

Svicarovich, John

APPLICATION TO REOPEN CLAIM

Accident report treated as application to reopen

An accident report may constitute an application to reopen for aggravation of condition where the Department has not been misled or prejudiced. The worker should not be penalized for using the wrong form in applying for additional benefits. ...*In re John Svicarovich, BIIA Dec., 08,205 (1957)* [Editor's Note: See also *In re Stanley Lee, BIIA Dec., 09,425 (1959)* **APPLICATION FOR BENEFITS.**]

Scroll down for order.

1 the claimant's attorney, Mr. James J. Solan, moved the board for an order dismissing the claimant's
2 appeal on claim no. C-282933, due to the fact that the claimant wished to initiate an application to
3 reopen claim no. C-144976 on the ground of aggravation. Accordingly, on May 28, 1956, this
4 board entered an order dismissing the claimant's appeal on claim no. C-282933. On July 12, 1956,
5 the claimant filed an application to reopen the above-numbered claim (C-144976) on the ground of
6 aggravation of condition. On September 25, 1956, the supervisor entered an order reopening said
7 claim for authorized treatment and action as indicated, effective July 12, 1956. On November 15,
8 1956, the claimant appealed from the supervisor's order of September 25, 1956, and on December
9 13, 1956, this board granted the appeal.

10 A pre-hearing conference was held in connection with this appeal in Aberdeen, Washington,
11 on March 13, 1957, pursuant to R.C.W. 51.52.095, and sec. 5.3, Rules of Procedure of this board.
12 At that time the claimant was present in person and represented by his attorney, Mr. James J.
13 Solan. The employer, Wagar Lumber Company, was represented by its attorney, Mr. Clark W.
14 Adams, and the department of labor and industries was represented by Mr. Stanton P. Sender,
15 assistant attorney general. At that conference, Mr. Solan stated that it was the claimant's position
16 on this appeal that the injury alleged by the claimant in his accident report filed under claim no. C-
17 282933 on December 1, 1955, was in fact an aggravation of his old injury of May 19, 1954, and
18 for that reason the accident report filed December 1, 1955, should be construed as an application to
19 reopen claim no. C-144976. Therefore, Mr. Solan contended that when the supervisor did reopen
20 this claim (C-144976) in July, 1956, the effective reopening date should have been November 7,
21 1955, instead of July 12, 1956. (November 7, 1955, has been determined as the date of alleged
22 injury covered by claim no. C-282933 instead of November 6, 1955). In support of his contention,
23 Mr. Solan produced a letter dated February 6, 1957, from the claimant's attending physician, Dr.
24 Edwin F. Leibold, of Forks, Washington. By stipulation of the parties at the conference on March
25 13, 1957, this letter was incorporated in the record as exhibit 1. It was further stipulated between
26 the parties, through their respective counsel, that this matter should be submitted to the board for
27 its decision on the basis of Exhibit one and the department file on claim no. C-144976 and claim no.
28 C-282933.

29 We see no point in discussing the evidence in the record on the question of whether the
30 acute condition suffered by the claimant on November 7, 1955, was due to a new injury on that date
31 or was an aggravation of the condition resulting from his injury of May 19, 1954. The department
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1 has determined that it was an aggravation of the old injury. The claimant did not appeal from
2 that portion of the department's order of September 25, 1956, reopening his claim based on his
3 1954 injury, but only from that portion of the order fixing July 12, 1956, as the effective date of the
4 reopening. Therefore, inasmuch as there was no appeal from the department's order by the
5 employer, the board is limited to consideration only of the issue of the proper effective date of
6 the reopening. Brakus v. Department of Labor and Industries, 48 Wn. (2d) 218. Resolution of this
7 issue hinges on the question of whether or not the report of accident filed by the claimant on
8 December 3, 1955, based on his purported "injury" of November 7, 1955, may properly be
9 considered and treated as an application to reopen his claim based on his 1954 injury.

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11 In the case of Georgia Pacific Plywood Company v. Department of Labor and Industries, 47
12 Wn. (2d) 893, which involved a question of whether a skin condition was due to an aggravation of a
13 condition previously recognized and allowed as an occupational disease or to a new exposure while
14 working for a different employer, our supreme court stated:

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16 "It was never intended that, when a workman's right to the benefits of
17 the workmen's compensation act on one basis or another is clear, he
18 should have to make a binding election between the possible causes of
19 his condition..."

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21 In the case of Kraleovich v. Department of Labor and Industries, 23 Wn. (2d) 640, the claimant
22 had filed an application to reopen his claim on the ground of aggravation of his condition within the
23 time limited for appeal from an order closing his claim with no disability award and the department
24 contended that the claimant was limited to a claim for aggravation only. In answering this
25 contention, the court stated:

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27 "This contention is without merit. It appears that the department was
28 nowise misled, nor did it suffer damage because of the matters
29 referred to. No technical advantage may now be taken of the fact that,
30 in asking that her claim be reopened, claimant used an inappropriate
31 form..."

