

Walster, Sandra (I)

[TIME-LOSS COMPENSATION \(RCW 51.32.090\)](#)

Provisional time-loss compensation (RCW 51.32.190(3) and RCW 51.32.210)

Provisional time-loss compensation is payable until the Department issues a determinative order of allowance or rejection of the claim. ...*In re Sandra Walster (I)*, BIIA Dec., 43,049, (10/73) [dissent]; *In re Florence Reid*, BIIA Dec., 43,052 (1973) [dissent]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS

STATE OF WASHINGTON

1
2 **In re:** SANDRA LUCILLE WALSTER) **DOCKET NO.** 43,049
3)
4 Claim No. S-117733) **ORDER DENYING APPEAL**
5)
6)

7 This is an appeal filed by Scott Paper Company, a self-
8 insured employer, on August 27, 1973, from an order of the
9 Department of Labor and Industries dated July 31, 1973, adhering
10 to a prior order of June 28, 1973, which directed the employer
11 to pay temporary disability compensation to which the claimant
12 may be entitled in accordance with RCW 51.32.190. Appeals denied.
13

14 DECISION

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16 This appeal raises solely a question of law. The pertinent
17 facts as disclosed by the Department file, are as follows:
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19 The claimant, Sandra Lucille Walster, alleges that she sus-
20 tained an industrial injury to her low back in her employment for
21 the self-insured employer, Scott Paper Company, on April 9, 1973.
22 She filed a claim with the employer on May 22, 1973, and, after
23 investigation, the employer on June 4, 1973, notified the claimant
24 and the Department in writing, pursuant to RCW 51.32.190 (1), of
25 its denial of the claim for the stated reason that claimant was
26 not injured at work. The Department, on the basis of the in-
27 formation then before it, issued an order on June 15, 1973, re-
28 jecting the claim on the ground that there was no proof of a
29 specific injury in the course of employment. Following an appeal
30 by the claimant, the Department entered an order on June 26, 1973,
31 holding its rejection order of June 15, 1973, in abeyance pending
32 further investigation. Extensive additional investigation was
33 done. Among other things, this disclosed that the claimant was
34 in fact temporarily totally disabled by reason of her back condi-
35 tion from May 21, 1973, at least until the middle of August, 1973,
36 and she underwent back surgery on June 4, 1973. The matter in
37 controversy, of course, was whether there was an injury on April
38 9, 1973, which caused this disability. Based on all the further
39 investigations, the Department entered its final order on August
40 28, 1973, reaffirming the prior order and rejecting the claim.
41 The claimant has appealed that order to this Board (under Docket
42 No. 43,109), and hearings will be held in her appeal, on the issue
43 of whether or not an industrial injury was incurred on April 9,
44 1973.
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46 In the meantime, while the above investigation was being
47 accomplished, information was submitted on behalf of the claimant
48 that the employer was not paying time-loss compensation to her for
49 the period from May 21, 1973, when she went off work due to her
50 back condition, until the date of the Department's determinative
51 order on the claim, as required by RCW 51.32.190. The Department
52 thereupon entered its order of June 28, 1973, directing the
53 employer to pay such compensation pursuant to that statute.
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1 Following a request for reconsideration filed by the employer,
2 said order was reaffirmed by the Department's order of July 31,
3 1973, from which the employer filed the instant appeal.
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5 It is the employer's contention that, since it has not been
6 finally determined that claimant's alleged industrial injury
7 caused her temporary disability, the employer is not required to
8 pay this time-loss compensation. However, we believe this con-
9 tention overlooks the basic legislative intent of the new statu-
10 tory sections which are here involved.
11

