

## **Angell, Radford**

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### **TIMELINESS OF CLAIM (RCW 51.28.050; RCW 51.28.055)**

**Occupational disease [prior to 1984 amendment to RCW 51.28.055]**

#### **Notification by physician**

The one-year limitation period for filing a claim for an occupational disease does not commence until the worker is advised by a physician that the worker's employment is the cause of the disease. A statement to the worker that work is bad for his condition is insufficient, as that which is or may be harmful to a condition is not, ipso facto, its cause. ....*In re Radford Angell*, BIIA Dec., 21,334 (1965)

Scroll down for order.

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

1   **IN RE: RADFORD M. ANGELL**                     )  
2   )  
3   **CLAIM NO. 7007325**                                     )  
4   )  
   **DOCKET NOS. 21,334 & 21,477**  
   **DECISION AND ORDER**

5 APPEARANCES:

6  
7       Claimant, Radford M. Angell, by  
8       Fredrickson, Maxey and Bell, per  
9       Leo H. Fredrickson

10  
11       Employer, Atomic Energy Commission, by  
12       Chester G. Brinck, Chief Counsel, per  
13       Roy B. Erickson, Associate Counsel

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15       Department of Labor and Industries, by  
16       The Attorney General, per  
17       James D. Sawyer, Assistant

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19       Appeal (Docket No. 21,334 ) filed by the claimant on December 20, 1963, and cross-appeal  
20 (Docket No. 21,477) filed by the employer on January 17, 1964, from an order of the supervisor of  
21 industrial insurance dated December 5, 1963, rejecting this claim for the reason that it was not filed  
22 within one year of the date the claimant was first advised by a medical doctor that he had an  
23 occupational disease. **REVERSED AND REMANDED**, as to the appeal; **DISMISSED**, as to the  
24 cross-appeal.  
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28   **DECISION**

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30       The Board has reviewed the record in the light of a Proposed Decision and Order issued in  
31 this matter on December 18, 1964, and a statement of exceptions duly filed thereto by the claimant  
32 on January 7, 1965. As a result thereof, we conclude that the exceptions are well taken and that  
33 this matter should be remanded to the department of labor and industries for consideration of the  
34 claim on its merits.  
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37       The department's order from which the appeal and cross-appeal were prosecuted made no  
38 determination as to whether or not the claimant was in fact suffering from an occupational disease.  
39 The rejection order is based upon the administrative finding that the claimant was advised by his  
40 attending physician on March 27, 1962, that his condition was occupational, and since the accident  
41 report was not received by the department until August 7, 1963, the claim was not timely.  
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44       Thus, as correctly noted by the hearing examiner, the only issue invoking the Board's  
45 jurisdiction is whether or not the claim was timely filed with the department. The employer's cross-  
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1 appeal as to the claim on its merits is decidedly premature and its counsel conceded at the first  
2 hearing that the only issue to be determined at this time was the timeliness of the appeal. Although  
3 more a matter of procedure than substance, the employer's cross-appeal should have been  
4 formally dismissed in the Proposed Decision and Order. This oversight will be corrected herein.  
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7 Under the evidence, the department's determination that the claimant was advised by his  
8 attending physician on March 27, 1962, that his condition was occupational is patently erroneous.  
9 The department offered no evidence to support its determination and the claimant testified that his  
10 attending doctor did not so advise him until August 13, 1962. This was corroborated by the  
11 testimony of the attending physician, Dr. Hubbard. The claimant further testified that the occasion  
12 of August 13, 1962, marked the first time that he had ever been informed by a doctor that he had a  
13 disease which resulted from his occupation.  
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18 The hearing examiner found, on the basis of the claimant's testimony, that he knew by  
19 December, 1961, as a result of advice by a medical doctor, that he had a disabling lung condition  
20 arising out of his work with asbestos in his employment at Hanford, Washington.  
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22 The claimant's testimony in this respect was to the effect that he was given periodic physical  
23 examinations by his employer at Hanford every two or three years. He stated that "they always  
24 passed me," but on his last examination, which took place in 1960 or 1961, the doctors advised him  
25 to change his trade as working with asbestos was bad for his health - more specifically, for his  
26 lungs. It is clear that the claimant was himself aware that he was having pulmonary difficulties as of  
27 that time, but there is no evidence that the doctors attempted to isolate or identify the particular  
28 disease process that was responsible for such difficulties. The claimant continued to work until  
29 December, 1961, when he decided he had better quit his work at Hanford if, as he put it, "I wanted  
30 to live any longer." He expressly denied that the doctors at Hanford had ever told him that his  
31 breathing difficulties or lung condition had resulted from his work with asbestos.  
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37 Manifestly, that which is or may be harmful to a pathological condition or disease is not, ipso  
38 facto, its cause. Thus, to say to a workman that his work is bad for his condition is not to say that  
39 the condition itself arose out of such work. The claimant's direct denial that the employer's doctors  
40 at Hanford ever advised him with respect to the etiology of his condition stands un-refuted in the  
41 record. Under the law, the one-year-limitation period does not commence to run against a  
42 workman until such time as a medical doctor advises him that his work or occupation is the cause  
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1 of his disabling disease. Williams v. Department of Labor & Industries, 45 Wn. 2d 574; Nygaard v.  
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3 Department of Labor & Industries, 51 Wn. 2d 659.

