

Hall, Stan

TIMELINESS OF CLAIM (RCW 51.28.050; RCW 51.28.055)

Filing

A claim is not filed with the Department until it is received by the Department. An accident report mailed within one year of the industrial injury but received by the Department more than one year after the industrial injury is untimely and the claim must be rejected. ...*In re Stan Hall*, BIIA Dec., 36,628 (1971) [Editor's Note: To the extent it is inconsistent, *Hall* was overruled by *In re Gwen Carey*, BIIA Dec., 03 13790 (2005).]

Scroll down for order.

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

1 **IN RE: STAN R. HALL**) **DOCKET NO. 36,628**
2)
3 **CLAIM NO. F-919405**) **DECISION AND ORDER**
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5 APPEARANCES:

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7 Claimant, Stan R. Hall, by
8 Gosta E. Dagg

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10 Employer, Municipality of Metropolitan Seattle
11 None
12 (In attendance: Winston Chick, Personnel Manager)

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14 Department of Labor and Industries, by
15 The Attorney General, per
16 Edward G. Gough, Assistant
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18 This is an appeal filed by the claimant on August 7, 1970, from an order of the Department of
19 Labor and Industries dated June 11, 1970, which held the Department's prior order dated May 18,
20 1970, for naught and rejected the claim and ordered refund of prior overpayment to claimant of
21 \$141.85 previously paid for time-loss compensation, said rejection of claim and said order for
22 refund being on the ground that "no claim has been filed by said workman within one year after the
23 day upon which the alleged injury occurred." **SUSTAINED.**

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27 **DECISION**

28 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
29 and decision on a timely Statement of Exceptions filed by the claimant to a Proposed Decision and
30 Order issued by a hearing examiner for this Board on May 10, 1971, in which the order of the
31 Department dated June 11, 1970, was sustained.
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34 The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no
35 prejudicial error was committed and said rulings are hereby affirmed.
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37 The record establishes that the claimant sustained an injury to the left knee on March 3,
38 1969, in the course of his employment with the Municipality of Metropolitan Seattle. A report of
39 accident with regard to that injury was signed and placed in the mail by the claimant's attending
40 physician, Dr. E. P. Palmason, on March 2, 1970. The report of accident was stamped as having
41 been received by the Department at its Olympia Office on March 5, 1970. On May 18, 1970, an
42 order was entered by the Department terminating time-loss compensation for the period from March
43 28, 1970 to April 19, 1970, with the order reflecting that the claimant was injured on March 3, 1970,
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1 rather than March 3, 1969, as ultimately established. On June 11, 1970, the Department issued an
2 order holding the order of May 18, 1970 for naught and rejecting the claim for the reason that no
3 claim had been filed by the workman within one year after the day upon which the alleged injury
4 occurred. The claimant, having taken exceptions from the examiner's Proposed Decision and
5 Order sustaining the Department's order of June 11, 1970, urges for consideration two points of
6 view; first, that the record before the Board establishes that the claimant's claim with respect to the
7 injury which he sustained on March 3, 1969, was timely filed within the meaning of RCW Section
8 51.28.050, the interpretation of which should be the subject of liberal construction, and, secondly, in
9 the event it be determined that claim was not timely filed, the Department should be held to its order
10 of March 18, 1970, which in effect allowed the claim. On this latter point, the claimant contends that
11 the Department once having allowed the claim no longer has the legal authority to rescind its
12 action, having allowed more than sixty days to lapse following its action.
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19 As noted, the record establishes that the claimant was injured in the course of his
20 employment with Municipality of Metropolitan Seattle on March 3, 1969, and that his attending
21 physician, Dr. Palmason, placed in the mail a report of accident with regard to that injury on March
22 2, 1970. The record further indicates that the parties stipulated that had a witness been called by
23 the Department, that witness would have testified that the claimant's report of accident was
24 received by the Department on March 5, 1970. RCW Section 51.28.050 provides:
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28 "No application [for compensation] shall be valid or claim thereunder
29 enforceable unless filed [with the Department] within one year after the
30 day upon which the injury occurred or the rights of dependents or
31 beneficiaries accrued."
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33 Under the fact pattern outlined and under the statute as quoted, it would be incumbent upon the
34 claimant to establish that the report of accident was mailed on March 2, 1970, which he has done,
35 and that in the ordinary course of business, the Department would have timely received that
36 application on March 3, 1970. The latter element is lacking and there is nothing to rebut the
37 Department's contention that the report of accident was received on the same date that it was
38 logged in namely, March 5, 1970. The statute quoted is jurisdictional in character and the claimant
39 has failed to establish the timely filing of his claim.
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43 The doctrine of liberal construction urged by the claimant is not applicable in this instance in
44 that the doctrine applies to those who have established their entitlement to benefits under the
45 Workmen's Compensation Act. Those claiming rights under the Act will be held to strict proof of
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1 their right. Olympia Brewing Company v. Department of Labor and Industries (1949) 34 Wn. 2d
2 498. This Board cannot apply a doctrine of liberal construction to cases such as this one in view of
3 our Supreme Court's determination that it is incumbent upon the claimant to timely file his claim and
4 that the Department has no power to make exceptions to the statute for "equitable reasons". Pate
5 v. General Electric Co., (1953) 43 Wn. 2d 185. Essentially the same position was taken earlier by
6 the Court in Wheaton v. Department of Labor and Industries, (1952) 40 Wn. 2d 56, when the Court
7 held that the timely filing of a claim was a limitation on the right to compensation and that unless the
8 claim was timely filed, the right was extinguished. In the Wheaton case, the Department had
9 allowed the claim, provided medical treatment, and a subsequent application to reopen for
10 aggravation of condition had been allowed when the Department's jurisdiction was challenged
11 successfully for the reason that the claim had not been filed within the one-year period required by
12 statute.

