

Bauer, Daniel

TIMELINESS OF APPLICATION TO REOPEN CLAIM (RCW 51.32.160)

Calculation of time

The seven year period for filing an application to reopen a claim begins to run when the Department order establishing or terminating compensation becomes a complete and final adjudication. Where no appeal was taken from the original order closing the claim, the statutory period for applying to reopen begins 60 days from the date the order was communicated to the worker. ...*In re Daniel Bauer*, BIIA Dec., 47,841 (1977)

Scroll down for order.

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

1 **IN RE: DANIEL BAUER**) **DOCKET NO. 47,841**
2)
3 **CLAIM NO. F-586967**) **DECISION AND ORDER**
4

5 APPEARANCES:

6
7 Claimant, Daniel Bauer, by
8 William J. VanNatter

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10 Employer, Vermiculite Manufacturing Company,
11 None

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13 Department of Labor and Industries, by
14 The Attorney General, per
15 Gayle Barry, Assistant
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17 This is an appeal filed by the claimant on March 12, 1976, from an order of the Department
18 of Labor and Industries dated January 15, 1976, which denied the application to reopen the claim
19 for aggravation of condition for the reason that it was not presented within the statutory time limit of
20 7 years from the date compensation was terminated, December 3, 1968. **REVERSED AND**
21 **REMANDED.**
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24 **DECISION**

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26 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
27 and decision on a timely Petition for Review filed by the Department of Labor and Industries to a
28 Proposed Decision and Order issued by a hearing examiner for this Board on May 12, 1977, in
29 which the order of the Department dated January 15, 1976 was reversed, and the claim remanded
30 to the Department with direction to grant the aggravation application, and to take such other and
31 further action as may be authorized or required by law.
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35 The issue before us is strictly one of law and is adequately set forth, along with the
36 background of this appeal, in the hearing examiner's Proposed Decision and Order.
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38 We uphold the hearing examiner's determination of timeliness of claimant's aggravation
39 application, but under a totally different rationale. Under the authority of Hunter v. Department of
40 Labor and Industries, 190 Wash. 380 (1937), the statutory period for applying to reopen a claim for
41 aggravation, as prescribed in RCW 51.32.160, begins to run from the time the Department's order
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1 establishing or terminating compensation becomes a complete and final adjudication. In the instant
2 case, inasmuch as no appeal was taken from the Department's order of December 3, 1968,
3 establishing and terminating compensation (as had been done in the Hunter case), the statutory
4 period for applying to reopen the claim for aggravation began to run 60 days from the date the order
5 of December 3, 1968, was communicated to the claimant. See Ek v. Department of Labor and
6 Industries, 181 Wash. 91 (1935). Without attempting to establish the precise date when the
7 statutory aggravation period began to run in this case, it is sufficient to say that the claimant's
8 aggravation application filed on January 2, 1976, was well within seven years from the date the
9 department's closing order of December 3, 1968, became a complete and final adjudication, since
10 said date had to be a minimum of 60 days after December 3, 1968. The application was therefore
11 timely filed.

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13 As a final note, the hearing examiner, in his Proposed Decision and Order, directed the
14 Department to "grant" the claimant's application. Manifestly, this was error inasmuch as the merits
15 of the claimant's application to reopen this claim for aggravation were not before the Board on this
16 appeal.

17 18 **FINDINGS OF FACT**

19 Proposed Findings 1 and 2 of the Proposed Decision and Order entered herein, are adopted
20 by the Board and are incorporated herein by this reference. Proposed Finding No. 4 (sic) is hereby
21 stricken, and in lieu thereof the Board makes the following as Finding No. 3:

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3. Claimant filed his application to reopen this claim for aggravation of condition on January 2, 1976.

CONCLUSIONS OF LAW

Based upon the foregoing findings, the Board makes the following conclusions:

1. The Board has jurisdiction of the parties and the subject matter of this appeal.
2. The claimant's application to reopen this claim for aggravation of condition was timely filed, inasmuch as it was filed within seven years from the date the Department's order of December 3, 1968, became a complete and final adjudication.
3. The order of the Department of Labor and Industries dated January 15, 1976, denying the claimant's application to reopen this claim for aggravation of condition on the ground that it was not presented within the statutory time limitation of seven years from the date compensation was terminated, is incorrect, and should be reversed, and this claim remanded to the Department with instructions to consider the claimant's

1 aggravation application on its merits, and to thereafter take such other
2 and further action as may be authorized or required by law.
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4 It is so ORDERED.

5 Dated this 14th day of December, 1977.
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7 BOARD OF INDUSTRIAL INSURANCE APPEALS
8

9
10 /s/
11 PHILLIP T. BORK Chairman

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13 /s/
14 SAM KINVILLE Member

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17 /s/
18 WILLIAM C. JACOBS Member
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