4 Under the record, the statute did not commence to run against the claimant until August 13,  
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6 1962. His claim, filed with the department on August 7, 1963, was within the statutory period.

### 7 FINDINGS OF FACT

8 Based upon the record, the Board makes the following findings:  
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- 10 1. On August 7, 1963, the claimant filed an accident report with the  
11 department of labor and industries. The report was signed by the  
12 claimant on August 13, 1962. On August 21, 1963, the department  
13 issued an order rejecting the claim for the reason that no claim was filed  
14 within one year from the date the claimant was informed that he had an  
15 occupational disease. The claimant appealed and on October 8, 1963,  
16 the department issued an order making its order of August 21, 1963,  
17 interlocutory, pending further investigation. On October 11, 1963, the  
18 Board issued an order denying the appeal on the ground that the order  
19 appealed from was not a final order. On December 5, 1963, the  
20 department issued an order adhering to its order of August 21, 1963, on  
21 the ground that the claimant was advised by his attending physician on  
22 March 27, 1962, that his condition was occupational, and, accordingly,  
23 the claim, filed on August 7, 1963, was not timely. On December 20,  
24 1963, the claimant filed a notice of appeal, and on January 10, 1964, the  
25 Board issued an order granting the appeal. On January 17, 1964, the  
26 employer filed a cross-appeal from the department's order of December  
27 5, 1963, attempting to raise an issue on the merits of the claim and  
28 contending that the department should also have denied the claim on  
29 the ground that the claimant was not suffering from an occupational  
30 disease due to his employment with this employer. On January 24,  
31 1964, the Board issued an order granting the cross-appeal and on  
32 December 18, 1964, a Proposed Decision and Order was issued by a  
33 hearing examiner for the Board. Exceptions thereto were duly filed by  
34 the claimant on January 7, 1965.
- 35 2. August 13, 1962, marks the first occasion that the claimant was advised  
36 by a medical doctor that his disabling lung condition was caused by his  
37 work with asbestos.  
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### 39 CONCLUSIONS OF LAW

40 Based upon the foregoing findings, the Board makes the following conclusions:  
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- 42 1. The Board has jurisdiction of the parties and the subject matter of the  
43 claimant's appeal (Docket No. 21,334).
- 44 2. The Board does not have jurisdiction over the employer's cross-appeal  
45 (Docket No. 21,477).  
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- 1 3. The accident report filed by the claimant on August 7, 1963, was timely  
2 under the provisions of RCW 51.28.055.  
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4 4. The order of the supervisor of industrial insurance dated December 5,  
5 1963, is incorrect, and this claim should be remanded to the department  
6 of labor and industries with instructions to consider the claim on its  
7 merits.  
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9 5. The employer's cross-appeal should be dismissed.

10 It is so ORDERED.

11 Dated this 15th day of December, 1965.

12 BOARD OF INDUSTRIAL INSURANCE APPEALS

13  
14 /s/  
15 J. HARRIS LYNCH Chairman

16  
17 /s/  
18 R. H. POWELL Member

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20 /s/  
21 R. M. GILMORE Member  
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