

Gravlee, Andrew

COMMUNICATION OF DEPARTMENT ORDER

Failure to provide order to custodial parent

A custodial parent of a minor is an affected party with respect to an order issued in the minor's claim, and such an order will not become final until communicated to the parent.
...In re Andrew Gravlee, BIIA Dec., 06 16783 (2007)

Scroll down for order.

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

1	IN RE: ANDREW J. GRAVLEE)	DOCKET NO. 06 16783
2)	
3	CLAIM NO. AA-79308)	DECISION AND ORDER

APPEARANCES:

7 Claimant, Andrew J. Gravlee, by
8 George M. Riecan & Associates, Inc., P.S., per
9 George M. Riecan and Edward R. Truitt, III

11 Employer, Diamond Star Inc.
12 None

14 Department of Labor and Industries, by
15 The Office of the Attorney General, per
16 Steve Vinyard, Assistant

18 The claimant, Andrew J. Gravlee, filed an appeal with the Board of Industrial Insurance
19 Appeals on July 7, 2006, from an order of the Department of Labor and Industries dated April 7,
20 2006. In this order, the Department determined that it could not reconsider its order dated April 12,
21 2005, because the protest was not received within the 60-day time limitation, and that order is final
22 and binding. The Department order is **REVERSED AND REMANDED**.

DECISION

26 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
27 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order
28 issued on June 5, 2007, in which the industrial appeals judge affirmed the order of the Department
29 dated April 7, 2006.

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

32 The only issue raised by this appeal is the timeliness of Mr. Gravlee's Protest and Request
33 for Reconsideration to the Department order dated April 12, 2005. This issue and the facts relevant
34 to it are not in dispute and are appropriately set forth in the industrial appeals judge's Proposed
35 Decision and Order. We have granted review because our conclusion regarding the timeliness of
36 filling of the Protest and Request for Reconsideration is different than that reached in the Proposed
37 Decision and Order.

1 Mr. Gravlee, who was born on September 14, 1988, was 16 years old when he suffered the
2 industrial injury. As his birth date was provided in the application for benefits, the Department was
3 aware that he was minor when injured. In light of the Department's knowledge of Mr. Gravlee's
4 minority status, a "liberal interpretation" of RCW 51.04.070 and RCW 51.52.050 establishes that the
5 order dated April 12, 2005, was not communicated to an "affected party" and that the Protest and
6 Request for Reconsideration was timely.
7
8

9
10 RCW 51.52.050 set out the requirements for "communication" of Department orders to "the
11 worker, beneficiary, employer, or other person aggrieved thereby" The record shows that the
12 Department did "communicate" the April 12, 2005 order to Mr. Gravlee at his "last known address
13 as shown by the records of the Department." The Department did not "communicate" the order to
14 Mr. Gravlee's custodial parent, Laurie A. Bean, his mother. While the provisions of RCW 51.04.070
15 deem Mr. Gravlee "sui juris for the purpose of this title, . . ." it also requires that all "disability
16 payments" be made to the minor's "parent . . . having legal custody." The requirement that
17 "disability payments" be made to a parent recognizes the role of Mr. Gravlee's custodial parent,
18 Ms. Bean, who was under a legal obligation to provide support and care. While the Department did
19 not make a "disability payment" in its April 12, 2005 order, it did determine the amount that would
20 be paid to the injured worker in the event that he was determined to be temporarily totally disabled
21 or permanently totally disabled. Ms. Bean, as Mr. Gravlee's custodial parent, definitely had an
22 interest in seeing that the order in which the Department set her son's wage rate was correct. She
23 was "affected" by this order as it had a direct impact on her obligation to provide care and support,
24 and upon her minor son's ability to receive the benefits to which he was entitled.
25
26

27
28 Ms. Bean, Mr. Gravlee's custodial parent, was an "affected party" and the Department order
29 dated April 12, 2005, was not "communicated" to her as required by RCW 51.52.050. Accordingly,
30 after consideration of the Proposed Decision and Order, the claimant's Petition for Review filed
31 thereto, the Department's Reply to Claimant's Petition for Review, and a careful review of the entire
32 record before us, we are persuaded that the Department order is incorrect and must be reversed.
33 The Protest and Request for Reconsideration filed on November 22, 2005, to the Department order
34 dated April 12, 2005, was timely filed.
35
36
37
38
39
40
41
42
43
44
45
46
47

1 **FINDINGS OF FACT**

- 2
3 1. On March 30, 2005, the Department of Labor and Industries received an
4 Application for Benefits in which the claimant, Andrew J. Gravlee,
5 asserts that he sustained an industrial injury on March 22, 2005, in the
6 course of his employment with Diamond Star Inc.