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33 In examining the record in this case to determine whether or not the department was misled
34 or prejudiced in any way because the claimant filed a report of accident based on a new injury
35 rather than an application to reopen his claim based on his 1954 injury, it is noted that although the
36 claimant made no mention of his 1954 back injury in his report of accident filed on December 1,
37 1955, it was accompanied by a letter from the employer stating that the claimant apparently
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1 aggravated an old injury and requesting an investigation. The department then conducted a
2 complete investigation which disclosed that the claimant had suffered a prior back injury "evidenced
3 under claim C-144976" that the claimant stated that he had trouble with his back since then, "but
4 nothing like what occurred on the evening of November 7th, 1955," that the employer contended
5 the claimant's condition was an aggravation of his old injury and that the claimant's attending
6 physician, Dr. Leibold, felt that the attack on November 7, 1955, was a new injury, but that "this
7 could be an aggravation of a previous injury." (In exhibit one, Dr. Leibold states that the claimant's
8 condition "was definitely an aggravation of his old condition, the previous injury to his back of May,
9 1954.")

10 As heretofore stated, it is now conceded that the claimant did suffer an aggravation of his
11 injury of May 19, 1954, in November, 1955, rather than a new injury. The question of whether or
12 not an incident such as that described on the claimant's report of accident filed on December 1,
13 1955, constitutes a "traumatic happening" and a separate and distinct injury or an aggravation of an
14 old injury is not an easy one to determine and we do not think that the claimant should be penalized
15 by the fact that he (or his doctor) used the wrong form in applying for relief. The department's
16 investigation following receipt of the claimant's report of accident disclosed adequate evidence on
17 which to base a determination that the claimant's acute back condition in November, 1955, was due
18 to an aggravation of the condition resulting from his 1954 injury and, in the board's opinion,
19 therefore, the report of accident filed on December 1, 1955, should properly have been treated as
20 an application to reopen the claim based on that injury, which had been closed on September 7,
21 1955.

22 The only remaining issue to be considered is with reference to the claimant's contention that
23 he is entitled to time-loss compensation and payment of medical expenses from November 7, 1955.

24 R.C.W. 51.28.040 provides that:

25 "If change of circumstances warrants an increase or rearrangement of
26 compensation, written application shall be made therefor. No increase
27 or rearrangement shall be operative for any period prior to application
28 therefor."

29 In the case of Fuller v. Department of labor and Industries, 169 Wash. 362, our supreme
30 court held that the above quoted statute precluded payment of monthly compensation to a workman
31 for a period prior to the date he filed an application to reopen his claim on the ground of aggravation
32 of his condition. Construing the report of accident filed by the claimant in this case on December 1,
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1 1955, as an application to reopen the claim based on his 1954 injury as requested by the claimant,
2 he still would not be entitled to time-loss compensation, in the board's opinion, for any period prior
3 to December 1, 1955, under the rule laid down in the Fuller case. However, the question of
4 payment of medical expenses presents a somewhat different problem.
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7 R.C.W. 51.32.010 provides that:

8 "Each workman injured in the course of his employment, or his family or
9 dependents in case of death of the workman, shall receive out of the
10 accident fund compensation in accordance with this chapter,..."
11 (Emphasis supplied)
12

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14 R.C.W. 51.36.010 provides in part that:

15 "Upon the occurrence of any injury to a workman entitled to
16 compensation under the provisions of this title, he shall receive, in
17 addition to such compensation and out of the medical aid fund,
18 proper and necessary medical and surgical services,..." (Emphasis
19 added).
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21 The section of the act now codified under R.C.W. 51.28.040 was part of the original
22 workmen's compensation act. (sec. 12, ch. 74, Laws of 1911, Page 364). No provision was made
23 in the original act for medical aid. The first medical aid act was passed by the legislature in 1917
24 and in so doing the legislature clearly distinguished (as indicated by the section of the act last
25 above quoted) between payments for medical expenses which were to be paid out of the medical
26 aid fund and the "compensation" to which a workman was entitled under the workmen's
27 compensation act, which is paid out of the accident fund, and specifically stated that medical
28 services were to be furnished in addition to the "compensation" provided for by the act. It seems
29 clear to the board, therefore, that the "compensation" referred to in R.C.W. 51.28.040 does not
30 include payment of medical expenses which are payable out of the medical aid fund. Obviously,
31 the legislature could not have intended this section of the act to apply to payment of medical
32 expenses when it was originally enacted as there was no provision for medical aid in the original
33 act.
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35 It is undisputed in this case that the claimant suffered an acute exacerbation of his condition
36 resulting from his injury of May 19, 1954, on or about November 7, 1955, necessitating medical
37 attention, which was provided commencing November 8, 1955, and it would appear therefore that
38 such medical expenses should be paid unless the department is, in fact, precluded from doing so
39 by law.
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1 As heretofore pointed out, R.C.W. 51.28.040 is applicable only to "compensation" payable
2 out of the accident fund and, inasmuch as there is no statutory bar that we know of to payment
3 of medical expenses incurred for treatment necessitated by an aggravation of a condition due to an
4 injury prior to the filing of an application to reopen a claim, the board is of the opinion that
5 necessary and proper medical expenses incurred by the claimant in this case subsequent to
6 November 7, 1955, should be paid by the department, but that no time-loss compensation should
7 be paid for any period prior to December 1, 1955
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12 FINDINGS OF FACT

