brief, dated October 5, 2005;
- 11 9. The arguments of the parties that occurred at the October 10, 2005,
- 12 hearing on the cross motions; and
- 13 10. Judicial notice, as provided by ER 201, is taken of the December 22,
- 14 2004, Agreement of Parties under Docket No. 04 12488.

15 The Department issued an order dated March 1, 2004, in which it closed Ms. Paterson's
16 claim with permanent partial disability awards equivalent to 5 percent of the amputation value of
17 each arm, and directed that she receive time-loss compensation benefits through January 18, 2004.
18 Ms. Paterson appealed the closing order to the Board of Industrial Insurance Appeals, (Docket
19 No. 04 12488), and it was from that appeal that the parties reached a settlement agreement that
20 eventually formed the basis of this appeal. Their agreement was that Ms. Paterson should be given
21 increased permanent partial disability awards, 15 percent of the amputation value of her right arm
22 plus 5 percent for the claimant's left arm, and that her time-loss compensation benefits be paid
23 through February 29, 2004. Those terms would be committed to a Department order. Additionally,
24 Ms. Paterson and The Boeing Company, through their respective attorneys, entered into what is
25 known as a "sidebar" agreement. That private contract between them called for Ms. Paterson to
26 receive a further sum of \$24,764.60 at some point in time after the Department issued its ministerial
27 order memorializing the agreement of the parties in Docket No. 04 12488.

28 After the Department issued its January 21, 2005, ministerial order, Ms. Paterson asked the
29 Department to assess a penalty against The Boeing Company. The claimant felt that the
30 self-insured employer did not fulfill the payment terms of the sidebar agreement within the time
31 frame agreed upon. When the Department declined to penalize the employer in its May 17, 2005,
32 order, Ms. Paterson appealed that decision to the Board, which is the basis of this appeal.

RCW 51.48.017 is the statutory mechanism through which penalties may be assessed when
self-insured employers unreasonably delay paying benefits to injured workers. It says:

If a self-insurer unreasonably delays or refuses to pay **benefits** as they become due there shall be paid by the self-insurer upon order of the director an additional amount equal to five hundred dollars or twenty-five percent of the amount then due, whichever is greater, which shall

1 accue for the benefit of the claimant and shall be paid to him with the
2 benefits which may be assessed under this title. The director shall issue
3 an order determining whether there was an unreasonable delay or
4 refusal to pay **benefits** within thirty days upon the request of the
claimant. Such an order shall conform to the requirements of
RCW 51.52.050.

5 RCW 51.48.017 (emphasis added).

6 Whether The Boeing Company unreasonably delayed paying Ms. Paterson the sum called for in the
7 private agreement between them is immaterial. The issue is whether the terms of a private, sidebar
8 contract are **benefits** within the meaning of the Industrial Insurance Act. We determine they are
9 not.

10
11 The Board is a creature of the Legislature without inherent or common law powers, and may
12 exercise only powers expressly conferred or implied by necessity. *Jaramillo v. Morris*, 50 Wn. App.
13 822, 829, 750 P.2d 1301 (1988). Its purpose is to adjudicate actions taken by the Department.
14 RCW 51.52.010; 51.52.050; 51.52.060. Similarly, the Department of Labor and Industries is an
15 agency whose powers are confined by legislative mandate. The Department administers the
16 Industrial Insurance Act to provide benefits to injured workers. Benefits under the Act have been
17 carefully enumerated in statute, and they are limited. See RCW 51.32.010. Benefits include
18 medical treatment provided by RCW 51.36.010, permanent partial disability awards in accord with
19 RCW 51.32.055, death benefits through RCW 51.32.050, pension benefits via RCW 51.32.060,
20 time-loss compensation benefits as authorized by RCW 51.32.090, and vocational rehabilitation
21 services granted by RCW 51.32.095. Enforcement of private contracts, such as sidebar
22 agreements, is not one of the benefits within the Department's mandate. By virtue of their
23 respective legislative mandates, both the Department and this Board are precluded from enforcing
24 private contracts between parties such as the sidebar agreement at issue in this appeal.

25 The Board of Industrial Insurance Appeals has the authority to resolve appeals by summary
26 judgment. RCW 51.52.140; WAC 263-12-125; CR 56. "The function of a summary judgment is to
27 determine whether there is a genuine issue of material fact requiring a formal trial." *Chase v. Daily*
28 *Record, Inc.*, 83 Wn.2d 37, 42 (1973) quoting *Leland v. Frogge*, 71 Wn.2d 197, 200-01, 427 (1967).
29 "The evidence before the judge is that contained in the pleadings, affidavits, admissions and other
30 material properly presented." *Chase*, 83 Wn.2d at 42, quoting *Leland*, 71 Wn.2d at 200. Summary
31 judgment is available only if the materials properly presented show there is no issue as to any
32 material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c). In

1 considering a summary judgment motion, all facts and reasonable inferences are considered in the
2 light most favorable to the nonmoving party. *Mountain Park Homeowners Ass'n, Inc. v. Tydings*,
3 125 Wn.2d 337 (1994).