7
8 On April 1, 2005, the Department issued an order in which it allowed the
9 claim for an industrial injury, and determined that the claimant was
10 entitled to receive medical treatment and other benefits as appropriate
11 under the industrial insurance laws.

12
13 On April 12, 2005, the Department issued an order in which it set the
14 worker's wage taking into account the following: Wage for job of injury
15 based on \$10 per hour, 4 hours per day, 5 days per week, equals
16 \$1,652.64, with no additional wages in the form of health care benefits,
17 tips, bonuses, overtime, or housing/board/fuel, for a worker's total gross
18 wage of \$880 per month, and the worker's marital status eligibility on the
19 date of this order is single with 0 dependents.

20
21 On November 22, 2005, the claimant filed with the Department of Labor
22 and Industries a Protest and Request for Reconsideration to Department
23 orders in which the Department paid time loss compensation benefits.
24 The November 22, 2005 Protest and Request for Reconsideration
25 constituted a Protest and Request for Reconsideration of the
26 Department order dated April 12, 2005.

27
28 On February 22, 2006, the claimant filed with the Department of Labor
29 and Industries a second Protest and Request for Reconsideration of the
30 Department order dated April 12, 2005.

31
32 On April 7, 2006, the Department issued an order in which it determined
33 that it could not reconsider its order dated April 12, 2005, because the
34 protest was not received within the 60-day time limitation, and that order
35 became final and binding. On May 30, 2006, the claimant filed with the
36 Department a Protest and Request for Reconsideration of the order
37 dated April 7, 2006, which the Department forwarded to the Board of
38 Industrial Insurance Appeals, where it was received on July 7, 2006, as
39 a direct appeal. On July 12, 2006, the Board issued an Order Granting
40 Appeal, assigned it Docket No. 06 16783, and directed that further
41 proceedings be held.

- 42
43 2. At the time of his industrial injury and throughout April 2005, Andrew J.
44 Gravlee was 16 years of age, and resided with his mother, who had
45 legal custody of him, at 510 North Washington Street, Long Beach,
46 Washington.
47

- 1
2 3. The Department order dated April 12, 2005, was communicated to
3 Andrew J. Gravlee, a minor, in the due course of the mails no later than
4 April 15, 2005, but this order was not communicated to Laurie A. Bean,
5 his mother and custodial parent.
6
- 7 4. In its April 12, 2005 order the Department advised the claimant that,
8 "This order becomes final 60 days from the date it is communicated to
9 you unless you do one of the following. You can either file a written
10 request for reconsideration with the Department or file a written appeal
11 with the Board of Industrial Insurance Appeals."
12
- 13 5. No protest or appeal was filed from the April 12, 2005 Department order
14 prior to November 22, 2005.
15
- 16 6. In its April 12, 2005 order the Department determined the amount of
17 Mr. Gravlee's wages to be used in determining the amount of any
18 disability payments to be made under this claim and transmitted to the
19 claimant the basis for any disability payment to be made by the
20 Department under this claim.
21

CONCLUSIONS OF LAW

- 22 1. The Board of Industrial Insurance Appeals has jurisdiction over the
23 parties to and the subject matter of this appeal.
24
- 25 2. The Department order dated April 12, 2005, is an order in which the
26 Department determined the amount of a disability payment within the
27 meaning of RCW 51.04.070. Laurie A. Bean is an affected party with
28 respect to that order within the meaning of RCW 51.04.070 and
29 RCW 51.52.050.
30
- 31 3. The claimant's Protest and Request for Reconsideration to the
32 Department order dated April 12, 2005, filed on November 22, 2005,
33 was timely, as that order had not been communicated to his custodial
34 parent, Laurie A. Bean, within the meaning of RCW 51.52.050.
35
- 36 4. The order of the Department dated April 7, 2006, is incorrect and is
37 reversed. This claim is remanded to the Department with direction to
38
39
40
41
42
43
44
45
46
47

1 reconsider its order dated April 12, 2005; act on the Protest and
2 Request for Reconsideration; and for such further action as may be
3 indicated or authorized by the facts and the law.
4

5 It is **ORDERED**.

6 Dated: November 19, 2007.
7

8 BOARD OF INDUSTRIAL INSURANCE APPEALS
9

10
11
12 s/s _____
13 THOMAS E. EGAN Chairperson
14

15
16
17 s/s _____
18 FRANK E. FENNERTY, JR. Member
19

20
21
22 s/s _____
23 CALHOUN DICKINSON Member
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47