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14 In view of the foregoing and after reviewing the entire record herein, the board finds as
15 follows:
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- 17 1. The claimant, John L. Svicarovich, filed a report of accident with the
18 department of labor and industries on June 6, 1954, alleging that on
19 May 19, 1954, he suffered a back strain while lifting lumber in the
20 course of his employment with the Wagar Lumber Company of
21 Aberdeen, Washington. His claim was allowed, medical treatment
22 was provided, time-loss compensation was paid and on September 7,
23 1955, the supervisor of industrial insurance issued an order closing the
24 claim with a permanent partial disability award of 5% of the
25 maximum allowable for unspecified disabilities. On December 1, 1955,
26 the claimant filed a report of accident with the department of labor and
27 industries alleging that he suffered an acute low back condition as a
28 result of an injury described as having occurred after finishing his shift at
29 the National Plywood in Beaver, Washington, on November 6, 1955,
30 when he stepped across a puddle of water outside the plant door and
31 felt a pain in his right side. This claim was assigned claim no. C-282933
32 by the department and was ultimately rejected by the supervisor's order
33 of February 6, 1956, on the ground that at the time of injury the claimant
34 was not in the course of his employment. On April 5, 1956, the claimant
35 appealed from that rejection order and on April 26, 1956, this board
36 granted the appeal. At a pre-hearing conference held in connection
37 with that appeal in Aberdeen, Washington, on May 23, 1956, the
38 claimant's attorney, Mr. James J. Solan, moved the board for an order
39 dismissing the claimant's appeal on claim no. C-282933, due to the fact
40 that the claimant wished to initiate an application to reopen claim no. C-
41 144976 on the ground of aggravation. Accordingly, on May 28, 1956,
42 this board entered an order dismissing the claimant's appeal on
43 claim no. C-282933. On July 12, 1956, the claimant filed an application
44 to reopen the above-numbered claim (C-144976) on the ground of
45 aggravation of condition. On September 25, 1956, the supervisor
46 entered an order reopening said claim for authorized treatment and
47 action as indicated, effective July 12, 1956. On November 15, 1956, the

1 claimant appealed from the supervisor's order of September 25, 1956,
2 and on December 13, 1956, this board granted the appeal.
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- 4 2. The workman suffered a sudden and acute aggravation of his back
5 condition resulting from his injury of May 19, 1954, on November 7,
6 1955, which necessitated medical treatment, and the department's
7 investigation in connection with the report of accident "filed by the
8 claimant on December 1, 1955, developed sufficient information on
9 which to base a determination that the claimant's condition was due to
10 an aggravation of his May 19, 1954, injury rather than to a new injury.
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12 CONCLUSIONS OF LAW

13 Based on the foregoing findings of fact, the board concludes:
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- 15 1. The report of "accident" filed by the claimant on December 1, 1955,
16 should as a matter of law be considered and treated as an application to
17 reopen claim no. C-144976.
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19 2. Such medical expenses incurred by the workman subsequent to
20 November 7, 1955, for treatment of his back condition, as may be
21 determined by the department of labor and industries to be proper and
22 necessary according to the law and the rules and regulations of the
23 department should be paid for out of the medical aid fund.
24
25 3. The claimant should be paid time-loss compensation for such period of
26 time subsequent to December 1, 1955, as the department may
27 determine that he was totally, temporarily disabled due to the
28 aggravation of his condition resulting from his injury of May 19, 1954.
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30 ORDER

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32 Now, therefore, it is hereby **ORDERED** that the order of the supervisor of industrial insurance
33 be, and the same is hereby, modified insofar as it purports to limit the benefits to which the claimant
34 is entitled to the period subsequent to July 12, 1956, and the above-numbered claim is remanded to
35 the department of labor and industries with direction to pay such medical expenses as were
36 incurred by the claimant for treatment of his back condition subsequent to November 7, 1955, and
37 as may be determined by the department to be necessary and proper in accordance with the rules
38 and regulations of the department, to pay the claimant time-loss compensation for such period of
39 time subsequent to December 1, 1955, as the department may determine that he was totally,
40 temporarily disabled due to the aggravation of his condition resulting from his injury of May 19,
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1 1954, and to take such further action in connection with this claim as may be authorized or required
2 by law.
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4 Dated this 22nd day of April, 1957
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6 BOARD OF INDUSTRIAL INSURANCE APPEALS
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11 /s/
12 J. HARRIS LYNCH Chairman
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16 /s/
17 ARTHUR BORCHER Member
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21 /s/
22 A. W. ENGSTROM Member
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