

Mauney, Keri

SCOPE OF REVIEW

Closing order

Where a self-insured employer cross appeals from a closing order, the employer cannot seek an overpayment order for past, unprotested orders that paid time-loss compensation without following the overpayment rules in RCW 51.32.240. If a self-insured employer believes it overpaid benefits due to the reasons set forth in RCW 51.32.240, it must petition for repayment within one year of making any such payment. **...*In re Keri Mauney*, BIIA Dec., 19 20581 (2022)** [*Editor's Note*: The Board's decision was appealed to superior court under Snohomish County 22-2-0498-31.]

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

IN RE: KERI P. MAUNEY) **DOCKET NOS. 19 20581 & 19 22987**
)
CLAIM NO. SZ-62663) **DECISION AND ORDER**

The claimant, Keri P. Mauney, was struck twice in the head by a student while working as a learning support specialist for Edmond School District #15 (ESD). Her claim for benefits was allowed and benefits administered by ESD as the self-insured employer until June 25, 2019, when a Department order ended time-loss compensation as paid through April 29, 2019, and closed the claim without an award for permanent impairment. Ms. Mauney appealed claiming entitlement to back time-loss compensation, further treatment, or alternatively a permanent total disability award. ESD cross-appealed the order closing the claim, arguing the claimant's previously paid time-loss compensation from September 1, 2017, through April 29, 2019, was improper and requesting an overpayment order.

We agree with our industrial appeals judge's determinations in Ms. Mauney's appeal. A preponderance of medical evidence does not support her claim for additional treatment, back time-loss compensation, or a pension. As for the ESD's cross appeal, we agree with our judge that the appeal must be dismissed, but on different grounds.

DISCUSSION

Ms. Mauney's Appeal (Docket No. 19 20581)

In her Petition for Review, Ms. Mauney claims entitlement to time-loss compensation, treatment, and/or a pension. However, she points to no specific evidence in any detail which would support us reweighing or reinterpreting the evidence in her favor. We have found nothing in her petition or the records to show that Ms. Mauney proved her case by a preponderance of the evidence. With respect to *Ms. Mauney's* appeal (*not* ESD's cross-appeal) we believe that our judge properly resolved all issues raised by the appeal, and we leave undisturbed his factual, evidentiary, and legal determinations relating to the appeal.

ESD Cross-Appeal (Docket No. 19 22987)

We granted review solely to address the relief requested by ESD in its cross-appeal. While we are agreement with our judge's ultimate disposition of the appeal, we note the statutory authority he relied on was not yet effective on the date of the order under appeal. We believe the grounds for granting partial judgment in favor of Ms. Mauney lies within our scope of review authority.

We begin with the language of the order on appeal, which states in relevant part:

1 Time-loss benefits are ended as paid through 04/29/19.

2 The medical record shows treatment is no longer necessary and there is no
3 permanent partial disability. The self-insured employer will not pay for
4 medical services or treatment after the closure date.

5 This claim is closed.
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7 In response to the above order, ESD filed a notice of cross appeal wherein "the self-insured employer
8 cross appeals the extent of temporary disability awarded by the Order".¹
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10 It is well established the Board's scope of review is limited to those issues which the
11 Department previously decided.² The plain language of the order *ends* time-loss compensation
12 benefits rather than awarding them. ESD argued that since a claimant may argue entitlement to
13 time-loss compensation payments after the date of a closing order³, the inverse must be true for
14 ESD.⁴ But this theory is neither supported by our case law nor permitted by the statutory scheme
15 governing overpayment assessment and subsequent recoupment. Though ESD argued it was not
16 seeking an overpayment order,⁵ it's clear from the context, briefing,⁶ and oral argument that ESD
17 sought the functional equivalent of an overpayment order from the Board, for a large portion of
18 time-loss compensation payments received by Ms. Mauney over the course of her claim. The
19 Legislature has created a statutory procedure for any self-insured employer to seek overpayment
20 recoupment for time-loss compensation payments.⁷ It's uncontested the employer did not employ
21 those procedures in this claim. Moreover, we do not believe the Department order impliedly
22 considered the question of overpayment given the separate statutory direction found within
23 RCW 51.32.240: Where a self-insured employer has reason to believe an overpayment has been
24 made, it must make a petition for repayment within one year of making any such compensation. After
25 such a request, the Department will then act by issuing an order either assessing an overpayment or
26 not. In the case of an overpayment assessment, the worker is entitled to contest that order as
27 provided by RCW 51.52.050 and 51.52.060.
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37 The attempted cross-appeal by ESD skirts the statutory obligation surrounding overpayment
38 assessments. For instance, RCW 51.32.240(7) requires an order assessing an overpayment to
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41 ¹ Employer's Notice of Cross-Appeal dated October 8, 2019.

42 ² *Lenk v. Dep't of Labor & Indus.*, 3 Wn. App. 977 (1970)

43 ³ *In re Randy Jundul*, BIIA Dec., 98 21118 (1999)

44 ⁴ See Employer's Response to Claimant's Mot. for Partial Sum. J.

45 ⁵ 12/2/20 Tr. at 14.

46 ⁶ See Employer's Response to Claimant's Motion for Partial Sum. J., pg. 4, ln. 12-13 ("[t]he evidence supports the
47 employer's position that Claimant *received time loss overpayment* December 30, 2018 onward.")

⁷ RCW 51.32.240.

