

Masseth, Jacob

CUSTODY OF CHILDREN

Invalid child in custody of state institution (RCW 51.32.010 and RCW 51.32.020)

Under RCW 51.32.010 and .020, compensation could not be paid to the noncustodial worker parent on account of an invalid child in a state institution. The question of whether the state institution having custody of an invalid child should receive compensation on the child's account was left unanswered. ...*In re Jacob Masseth*, BIIA Dec., 07,822, (1957)

Scroll down for order.

1 reduced accordingly. Thereafter, the order here appealed from was entered by the supervisor on
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3 July 25, 1956, superseding the prior order dated July 12, 1956, and providing as follows:

4 **"IT IS ORDERED** that this claim be ordered reopened effective July 23rd
5 1955, that the claimant be adjudged permanently and totally disabled
6 and that he be placed on the pension rolls effective that date and
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8 **"IT IS FURTHER ORDERED** that since three of the claimant's children
9 to-wit Jeanette Hazel, Jean Katherine, and Julia are inmates of the
10 Rainier State School and he was not entitled to compensation on their
11 account under the provisions of Section 51.32.020, RCW that there has
12 been an overpayment on account of these children amounting to
13 \$865.30 and this amount should be charged against the pension reserve
14 and the monthly pension reserve and the monthly pension reduced
15 accordingly and
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17 **"IT IS FURTHER ORDERED** that the \$2,443.00 paid as permanent
18 partial disability in August of 1955 be applied against the pension
19 reserve and the monthly pension reduced accordingly."
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21 In his notice of appeal from the above-quoted order filed on September 6, 1956, the claimant,
22 in substance, alleged that the supervisor was in error in (1) establishing the amount of his monthly
23 pension payments on the basis of two minor children, rather than five, and (2) deducting the alleged
24 overpayment of time-loss compensation from the pension reserve because the claimant's right to
25 such payment "is res judicata, no appeal having been taken from the time loss orders entered" and
26 the deduction was improper "on the merits" because the reason assigned for the deduction was not
27 "a legally sufficient reason under the workmen's compensation act."
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31 There is no dispute as to the material facts in this case. Three minor children of the claimant
32 (Jeanette, Julia and Jeanne) were found to be mentally deficient, requiring "custodial care,
33 education and protection" and were ordered confined in the Rainier State School at Buckley,
34 Washington, by three orders of the Superior Court for King County, all dated February 23, 1949.
35 For reasons which do not appear in the record, Julia and Jeanne were not confined until March 10,
36 1953. The date of Jeanette's confinement does not clearly appear in the record, but when asked if
37 it were not a fact that she was confined on September 18, 1952, the claimant admitted that
38 "Jeanette went a little earlier, but I don't know the date."
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42 In filling out his report of accident on January 31, 1953, the claimant listed the names of five
43 children, including Jeanette, Julia and Jeanne under the heading in the form labeled: "GIVE
44 NAMES AND BIRTH DATES OF YOUR CHILDREN UNDER 18 SUPPORTED BY YOU." It was
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1 stipulated by the parties that claimant was paid time loss compensation commencing three days
2 after his accident to July 22, 1955, on the basis of a workman with a wife and five children and that
3 these payments were made pursuant to written orders issued monthly "which were appealable
4 orders and that no appeal was filed by any party from these orders granting time loss."
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7 The department's order from which this appeal was taken purports to be based on R.C.W.
8 51.32.020, the pertinent portion of which provides that:
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10 "An invalid child, while being supported and cared for in a state
11 institution shall not receive compensation under this chapter."