12 Two statutory sections must be considered together in order
13 to understand their intent. These are RCW 51.32.190, relating to
14 prompt claim action and payment of temporary disability compensa-
15 tion in self-insured cases, and RCW 51.32.210, relating to prompt
16 claim action and payment of temporary disability compensation in
17 Department-insured cases. These are the codifications of Sections
18 25 and 26, Chap. 43, Laws of 1972 ex. sess.
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20 RCW 51.32.190, as pertinent to this case, provides:
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22 "(1) If the self-insurer denies a claim for compen-
23 sation, written notice of such denial, clearly in-
24 forming the claimant of the reasons therefor and
25 that the director will rule on the matter shall be
26 mailed or given to the claimant and the director
27 within seven days after the self-insurer has
28 notice of the claim.
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30 (2) Until such time as the department has entered
31 an order in a disputed case acceptance of compen-
32 sation by the claimant shall not be considered a
33 binding determination of his rights under this
34 title. Likewise the payment of compensation shall
35 not be considered a binding determination of the
36 obligations of the self-insurer as to future com-
37 pen-sation payments.
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39 (3) Upon making the first payment of income
40 benefits, and upon stopping or changing of such
41 benefits except where a determination of the
42 permanent disability has been made as elsewhere
43 provided in this title, the self-insurer shall
44 immediately notify the director in accordance
45 with a form to be prescribed by the director that
46 the payment or income benefits has begun or has
47 been stopped or changed. Where temporary disability
48 compensation is payable, the first payment thereof
49 shall be made within fourteen days after notice
50 of claim and shall continue at the regular semimonthly
51 or biweekly intervals.
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53 (4) If, after the payment of compensation without
54 an award, the self-insurer elects to controvert the
55 right to compensation, the payment of compensation
56 shall not be considered a binding determination
57 of the obligations of the self-insurer as to
58 future compensation payments. The acceptance of
59 compensation by the workman or his beneficiaries
60 shall not be considered a binding determination of
61 their rights under this title.
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3 (5) The director (a) may, upon his own initiative
4 at any time in a case in which payments are being
5 made without an award, and (b) shall, upon receipt
6 of information from any person claiming to be
7 entitled to compensation, from the self-insurer,
8 or otherwise that the right to compensation is
9 controverted, or that payment of compensation has
10 been opposed, stopped or changed, whether or not
11 claim has been filed, promptly make such inquiry
12 as circumstances require, cause such medical
13 examinations to be made, hold such hearings,
14 require the submission of further information
15 make such orders, decisions or awards, and take
16 such further action as he considers will properly
17 determine the matter and protect the rights of
18 all parties." (Emphasis supplied)
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20 RCW 51.32.210 provides:

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22 "Claims of injured workmen of employers who
23 have secured the payment of compensation by insuring
24 with the department shall be promptly acted upon
25 by the department. Where temporary disability
26 compensation is payable, the first payment thereof
27 shall be mailed within fourteen days after receipt
28 of the claim at the department's offices in Olympia
29 and shall continue at regular semimonthly intervals.
30 The payment of this or any other benefits under this
31 title, prior to the entry of an order by the depart-
32 ment in accordance with RCW 51.52.050 as now or
33 hereafter amended, shall be not considered a binding
34 determination of the obligations of the department
35 under this title. The acceptance of compensation by
36 the workman or his beneficiaries prior to such order
37 shall likewise not be considered a binding deter-
38 mination of their rights under this title."
39 (Emphasis supplied)
40

41 Clearly, the overriding object of these statutes is to
42 promote prompt investigation and determinative initial action
43 on all claims filed by workmen under the law -- prompt action by
44 both the self-insurer and the Department in self-insured cases,
45 and prompt Departmental action in Department-insured cases.
46 Especially is prompt action important in the cases where tempo-
47 rary total disability is involved. Thus, to make the objective
48 effective, the "14-day law" was adopted, to require commencement
49 of payment of time-loss compensation within that period of time
50 after notice of the claim.
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52 Furthermore, when this 14-day requirement is considered in
53 conjunction with the other language in these statutes, it is clear
54 that, if in fact there is temporary total disability, compensation
55 for it must be paid, even though a determinative order has not yet
56 been entered by the Department, determining that the temporary
57 disability was industrially caused. This, in our opinion, is the
58 obvious intent of these statutes when viewed in their entirety.
59 If the intent were otherwise, there would be no need for the
60 portions of the statutes providing that payment by the self-
61 insurer or the Department, as the case may be, and acceptance by
62 the claimant, of such compensation prior to the entry of a
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3 determinative order, is not a "binding determination" of their
4 respective rights and obligations under the Act. Clearly such
5 payments are contemplated, or the statute would not have to pro-
6 vide for their non-binding nature. The "binding determination" on
7 allowance or rejection of the claim must be a final determinative
8 order entered by the Department which complies with the require-
9 ments for a "final" order as set forth in RCW 51.52.050. Thus,
10 until said determinative order on allowance or rejection is
11 entered, the Department or self-insurer, as the case may be, must
12 comply with the "14-day" provision and pay time-loss compensation
13 to the claimant for whatever period prior to said order that he
14 is in fact temporarily totally disabled.
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16 The reason for this new kind of statutory requirement
17 appears to be a very practical one, namely, that when a workman
18 is rendered temporarily unable to work because of a physical
19 condition caused, or alleged to be caused, by his employment,
20 there is usually an urgent economic need for prompt payment of
21 temporary disability compensation as wage replacement. The law-
22 makers have apparently decided that this social need outweighs
23 the wisdom of the previous practice that under no circumstances
24 would any compensation be paid until a determinative administra-
25 tive decision was made that liability existed. That practice
26 could produce economic hardship for a claimant while awaiting the
27 decision on acceptance of his claim, which decision in some
28 cases was long in coming.
29