1 include conspicuous notice of collection methods available to the Department or self-insured
2 employer. No such notice was included in the closing order, a strong indicator that the Department
3 did not consider the question of overpayment when it issued the closing order. Where the Department
4 closes a claim and assesses an overpayment, it will so state in the order.⁸
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7 Unless and until the Department passes on an issue, the Board is without authority to
8 adjudicate the controversy. Such is the circumstance here and ESD's appeal must necessarily be
9 dismissed.⁹
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11 **DECISION**

- 13 1. In Docket No. 19 20581, the claimant, Keri P. Mauney, filed an appeal with the Board of Industrial
14 Insurance Appeals on August 21, 2019, from an order of the Department of Labor and Industries
15 dated June 25, 2019. In this order, the Department ended time-loss compensation benefits as
16 paid through April 29, 2019, determined treatment is no longer necessary, and closed the claim
17 without a permanent partial disability award. This order is correct and is **AFFIRMED**.
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- 20 2. In Docket No. 19 22987, the employer, Edmonds School District #15, filed a cross-appeal with
21 the Board of Industrial Insurance Appeals on October 8, 2019, from this same order of the
22 Department of Labor and Industries dated June 25, 2019. This order is correct and the employer's
23 cross-appeal is **DISMISSED** for being outside our scope of review.
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27 **FINDINGS OF FACT**

- 28 1. On November 25, 2019, an industrial appeals judge certified that the
29 parties agreed to include the Jurisdictional History in the Board record
30 solely for jurisdictional purposes.
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- 32 2. Keri P. Mauney, the claimant, sustained an industrial injury on
33 October 10, 2016, when she was teaching in a classroom. While working
34 with a student, a second student struck her on the cheek, causing her to
35 fall. The student struck her a second time behind the ear. Ms. Mauney
36 did not lose consciousness.
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- 38 3. Ms. Mauney was born in 1981. She received her bachelor's degree in
39 elementary education, a master's degree in curriculum and instruction, a
40 Washington State professional teaching certification, and a national board
41 teaching certification. Ms. Mauney worked for Edmonds School District
42 at the time of the industrial injury.
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- 44 4. The two blows caused a closed head injury and cervical strain.
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46 ⁸ See *In re Marcos Yanez, Sr.*, Dckt No. 15 16306 (September 20, 2016).

47 ⁹ *In re Lai Ping-Bazzell*, Dckt. No. 12 25379 (November 14, 2013).

- 1 5. In Docket No. 19 20581, Ms. Mauney was able to perform the following
2 jobs as of June 25, 2019: learning support specialist, teacher's aide,
3 paraeducator, customer service representative, and receptionist/general
4 office clerk.
- 5 6. In Docket No. 19 20581, Ms. Mauney was able to perform and obtain
6 gainful employment on a reasonably continuous basis from
7 April 30, 2019, through June 25, 2019.
- 8 7. In Docket No. 19 20581, as of June 25, 2019, Ms. Mauney's closed head
9 injury and cervical strain proximately caused by the industrial injury were
10 fixed and stable and did not need further proper and necessary treatment.
- 11 8. In Docket No. 19 22987, the Edmonds School District failed to request an
12 overpayment order from the Department for any time-loss compensation
13 benefits paid on the claim. Instead, Edmonds School District simply
14 requested the claim be closed.
- 15 9. In Docket No. 19 22987, the pleadings and evidence submitted
16 demonstrate there was no genuine issue of material fact.

19 **CONCLUSIONS OF LAW**

- 20 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
21 and subject matter in these appeals.
- 22 2. In Docket No. 19 22987, the claimant, Keri P. Mauney is entitled to a
23 decision as a matter of law as contemplated by CR 56.
- 24 3. In Docket No. 19 22987, Edmonds School District failed to request an
25 overpayment order from the Department of Labor and Industries per
26 RCW 51.32.240.
- 27 4. In Docket No. 19 22987, Edmonds School District's cross-appeal is
28 beyond the Board's scope of review. The Board lacks the authority to
29 adjudicate Edmonds School District's cross-appeal pursuant to
30 RCWs 51.32.240(6), 51.52.050, and 51.52.060.
- 31 5. In Docket No. 19 20581, Ms. Mauney's closed head injury and cervical
32 strain proximately caused by the industrial injury were fixed and stable as
33 of June 25, 2019, and she is not entitled to further treatment.
34 RCW 51.36.010.
- 35 6. Docket No. 19 20581, Ms. Mauney was not a temporarily totally disabled
36 worker within the meaning of RCW 51.32.090 from April 30, 2019, through
37 June 25, 2019.
- 38 7. In Docket No. 19 20581, Ms. Mauney was not a permanently totally
39 disabled worker within the meaning of RCW 51.08.160, as of
40 June 25, 2019.
- 41 8. In Docket No. 19 22987, Edmonds School District's appeal is dismissed.

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9. Docket No. 19 20581, the Department order dated June 25, 2019, is correct and is affirmed.

Dated: July 20, 2022.

BOARD OF INDUSTRIAL INSURANCE APPEALS



HOLLY A. KESSLER, Chairperson



ISABEL A. M. COLE, Member



JACK S. ENG, Member

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**Addendum to Decision and Order
In re Keri P. Mauney
Docket Nos. 19 20581 & 19 22987
Claim No. SZ-62663**

Appearances

Claimant, Keri P. Mauney, by Law Office of K. L. Mason, PLLC, per Katherine L. Mason
Self-Insured Employer, Edmonds School District #15, by Wallace, Klor, Mann, Capener &
Bishop, P.C., per Schuyler T. Wallace, Jr.
Department of Labor and Industries, by Office of the Attorney General, per Inwoo Lee

Petition for Review

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The claimant filed a timely Petition for Review of a Proposed Decision and Order issued on November 24, 2021, in which the industrial appeals judge affirmed the Department order dated June 25, 2019, and dismissed the appeal in Docket No. 19 22987.

Evidentiary Rulings

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