12 The above-quoted portion of R.C.W. 51.32.020 was taken from Sec. 4 (c) Chapter 310, Laws
13 of 1927. The first paragraph of that sub-section specifies the payments to be made to the widow,
14 invalid widower and children of a workman who dies while totally, permanently disabled as a result
15 of an injury and the second paragraph provides that:
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18 "An invalid child while being supported and cared for in a state institution
19 shall not receive compensation under this act. If any injured workman,
20 or the surviving spouse of an injured workman, shall not have the
21 custody of a minor child for, or on account of, whom payments are
22 required to be made under this section, such payment or payments shall
23 be made to the person having lawful custody of such minor child."
24 (Emphasis added)
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26 Section 4 (b) of the same act provides for total permanent disability, or pension payments
27 and Section 4 (d) for total temporary disability, or time-loss compensation, on the basis, among
28 others, of the number of a workman's children.
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30 In the board's opinion, the first sentence of paragraph two of Section 4 (c), Chapter 310,
31 Laws of 1927, codified under R.C.W. 51.32.020, applies only to payments required to be made
32 under the act to children of a deceased workman and is not applicable to pension or time-loss
33 compensation payments made to a workman "on account of" minor children. The board is further
34 of the opinion that the second sentence of the same paragraph, now codified under R.C.W.
35 51.32.010, is definitely applicable to pension or time-loss compensation payments made to a
36 workman "on account of" minor children and precludes such payments to the workman unless he
37 has the custody of such minor children.
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43 Under the provisions of R.C.W. 72.32.030 the superintendent of Rainier State School is
44 granted ". . .charge, management, and control. . ." of inmates committed to the school. Further,
45 under R.C.W. 72.32.020 that institution is charged with the care, training and employment of
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1 persons so committed. It is noted that the statute pertaining to the operation and control of the
2 school does not employ the term "custody." However, it is clear from the nature of the commitment
3 to the institution and the fact that the children are resident at the school at all times, that the
4 superintendent in fact has all the incidences of physical control over the children and, therefore,
5 their custody. The word custody in its normal use is defined as follows:
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8 "1. A keeping or guarding; care, watch, inspection, for keeping,
9 preservation or security.
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11 "2. Judicial or penal safekeeping; control of a thing or person with such
12 actual or constructive possession as fulfills the purpose of the law or the
13 duty requiring it." (Webster's New International Dictionary 2nd Edition,
14 Unabridged (1951)).
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16 Although there is provision for visitation away from the school, in accordance with that
17 institution's regulations, this would not constitute a transfer of custody from the superintendent at
18 such times in the event such visitation rights were exercised. Further, the 1957 legislature in
19 effecting changes pertaining to the Rainier School specifically provided that the superintendent
20 shall have "custody" of the residents of the school; and defined the term custody as "the right of
21 immediate physical attendance, retention and supervision." (Ch. 102, Secs. 2 and 4, Laws of
22 1957). It does not appear that the new legislation effects any change in the handling of inmates of
23 that institution, and, therefore, can only be characterized as to declaratory of an existing status.
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26 The question of whether or not the department is required, under the provisions of R.C.W.
27 51.32.010, to make payments "for, or on account of" the three minor children in question to the
28 Rainier State School is not before the board on this appeal, but it is clear that the department is
29 precluded under that statute from making such payments to the claimant while he does not have
30 the custody of such children.
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33 The next question to be considered is whether or not the department had the legal right to
34 deduct the amount of time-loss compensation paid to the claimant "for, or on account" of the three
35 minor children in question from his pension reserve and reduce his pension payments accordingly.
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38 It is the well settled law of this state that an order or judgment of the department becomes a
39 complete and final adjudication binding on all parties unless set aside on appeal (or modified or
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2 vacated during the time limited for appeal under R.C.W. 51.52.060) or "unless fraud, or something
3 of like nature, which equity recognizes as sufficient to vacate a judgment has intervened."
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5 Abraham v. Department of Labor and Industries, 178 Wash. 160; Luton v. Department of Labor and
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7 Industries, 183 Wash. 105; LeBire v. Department of Labor and Industries, 14 Wn. (2d) 407; Brakus
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9 v. Department of Labor and Industries, 48 Wn. (2d) 218. Further, in the case of Farley v. Davis, 10
10 Wn. (2d) 62, our supreme court held that fraud sufficient to vacate a judgment or decree must be
11 "extrinsic or collateral to the issues tried in the proceedings which are attacked, or, as sometimes
12 stated, there must have been fraud in procuring the original judgment or decree" and then stated:
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16 "Extrinsic or collateral fraud, justifying equitable relief against a judgment
17 or decree, means some intentional act or conduct by which the
18 prevailing party has prevented the unsuccessful party from having a fair
19 submission of the controversy." (Emphasis added)
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21 Assuming that the claimant's daughter, Jeanette, was confined in the Rainier State School
22 prior to the time the claimant filled out his report of accident (which is not definitely established by
23 the record), his inclusion of her name as a child supported by him is the only affirmative action
24 taken by him which could possibly be considered as a fraudulent misrepresentation. However, it is
25 noted in this connection that, under the law in effect at that time, it was not necessary that a
26 workman be supporting a minor child in order to be entitled to time-loss compensation payments"
27 for or on account of" such child. The only requirement, under the law, was that the workman have
28 the "custody" of such minor children. No representations were made by the claimant with reference
29 to the custody of his children and, assuming that the claimant was not actually "supporting"
30 Jeanette at the time he filed his report of accident, this was wholly immaterial and did not affect his
31 right to time-loss compensation "for, or on account of" her. It cannot be said, therefore, that the
32 time-loss compensation which he received was procured by any fraudulent representation. Further,
33 in the board's opinion, the claimant's mere failure to notify the department that three of his children
34 were committed to a state institution, when the department had never requested any information
35 with respect to the custody of his children, cannot be considered intentional fraud. It would appear
36 that it was the department's responsibility to make such inquiries or investigation as it deemed
37 necessary to determine whether or not the claimant had the custody of his minor children and that
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1 there was no legal obligation on the part of the claimant to volunteer such information, at least in
2 the absence of any showing that he knew that his right to compensation would be affected thereby.