30 A consequence of this new statutory approach to forcing
31 prompt administrative determinations on allowance or rejection
32 of claims is, of course, that in some cases the claimant will have
33 received time-loss compensation where it is later finally deter-
34 mined, by administrative or judicial decision, that the claim
35 should be rejected and no benefits payable. The instant case
36 could be an example of this possible result. However, this
37 consequence points up the effectiveness of the statute in
38 achieving its purpose, i.e., it should cause all people involved
39 in administering the system to see to it that the Department's
40 determinative order on allowance or rejection is entered promptly
41 -- within 14 days whenever possible. If necessary investigative
42 tasks result in a longer period (as, for example, the three
43 months consumed here), the legislature has simply said that the
44 economic burden of such investigative period should fall on the
45 workmen's compensation system, not on the temporarily disabled
46 claimant or on welfare or some other insurance program.
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48 As support for our legal conclusion, we need look no further
49 than to our neighboring state of Oregon. The Oregon workmen's
50 compensation law, in ORS Sec. 656.262, has provisions very similar
51 to our applicable statutory sections; including requirements for
52 prompt payments of compensation (subsection 2 of ORS 656.262)
53 until denial of the claim is formally made (per subsection 6);
54 the requirement for paying compensation within 14 days after notice
55 of the claim and at least biweekly thereafter (subsection 4); and
56 the provision that "merely paying or providing compensation
57 shall not be considered acceptance of a claim or an admission of
58 liability." (Subsection 7).
59

60 We are not aware of any decision by the Oregon appellate
61 courts in which the question here before us was squarely pre-
62 sented. However, the case of Logan v. Boise Cascade Corp., 5 Or
63 App. 636, 485 P. 2d 441, (1971) is significant. Although the
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4 exact holding in that case was concerned with whether or not a
5 statute of limitations operated as a bar to the claim, the Court
6 did observe that initial payment of compensation did not, in view
7 of the provisions of ORS 656.262(7), prevent the employer from
8 later contesting the claim on its merits. This language is
9 certainly pertinent to the instant case, where the question of
10 allowance or rejection of the claim will be determined on its
11 merits in the claimant's pending appeal under Docket No. 43,109.
12

13 We conclude as a matter of law that the Department's order
14 of July 31, 1973, was a correct and proper order under the terms
15 of RCW 51.32.190, and that this self-insured employer is required
16 to pay time-loss compensation to the claimant for whatever
17 period between May 21, 1973 and August 28, 1973, that she was in
18 fact temporarily totally disabled.
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20 ORDER
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22 Now, therefore, it is hereby ORDERED that the order of the
23 Department of Labor and Industries dated July 31, 1973, adhering
24 to its prior order of June 28, 1973, and directing the self-
25 insured employer, Scott Paper Company, to pay temporary disability
26 compensation to which the claimant is entitled in accordance with
27 RCW 51.32.190, be, and the same is hereby, confirmed; and the
28 employer's above-numbered appeal from said order, filed with this
29 Board on August 27, 1973, be, and the same is hereby, denied.
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31 Dated this 26th day of October, 1973.
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33 BOARD OF INDUSTRIAL INSURANCE APPEALS
34

