

## **Aldridge, Colleen**

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### **APPEALABLE ORDERS**

#### **Informal letters**

An electronic secure message sent by the Department to a worker is considered a writing and meets the requirements of RCW 51.52.050 and RCW 51.52.060 for appeal to the Board. ....*In re Colleen Aldridge*, BIIA Dec., 10 15903 (2011)

Scroll down for order.

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

1 **IN RE: COLLEEN M. ALDRIDGE** ) **DOCKET NO. 10 15903**  
2 )  
3 **CLAIM NO. AM-48151** ) **ORDER VACATING PROPOSED DECISION**  
4 ) **AND ORDER AND REMANDING THE APPEAL**  
5 ) **FOR FURTHER PROCEEDINGS**

5 **APPEARANCES:**

6 Claimant, Colleen M. Aldridge, Pro Se, and by  
7 Michael W. Aldridge, Lay Representative

8 Employer, Department of Social & Health Services,  
9 None

10 Department of Labor and Industries, by  
11 The Office of the Attorney General, per  
12 Lynette Weatherby Teague, Assistant

13 The claimant, Colleen M. Aldridge, filed an appeal with the Board of Industrial Insurance  
14 Appeals on May 19, 2010, from an electronic "Secure Message" of the Department of Labor and  
15 Industries dated May 19, 2010. In this electronic message, the Department denied Ms. Aldridge's  
16 request for payment of provisional time loss compensation benefits. The appeal is **REMANDED**  
17 **FOR FURTHER PROCEEDINGS.**

18 **PROCEDURAL AND EVIDENTIARY MATTERS**

19 On November 10, 2010, the industrial appeals judge issued a Proposed Decision and Order  
20 in which the industrial appeals judge dismissed this appeal based on a determination that the Board  
21 of Industrial Insurance Appeals lacks subject matter jurisdiction. The claimant, Colleen M. Aldridge,  
22 filed a timely Petition for Review of the Proposed Decision and Order. This matter is before the  
23 Board for review and decision as provided by RCW 51.52.104 and RCW 51.52.106.

24 The Board has reviewed the evidentiary and procedural rulings. For reasons further  
25 explained herein, we disagree with the industrial appeals judge's determination that the Board lacks  
26 subject matter jurisdiction in this appeal. Otherwise, we find that no prejudicial error was committed  
27 by the evidentiary and procedural rulings and affirm the rulings.

28 We have also considered the contention, made on behalf of Ms. Aldridge during the  
29 present stage of proceedings, that our industrial appeals judge should have disqualified herself  
30 on the grounds that her continued involvement in this appeal case violated the doctrine  
31 that courts should avoid even the appearance of partiality (the "appearance of fairness doctrine").  
32

1 See, for example, *Zehring v. Bellevue*, 99 Wn.2d 488 (1983); *Hill v. Department of Labor & Indus.*,  
2 90 Wn.2d 276 (1978); and, *Swift v. Island County*, 87 Wn.2d 348 (1976). The facts alleged, even if  
3 shown to be correct, are not of a nature such that a disinterested person should reasonably believe  
4 that partiality may exist. Recusal was not required.

### 5 DECISION

6 The issue immediately before us is whether the Board of Industrial Insurance Appeals has  
7 jurisdiction in the present appeal. This issue arises from the following circumstances. The  
8 Department of Labor and Industries rejected Colleen M. Aldridge's claim by order dated April 20,  
9 2010. The Department, on May 3, 2010, issued an order in which it indicated that it was  
10 reconsidering the April 20, 2010 order and would issue a new order after further review.  
11 Ms. Aldridge sent the Department an electronic "Secure Message" on May 10, 2010, in which she  
12 stated that her doctor had taken her off work for thirty to sixty days effective immediately and further  
13 stated, "Pease begin paying provisional time-loss compensation." A Department claim manager  
14 responded by "Secure Message" on May 19, 2010: "Cannot pay tl at this time, your claim is in  
15 rejected status." On May 19, 2010, Ms. Aldridge electronically filed an appeal of the Department's  
16 May 19, 2010 "Secure Message" with the Board of Industrial Insurance through means provided on  
17 the Board website. The Department, through its claims consultant, requested that the Board deny  
18 the appeal on grounds that Ms. Aldridge's appeal is not an appeal of a final decision made by the  
19 Department. The claims consultant asserted that the final decision must pertain to allowing or  
20 rejecting the claim and not be a reply to a "Secure Message." The Board nevertheless issued an  
21 Order Granting Appeal on June 18, 2010.