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4 The board concludes, therefore, that that portion of the supervisor's order of July 25, 1956,
5 providing for a deduction from the claimant's pension reserve of the sum of \$865.30 and
6 proportionate reduction of monthly pension payments should be reversed and that said order
7 should in all other respects be sustained.
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10 FINDINGS OF FACT

11 In view of the foregoing and after reviewing the entire record herein, the board finds as
12 follows:
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- 14 1. The claimant, Jacob Masseth, sustained an industrial injury on January
15 30, 1953, while in the employ of Matheny & Bacon at Spokane,
16 Washington. His claim based on that injury was allowed and the
17 claimant was paid time- loss compensation for the period from February
18 3, 1953, to July 22, 1955, on the basis of an injured workman with a wife
19 and five minor children, pursuant to written orders of the department,
20 from which no appeal was taken and which were not modified or
21 vacated within the time limited for appeal.
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- 23 2. The claimant's claim was originally closed on August 24, 1955, with
24 time-loss compensation as paid to July 22, 1955, and permanent
25 partial disability awards of 10% of the amputation value of the left arm
26 so near the shoulder that an artificial arm cannot be worn, 25% of the
27 amputation value of the left leg below the knee and 20% of the
28 maximum allowable for unspecified disabilities. Following an appeal
29 from that order to this board, the board issued an order on May 31,
30 1956, remanding the claim to the department with direction to classify
31 the claimant as totally, permanently disabled and place him on the
32 pension rolls, effective the date time-loss compensation was last
33 terminated.
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- 35 3. On July 25, 1956, the department entered an order placing the claimant
36 on the pension rolls as of July 23, 1955. Said order further recited that
37 three of the claimant's children (Jeanette, Julia and Jeanne) were
38 inmates of the Rainier State School, that the claimant was not entitled
39 to compensation "on their account," that there had been an
40 overpayment "on account of these children" in the sum of \$865.30 and
41 directing that this amount, as well as the sum of \$2,443.00 previously
42 paid as a permanent partial disability award be deducted from the
43 claimant's pension reserve and that his monthly pension payments be
44 reduced accordingly. The claimant filed a notice of appeal from that
45 order with this board on September 6, 1956, and the appeal was
46 granted by a board order, dated September 20, 1956.
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4. Three of the claimant's minor children, (Jeanette, Julia and Jeanne) were found to be mentally deficient and ordered committed to the Rainier State School by order of the superior court for King County, Washington, dated February 23, 1949. Julia and Jeanne were not actually admitted to the school until on or about March 10, 1953, and Jeanette was admitted sometime prior to that date, the exact date not being disclosed by the record. From and after their admittance to the school and at the time of the issuance of the department's order of July 25, 1956, these three minor children of the claimant were under the charge, management and control of the superintendent of the Rainier State School.
 5. The claimant listed the names of five minor children, including Jeanette, Julia and Jeanne, as being dependent on him for support in filling out his report of accident on January 31, 1953.
 6. The claimant was never requested by the department to furnish any information concerning the custody of his minor children.

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CONCLUSIONS OF LAW

22 Based on the foregoing findings of fact, the board concludes:

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1. The board has jurisdiction of the parties and subject matter of this appeal.
 2. The claimant did not have the custody of the minor children, Jeanette, Julia and Jeanne from and after March 10, 1953, within the meaning of R.C.W. 51.32.010 and the superintendent of the Rainier State School has had the lawful custody of said children at all times since said date.
 3. The claimant is not entitled to pension payments on account of the three children above-named as long as they are in the custody of the Superintendent of the Rainier State School.
 4. The claimant did not obtain payment of time-loss compensation, or any part thereof, prior to July 22, 1956, by intentional fraud or misrepresentation of any material fact.
 5. It is res judicata by virtue of the series of orders pursuant to which the claimant's time-loss compensation prior to July 22, 1956, was paid, that the claimant was entitled to such compensation as was paid.
 6. The department had no authority under the law to deduct the alleged overpayment of time-loss compensation in the sum of \$865.30 from the claimant's pension reserve and reduce his pension payments accordingly.

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ORDER

Now, therefore, it is hereby **ORDERED** that that portion of the order of the supervisor of industrial insurance issued herein July 25, 1956, deducting the sum of \$865.30 from the claimant's pension reserve be, and the same is hereby, reversed and the claim is remanded to the department with direction to strike that provision from the order. It is further **ORDERED** that the supervisor's order of July 25, 1956, be, and the same is hereby, in all other respects sustained.

Dated this 15th day of October, 1957.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/ _____
J. HARRIS LYNCH Chairman

/s/ _____
ARTHUR BORCHER Member

/s/ _____
RICHARD E. CALLAHAN Member