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19 The Department's order of June 11, 1970, should be sustained in accord with the findings
20 and conclusions as hereinafter set forth.

21 22 **FINDINGS OF FACT**

23 After a careful review of the entire record herein, this Board finds as follows:

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25 1. On March 3, 1969, the claimant, Stan R. Hall, sustained an injury to the
26 left knee in the course of his employment with the Municipality of
27 Metropolitan Seattle. Acting on a report of accident with reference to
28 that injury marked as having been received by the Department of Labor
29 and Industries at its Olympia Office on March 5, 1970, the Department
30 paid time-loss compensation to the claimant for the period from March
31 28, 1970 to April 19, 1970, pursuant to an order dated May 18, 1970,
32 which indicated thereon that the claimant had sustained his injury on
33 March 3, 1970. Thereafter on June 11, 1970, the Department issued an
34 order holding the order of May 18, 1970 for naught and rejecting the
35 claim for the reason that no claim had been filed with the Department
36 within one year after the date upon which the injury occurred. The order
37 of June 11, 1970, further directed repayment of time-loss compensation
38 previously paid in the sum of \$141.85. From that order, the claimant
39 appealed to this Board on August 7, 1970, which granted the appeal by
40 order dated October 9, 1970.
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42 2. Claimant's claim, based upon his alleged industrial injury, claimed by
43 claimant to have occurred on March 2 or 3, 1969, (but over date of
44 claimant's signature of March 2, 1970, on exhibit four showing date of
45 injury as "5 mo ago" - which quoted statement appears on exhibit four,
46 said accident report form) was filed with the Department as received
47 from claimant on March 5, 1970.

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3. The claimant's report of accident with reference to his injury of March 3, 1969, was placed in the United States Mail by his attending physician, Dr. E. P. Palmason, on Monday, March 2, 1970. The claimant's report of accident was received by the Department at its Olympia Office on Thursday, March 5, 1970.
 4. The claimant's claim with reference to his injury of March 3, 1969, was not timely filed as required by RCW Section 51.28.050.

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CONCLUSIONS OF LAW

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Based on the foregoing findings of fact, this Board concludes:

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1. This Board has jurisdiction of the parties and the subject matter of this appeal.
 2. The order of the Department of Labor and Industries entered herein on June 11, 1970, is correct and the same is hereby sustained.

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It is so ORDERED.

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Dated this 20th day of September, 1971.

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BOARD OF INDUSTRIAL INSURANCE APPEALS

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/s/ _____
ROBERT C. WETHERHOLT Chairman

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/s/ _____
R.H. POWELL Member