

Whiteside, H.B.

TIME-LOSS COMPENSATION (RCW 51.32.090)

Wage continuation precludes time-loss compensation (RCW 51.32.090(6))

Sick leave pay received by a city employee pursuant to a municipal ordinance which provides that a person in sick leave status shall receive his "regular salary," precludes the concurrent payment of time-loss compensation. ...*In re H.B. Whiteside*, BIIA Dec., 17,144 (1962)

Scroll down for order.

1 "Should a workman suffer a temporary total disability and should his
2 employer at the time of the injury continue to pay him the wages which
3 he was earning at the time of such injury, such workman shall not
4 receive any payment provided in subsection (1) of this section from the
5 accident fund during the period his employer shall so pay such wages."
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7 The claimant's salary during the period in question was paid to the claimant pursuant to a resolution
8 (No. 563) by the City Council of the City of Longview, which provides, in part, (Sec. 6) that
9 "Employees of the City of Longview, Washington, who have accumulated sick leave may be
10 permitted to remain away from their employment during such time as they may be unable to
11 properly perform their job, due to illness or physical disability, for as many days as they have
12 accumulated as sick leave, without loss of compensation", and further, (Sec. 9) that "whenever a
13 request for sick leave is approved, the employee of the City of Longview, Washington, who was
14 absent from his employment and whose request for sick leave was approved, shall receive his
15 regular salary for such time as he was absent from his employment." (Emphasis added) Although
16 an employee may accumulate up to ninety days sick leave under the resolution, unlike accumulated
17 vacation leave, he does not receive compensation therefor upon termination.
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19 It is apparent, therefore, that the City of Longview continued to pay the claimant his regular
20 salary during the period in issue and that such payments were not, as contended by the claimant's
21 counsel, simply benefits in the same category as benefits paid under a private health and accident
22 insurance policy. The statute heretofore quoted, by its express terms is applicable only where the
23 employer continues to pay an employee his regular salary or wages during a period of total
24 temporary disability and has no application to benefits paid the employee from any other source.
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26 The language of the statute in question is plain and unambiguous and, therefore, not subject
27 to construction and interpretation. Lane v. Department of Labor and Industries, 21 Wn. (2d) 420.
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29 The statute specifically provides that no time-loss compensation shall be paid to a workman
30 for any period during which his employer continues to pay him the wages he was earning at the
31 time of his injury. Such wages during a period of total disability would necessarily have to be paid
32 either as a gratuity or pursuant to a right arising out of the contract of employment. No exception
33 was made for payment of wages in the latter category (which presumably, would be a more
34 common occurrence than payment of wages as a gratuity) and there would appear to be no sound
35 reason for such an exception.
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1 To interpret the statute in accordance with the claimant's contention that it is not applicable to
2 the instant case because the salary he received while on sick leave "was paid to him based on his
3 tenure as a city employee and was not money derived from his personal labor" would make it
4 completely meaningless. Obviously, under such an interpretation, no case would ever come within
5 the terms of the statute because if a workman is paid wages for his personal labor, he would not be
6 totally, temporarily disabled and entitled to time-loss compensation in any event. It is a universal
7 rule of statutory construction that "it is the duty of the courts to give such construction to the
8 language of a statute as well make it purposeful and effective, rather than futile and meaningless."
9 Denning v. Quist, 172 Wash. 83.

10 Finally, it is noted in the instant case that payment of an employee's salary during a period of
11 disability, under the resolution in question, was not automatic, but only on request, or application by
12 the employee. The argument could not, therefore, be advanced that the claimant lost his
13 accumulated sick leave which he otherwise could have used during periods of illness or disability
14 not due to an industrial injury as there was no requirement that he apply for sick leave while
15 incapacitated due to his injury.

16 We conclude, therefore, that the claimant was not entitled to time-loss compensation during
17 the period in issue and that the supervisor's orders of December 29, 1961, and January 17, 1962,
18 should be sustained.

29 **FINDINGS OF FACT**

30 After reviewing the entire record herein, the board finds as follows:

- 31 1. On August 8, 1958, the claimant, H. B. Whiteside, sustained an injury in
32 the course of his employment as pound master for the City of Longview
33 when a horse which he was exercising fell on him. The claim based
34 thereon was allowed, medical treatment provided, time-loss
35 compensation paid; and on June 8, 1959, the supervisor of industrial
36 insurance issued an order closing the claim with a permanent partial
37 disability award of 20% of the maximum allowable for unspecified
38 disabilities. The claimant appealed to this board on July 31, 1959, and
39 on November 21, 1960, the board issued an order remanding the claim
40 to the department of labor and industries with direction to reopen the
41 claim to pay the claimant an additional permanent partial disability
42 award of 10% of the maximum allowable for unspecified disabilities, and
43 thereupon to close the claim. This additional award was paid pursuant
44 to an order of the supervisor dated January 5, 1961.

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2. On March 28, 1961, the claimant filed an application to reopen his claim for aggravation of condition and on April 18, 1961, the supervisor entered an order denying his application. On May 5, 1961, the claimant appealed to this board, but on May 31, 1961, the supervisor issued an order holding the order of April 18, 1961, in abeyance pending further investigation. Consequently, the appeal was denied by a board order dated June 1, 1961. On November 21, 1961, the supervisor issued an order setting aside his order of April 18, 1961, and reopening the claim effective March 26, 1961, for treatment only, and effective March 28, 1961, for authorized treatment and further action as indicated.
 3. On December 6, 1961, the supervisor entered an order awarding the claimant time-loss compensation for the period from August 2, 1961, to December 2, 1961, in the amount of \$936.00. After a protest from the employer, the supervisor issued a further order on December 29, 1961, awarding time-loss for the period October 8, 1961, to December 8, 1961, in the amount of \$468.00 "less previous award...\$936.00", leaving a "balance of overpayment \$468.00". On January 17, 1962, the supervisor issued a further order providing for the payment of time-loss compensation for the period December 8, 1961, to January 8, 1962, in the amount of \$234.00, "less partial overpayment previous award...\$234.00". On January 31, 1962, the claimant appealed to this board from the orders of December 29, 1961, and January 17, 1962, alleging that he was entitled to time-loss compensation for the entire period subsequent to August 2, 1961. On February 15, 1962, the board granted the appeal.
 4. The claimant was unable to work between August 2, 1961, and October 7, 1961, as the result of conditions related to the industrial injury of August 8, 1958.
 5. The claimant's employer continued to pay the claimant's regular salary for the period from August 2, 1961, to October 7, 1961, pursuant to a resolution of the City of Longview, Washington, providing that employees may accumulate sick leave of one day for each calendar month of continuous employment and authorizing payment, on approval of a request therefor, if an employee's "regular salary" during periods he is unable to perform his work due to illness or physical disability not in excess of the amount of accumulated sick leave.

CONCLUSIONS OF LAW

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

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1. This board has jurisdiction of the parties and subject matter of this appeal.
 2. The claimant was not entitled to time-loss compensation for the period from August 2, 1961, to October 7, 1961, under the provisions of R.C.W. 51.32.090 (5).

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ORDER

Now, therefore, it is hereby ORDERED that the supervisor's orders of December 29, 1961, and January 17, 1962, be, and the same are hereby, sustained.

Dated this 31st day of October, 1962.

BOARD OF INDUSTRIAL INSURANCE APPEAL

/s/
J. HARRIS LYNCH Chairman

/s/
R. H. POWELL Member

/s/
HAROLD J. PETRIE Member