4 There are no issues of material fact in this appeal and the self-insured employer is entitled
5 to a judgment in its favor as a matter of law. This appeal is, therefore, ripe for disposition by way of
6 summary judgment. The Department order dated May 17, 2005, is affirmed.

7 **FINDINGS OF FACT**

- 8 1. On September 11, 1998, the Department received an Application for
9 Benefits in which it was alleged that the claimant, Alta D. Paterson,
10 sustained an industrial injury while in the course of her employment with
11 the self-insured employer, The Boeing Company. On October 16, 1998,
12 the Department issued an order wherein it allowed the claim. On
13 March 1, 2004, the Department issued an order in which it directed the
14 claimant be paid the claimant time-loss compensation benefits through
15 January 18, 2004, and closed the claim with permanent partial disability
awards equivalent to 5 percent of the amputation value of each of the
claimant's arms at or above the deltoid insertion or by disarticulation at
the shoulders.

16 On March 10, 2004, the claimant filed a Notice of Appeal to the
17 Department order dated March 1, 2004, with the Board of Industrial
18 Insurance Appeals. On April 9, 2004, the Board granted the appeal and
19 assigned it Docket No. 04 12488. On December 23, 2004, the Board
20 issued an Order on Agreement of Parties. On January 21, 2005, the
21 Department issued a ministerial order to conform to the Order on
22 Agreement of Parties. In that ministerial order the Department reversed
23 its prior order dated March 1, 2004, and it closed the claim with time-
24 loss compensation benefits paid through February 29, 2004, and
25 directed the self-insured employer to pay the claimant permanent partial
26 disability awards equivalent to 15 percent of the amputation value of her
27 right arm at or above the deltoid insertion or by disarticulation at the
28 shoulder and 5 percent of the amputation value of the claimant's left arm
29 at or above the deltoid insertion or by disarticulation at the shoulder.

30 On April 18, 2005, the claimant requested that the Department assess a
31 penalty against the self-insured employer. On May 17, 2005, the
32 Department issued an order that denied the claimant's request for a
penalty assessment against The Boeing Company for a delay and
paying a sum of money in accord with a sidebar agreement between the
claimant and the self-insured employer. On June 1, 2005, the claimant
filed a Notice of Appeal to the Department order dated May 17, 2005,
with the Board. On June 22, 2005, the Board granted the appeal and
assigned it Docket No. 05 15987.

- 1 2. On September 17, 1997, Alta D. Peterson sustained industrial injuries to
2 each of her arms while in the course of her employment with The Boeing
3 Company.
4 3. There are no disputed issues of material fact in this appeal.
5 4. On December 22, 2004, Alta D. Peterson and the self-insured employer,
6 the Boeing Company, reached an agreement to settle the claimant's
7 appeal pending before the Board under Docket No. 04 12488. The
8 agreement between the claimant and the self-insured employer, formally
9 memorialized by a December 23, 2004, Order on Agreement of Parties
10 issued by the Board, provided Ms. Paterson with increased permanent
11 partial disability awards and additional time-loss compensation benefits.
12 The agreement between the parties at the Board did not include other
13 terms and conditions.
14 5. The claimant and the self-insured employer also entered into a sidebar
15 agreement that required The Boeing Company to pay Ms. Paterson the
16 sum of \$24,764.60 at some future date. The Department and the Board
17 were not parties to that sidebar agreement.

CONCLUSIONS OF LAW

- 18 1. The Board of Industrial Insurance Appeals has jurisdiction over the
19 parties and the subject matter of this appeal.
20 2. A sidebar agreement is not a benefit within the meaning of
21 RCW 51.32.010.
22 3. Delay in following the terms of a sidebar agreement between the
23 claimant and the self-insured employer does not subject the employer to
24 penalties contemplated by RCW 51.48.017 because those terms are not
25 benefits, but amount to a private contract beyond the authority of the
26 Industrial Insurance Act.
27 4. The self-insured employer, The Boeing Company, is entitled to judgment
28 in its favor as a matter of law, as provided by Civil Rule 56.
29 5. The Department order dated May 17, 2005, is correct and is affirmed.

30 It is so **ORDERED**.

31 Dated this 30th day of December, 2005.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/ _____
THOMAS E. EGAN Chairperson

/s/ _____
CALHOUN DICKINSON Member