

Murray, Lynnette (I)

[NOTICE OF APPEAL \(RCW 51.52.050, RCW 51.52.060\)](#)

Contents required

To be recognized as a notice of appeal, the written document itself must indicate an intent to appeal and must identify the Department decision or order being challenged. An appeal of an order under one claim cannot be treated as an appeal of an order under another claim, even though the worker testifies that she intended to appeal both orders. *...In re Lynnette Murray (I), BIIA Dec., 41,887 (1974)*

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

1 IN RE: LYNNETTE A. MURRAY) DOCKET NO. 41,887
2)
3 CLAIM NO. G365806) DECISION AND ORDER
4

5 APPEARANCES:

6
7 Claimant, Lynnette A. Murray, by
8 Phillipps and Young, per
9 Kenneth Phillipps

10
11 Employer, Scott Paper Company, by
12 Richard Johnson

13
14 Department of Labor and Industries, by
15 The Attorney General, per
16 Richard R. Roth, Assistant
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18 This is an appeal filed by the claimant on December 7, 1972, from an order of the
19 Department of Labor and Industries dated November 16, 1972, which rejected the above-numbered
20 claim on the ground that there was no proof of a specific injury at a definite time and place in the
21 course of employment. **SUSTAINED.**
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24 DECISION

25 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
26 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order
27 issued by a hearing examiner for this Board on October 26, 1973, in which the order of the
28 Department dated November 16, 1972 was sustained.
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31 The issue in this appeal is whether or not the claimant sustained an industrial injury on April
32 1, 1972 in her employment for the Scott Paper Company.
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34 From the record herein, it is quite apparent that she did not sustain an injury on April 1, 1972.
35 The only thing which occurred at that time was that she experienced a temporary feeling of tingling
36 in the fingers of her right hand, such as a person feels when you "bump your crazy bone." She said
37 she had felt such a tingling at various times in the past, both on the job and at home, when she
38 would accidentally bump her elbow on an object. (This of course is a common phenomenon known
39 to everyone.) However, she admitted she could not recall any particular incident of striking her
40 elbow on or about April 1, 1972. She frankly stated that "There wasn't an incident then," and that
41 the tingling "was nothing to get excited about," and that in any event it disappeared in a short period
42 -- a few minutes at most.
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1 The claimant did not seek any medical treatment until August 1, 1972, and then it was not for
2 any "tingling" feeling, but for pain and weakness in the entire right arm, right shoulder, and neck.
3 Her attending physician at that time, Dr. J. V. Curran, diagnosed a shoulder-hand syndrome or
4 thoracic outlet syndrome emanating from the area where the nerves and vessels pass through the
5 shoulder musculature. It was this condition which the doctor treated for somewhat more than three
6 months thereafter. Dr. Curran's testimony was completely speculative and inconclusive insofar as
7 establishing any causal relationship of this condition to any alleged injury on or about April 1, 1972 -
8 - and, as heretofore observed, the claimant denied that any injury occurred then.
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10 It is obvious, therefore, that the shoulder-hand syndrome for which this claim was filed did
11 not result from any injury occurring in the course of claimant's employment on April 1, 1972. The
12 Department's order of November 16, 1972, rejecting this claim, was clearly correct.
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14 The claimant makes the assertion that the notice of appeal filed herein on December 7,
15 1972, from the Department's order of November 16, 1972, in Claim No. G-365806, also was
16 sufficient to constitute an appeal from another order of the Department issued on November 13,
17 1972, in Claim No. S-105979. (That claim was a separate claim, filed prior to the filing of the instant
18 claim, in which the claimant's same shoulder-hand syndrome condition was alleged to have
19 resulted from an industrial injury of July 18, 1972.) She testified that she had intended to file an
20 appeal with reference to the claim for the July 18, 1972 alleged injury.
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22 However, claimant's assertion that she filed a recognizable appeal in the S-105979 claim is
23 not tenable. Regardless of what the claimant may have intended in her mind, the important point is
24 that the written document itself must, at least, indicate to the recipient thereof an intent to appeal
25 and what decision or order of the Department is intended to be challenged by the appeal. Such
26 minimum requirement is implicit in the statutory language of RCW 51.52.060 and 51.52.070.
27 Examination of the contents of the notice of appeal received on December 7, 1972 makes it
28 obvious that it conveys no indication of any intent to appeal from the Department's order concerning
29 the alleged July 18, 1972 injury. The appeal document in no way challenges the Department's
30 order of November 13, 1972, which clearly referred to the injury date of July 18, 1972, and was
31 entered under Claim No. S-105979. Rather, the appeal specifically gives notice of intent to appeal,
32 solely regarding Claim No. G-365806 and solely regarding the Department's order of November 16,
33 1972 entered under this claim. There is no intent to appeal the S-105979 claim, either expressed
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1 or implied, in this notice of appeal. For a holding similar in principle, see Royce v. Department of
2
3 Labor & Industries, 193 Wash. 488.

4 After consideration of the Proposed Decision and Order and the Petition for Review filed
5 thereto, and a careful review of the entire record before us, we are persuaded that the Proposed
6 Decision and Order is supported by the preponderance of the evidence and is correct as a matter of
7 law.
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10 The hearing examiner's proposed findings, conclusions and order are hereby adopted as this
11 Board's findings, conclusions and order and are incorporated herein by this reference.

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13 It is so ORDERED.

14 Dated this 6th day of November, 1974.

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16 BOARD OF INDUSTRIAL INSURANCE APPEALS

17
18 /s/ _____
19 PHILLIP T. BORK Chairman

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21 /s/ _____
22 R.M. GILMORE Member
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