

Herring, David

COMMUNICATION OF DEPARTMENT ORDER

Address shown by Department records

A Department order must be sent to the worker's last known address as shown by the records of the Department. When the worker has notified the Department of a change of address to that of his attorney, an order sent to the claimant at his home address rather than in care of his attorney has not been "communicated" within the meaning of RCW 51.52.050. ...*In re David Herring, BIIA Dec., 57,831 (1981)*

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

1 **IN RE: DAVID P. HERRING**) **DOCKET NOS. 57,831 & 57,830**
2)
3) **ORDER REMANDING APPEALS TO**
4 **CLAIM NOS. G-326610 & G-292702**) **HEARINGS EXAMINER**
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6 **APPEARANCES:**

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8 Claimant, David P. Herring, by
9 David L. Scott and Charles W. Talbot

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11 Employer, Washington Iron Works, by
12 Nick Verwolf

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14 Department of Labor and Industries, by
15 The Attorney General, per
16 Dorothy C. Bullitt, Assistant
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18 Appeals filed by the claimant on October 7, 1980, from orders of the Department of Labor
19 and Industries, the first dated December 21, 1971, which adhered to the provisions of a prior order
20 denying an application to reopen the claim for aggravation of condition in Claim No. G-292702
21 (Docket No. 57,830), and the second, from an order dated August 11, 1978, denying an application
22 to reopen the claim for aggravation of condition in Claim No. G-326610 (Docket No. 57,831).
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24 **REMANDED TO HEARINGS EXAMINER.**
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DECISION

38 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
39 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order
40 issued by a hearings examiner for this Board on April 17, 1981, dismissing both appeals.
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42 The question for decision is the timeliness of the claimant's appeals herein which were filed
43 on October 7, 1980, and taken in regard to both the above-referenced claims. Exhibit 1 through 28
44 for identification are hereby admitted in evidence.
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46 The transcript in this matter is not a model of resolute clarity. Certain salient facts, however,
47 can be gleaned from the official record. Sometime in early August, 1978, the claimant met with
48 Attorney Charles Talbot, who was associated in these two matters by Attorney David Scott. Mr.
49 Herring presented to Mr. Talbot final orders dated July 28, 1978, in each of the claims before us.
50 Both orders were appealable departmental orders denying applications to reopen each respective
51 claim for aggravation of disability. By letter dated August 7, 1978, the claimant notified the
52 Department of change of address in both claims to that of his attorneys who share the same
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1 address. By letter dated September 20, 1978, Attorney Talbot submitted a request for
2 reconsideration of the closing order of July 28, 1978, in Claim No. G-292702 to the Department.
3 Mr. Talbot asserts that this reconsideration request was filed by him with respect to both claims.
4 Exhibit 6 shows clearly that the request was in reference solely to Claim No. G-292702.
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7 During the interim, the Department issued a final order dated August 11, 1978, in Claim No.
8 G-326610, denying an application to reopen the claim for aggravation of disability. This is the last
9 final order issued by the Department in Claim No. G-326610. On October 10, 1978, the
10 Department issued an order in Claim No. G-292702, noting that the claim had previously been
11 closed on July 28, 1978, that a request for reconsideration had been received, and that the claim
12 was to remain closed. For reasons which remain unexplained, the Department issued a further
13 order in Claim No. G-292702 on December 21, 1978, closing the claim and setting forth the same
14 recitations as those contained in the order of October 10, 1978.
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16 It is clear that the claimant's attorneys did not receive a copy of the Department's order of
17 August 11, 1978, in Claim No. G-326610, nor of its orders of October 10, 1978 and December 21,
18 1978 in Claim No. G-292702. These orders do not show claimant's attorneys as an addressee.
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20 Although the Department, by its own admission, had received claimant's change of address
21 of August 7, 1978, to that of his attorneys, and had it in its files, the change somehow did not get
22 into the Department's computer. These orders do show the claimant as an addressee, and his
23 address is correctly listed except for an erroneous Zip code. The claimant did not deny receiving
24 these orders -- he just couldn't "recollect" receiving them. His testimony implies that since the Zip
25 code was wrong the mail did not reach him.
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27 The law requires that the Department's closing orders be sent to the worker (or implicitly his
28 or her authorized representative) at his last known address "as shown by the records of the
29 department." RCW 51.52.050. By the Department's own admission (Robert J. Sullivan), it had the
30 claimant's change-of-address in its records. Whether the claimant did in fact receive copies of the
31 orders at his home is not critical to resolution of this appeal since they were issued after a change
32 of address was filed with the Department. Under these circumstances, we hold that the
33 Department's final order dated August 11, 1978, in Claim No. G-326610, and its final order dated
34 December 21, 1978, in claim No. G-292702, were not legally "communicated" at the claimant's last
35 known address and therefore have remained viable and subject to appeal. To be "communicated,
36 copies of the orders or actual knowledge of the contents and meaning of the orders must be
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1 directed to the last known address of the claimant (or his authorized representative as shown by the
2 Department's records).
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4 The appeals filed herein as to both claims on October 7, 1980 are timely, and the Board
5 assumes jurisdiction in both appeals. We do not deem formal findings of fact necessary, inasmuch
6 as they are straight-forward and sufficiently set forth in the text. This matter will be remanded to a
7 hearings examiner of the Board with instructions to schedule testimony on the merits of the
8 claimant's appeals as to both claims.
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11 It is so ORDERED.

12 Dated this 30th day of July, 1981.

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15 BOARD OF INDUSTRIAL INSURANCE APPEALS

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17
18 /s/
19 MICHAEL L. HALL Chairman

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21 /s/
22 FRANK E. FENNERTY, JR. Member
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