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36 PHILLIP T. BORK

37 Chairman
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40 R. H. POWELL

41 Member
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44 DISSENTING OPINION
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46 The claimant in this case is an employee of Scott Paper
47 Company; Scott Paper Company being a self-insurer under the
48 appropriate provisions of the Act. The record before us indicates
49 that the employee-claimant filed a claim of industrial injury
50 with the employer on April 9, 1973; the date of injury being the
51 same date. On June 5, 1973, the employer denied the claim. It
52 is observed that the first paragraph of RCW 51.32.190 requires
53 the self-insurer to rule upon such a matter within seven days
54 after the self-insurer has notice of the claim and this require-
55 ment of the statute was not complied with.
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57 On June 15, 1973, the Department issued an order denying the
58 claim on the basis that there was no proof of an injury at a
59 definite time and place in the course of employment. Thereafter,
60 that order was held in abeyance. On June 28, 1973, the Department
61 issued an order directing the employer to pay time-loss to the
62 claimant pursuant to the provisions of RCW 51.32.190 and a
63 further order dated June 31, 1973 affirmed the prior order dated
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5 June 28, 1973. On August 28, 1973, the Department issued an
6 order rejecting the claim for the reason previously given, i.e.,
7 no proof of an injury at a definite time and place in the course
8 of employment.

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10 The employer has appealed the Department's orders directing
11 the employer to pay time-loss; the time interval being May 21,
12 1973 to August 28, 1973. The majority of the Board has elected to
13 deny the employer's appeal on the ground that the provisions of
14 RCW 51.32.190(3) require the employer to pay time-loss in a
15 situation of this nature. The final sentence of RCW 51.32.190(3)
16 reads as follows:

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18 "...Where temporary disability com-
19 pensation is payable, the first payment
20 thereof shall be made within fourteen
21 days after notice of claim and shall
22 continue at regular semimonthly or
23 biweekly intervals." (Emphasis added)

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25 In the opinion of the majority, the intent of the provisions of
26 RCW 51.32.190 make it mandatory to pay time-loss regardless of
27 any determination as to the occurrence of an insured injury under
28 the Act and regardless of any determination as to whether or not
29 the claimant was temporarily and totally disabled because of the
30 incident complained of.

31
32 It is observed that the final paragraph of the statute
33 quoted above reads "Where temporary disability compensation is
34 payable" and to my mind these words connote a situation where a
35 true injury under the Act has occurred and further there has been
36 evidence of temporary total disability due to that eligible
37 injury. In the case before us, we have a factual pattern where the
38 Department of Labor and Industries has actually rejected the
39 claim but nevertheless has directed the employer to pay time loss
40 for a time interval up to the time that the Department issued its
41 final order rejecting the claim.

42
43 To me, it is patently incongruous that the Department would
44 on the one hand reject the claim and on the other hand direct a
45 self-insured employer to pay time loss compensation for an inci-
46 dent which was not a compensable injury under the Act. In an
47 ordinary reject case where a self-insured employer is not involved,
48 it is well settled that first there must be an injury insurable
49 under the Act and secondly, there must be temporary total dis-
50 ability attributable to that injury in order to enable the
51 employee to recover time-loss compensation. In the case before us,
52 there is not showing that there was an injury covered by the Act
53 and there is no showing that the employee was properly classified
54 as temporarily and totally disabled due to the incident complained
55 of. I refer to Franks v. Department of Labor and Industries, 35
56 Wn. 2d 763, Stampas V. Department of Labor and Industries, 38
57 Wn. 2d 48.

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59 In my opinion, the action of the Department in this case re-
60 quiring the employer to pay time-loss regardless of whether or
61 not there was an injury under the Act amounts to a violation of
62 that portion of the 14th Amendment to the Constitution of the
63 United States which provides in part that "nor shall any state
64 deprive any person of life, liberty or property without due
65 process of law."
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It is my belief that the appeal made by the employer to this Board should be allowed and that the employer should be afforded an opportunity to offer proof supporting a rejection of the initial claim and also proof as available on the question of temporary total disability, attributable to the incident complained of.

I am unable to concur in the majority opinion and therefore dissent.

Dated this 26th day of October, 1973.

BOARD OF INDUSTRIAL INSURANCE APPEALS

R. M. GILMORE

Member