22 The Department's "Secure Message," directed to Ms. Aldridge on May 19, 2010, is an  
23 appealable determination of the Department subject to appeal within the meaning of  
24 RCW 51.52.050 and .060. The determination is in writing and appears from our review of  
25 jurisdictional facts to be the Department's final determination on the narrow matter of whether or not  
26 the Department would pay time loss compensation benefits **on a provisional basis** until the  
27 Department made a further determination of whether Ms. Aldridge's claim should be allowed.

28 To be subject to appeal, a Department determination only needs to be in writing and  
29 considered final on the matter determined. The written determination may still be subject to appeal  
30 even though the written determination does not sufficiently meet the statutory requirement of  
31 RCW 51.52.050 necessary to give the determination binding, *res judicata* effect as against an  
32 aggrieved party who fails to protest or appeal the determination. See, *In re Lucian Saltz*,

1 BIIA Dec., 92 4309 (1993); *In re Ryan Lowry*, BIIA Dec., 91 C061 (1991); *In re Maid-For-You*, BIIA  
2 Dec., 88 4843 (1990); and, *In re Kerry Kemery*, BIIA Dec., 62,634 (1983). Here, the "Secure  
3 Message" communicated the Department's determination regarding provisional time loss  
4 compensation benefits to an aggrieved party, Ms. Aldridge, even though the determination was not  
5 communicated to other potentially affected parties, such as the employer, as required by statute in  
6 order to bind the other parties to the Department's determination. We note that the Board did notify  
7 Ms. Aldridge's employer of proceedings on the appeal.

8 We have previously held that the Department's determination of the rate of time loss  
9 compensation benefits or refusal to pay time loss compensation benefits is subject to review by the  
10 Board even though the Department characterized its determinations as temporary. *In re Tony T.*  
11 *Perry*, BIIA Dec., 03 19142 (2004), *In re Robert Uerling*, BIIA Dec., 99 17854 (1999) and *In re*  
12 *Louise Favaloro*, BIIA Dec., 90 5892 (1990). We note here that the Department's April 20, 2010  
13 order, in which it rejected Ms. Aldridge's claim, remained in abeyance at that time. The  
14 Department's written "Secure Message" response informed Ms. Aldridge that the Department would  
15 not pay "**provisional**" time loss compensation benefits because the claim was still in rejected  
16 status.

17 We determine that as provided by RCW 51.52.060, Ms. Aldridge had, in the circumstances  
18 of this case, the right to raise before this Board the question of whether the Department was correct  
19 or incorrect on the narrow issue of whether the Department was required to pay **provisional** time  
20 loss compensation while the claim rejection order was in abeyance.

21 The Proposed Decision and Order of November 10, 2010, is vacated. This order vacating is  
22 not a final Decision and Order of the Board within the meaning of RCW 51.52.110. Further, we  
23 make no determination herein as to whether the facts and the law required the Department of Labor  
24 and Industries to provide Ms. Aldridge time loss compensation benefits on a provisional basis while  
25 a Department order rejecting Ms. Aldridge's claim was held in abeyance.

26 This appeal is remanded to the hearings process, as provided by WAC 263-12-145(4), for  
27 further proceedings as indicated by this order. Unless the matter is settled or dismissed, the  
28 industrial appeals judge will issue a new Proposed Decision and Order. The new order will contain  
29 findings and conclusions as to each contested issue of fact and law. Any party aggrieved by the  
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31  
32

1 new Proposed Decision and Order may petition the Board for review, as provided by  
2 RCW 51.52.104.

3 Dated: February 16, 2011.

4 BOARD OF INDUSTRIAL INSURANCE APPEALS

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7 /s/ \_\_\_\_\_  
8 DAVID E. THREEDY Chairperson

9  
10 /s/ \_\_\_\_\_  
11 FRANK E. FENNERTY, JR. Member

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13 /s/ \_\_\_\_\_  
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