

## **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)*

Scroll down for order.

**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**

5  
6 **APPEARANCES:**

7  
8         Claimant, David P. Herring, by  
9         David L. Scott and Charles W. Talbot

10  
11        Employer, Washington Iron Works, by  
12        Nick Verwolf

13  
14        Department of Labor and Industries, by  
15        The Attorney General, per  
16        Dorothy C. Bullitt, Assistant

17  
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).

23  
24        **REMANDED TO HEARINGS EXAMINER.**

25  
26  
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 Petition for Review filed by the claimant to a Proposed Decision and Order  
30        issued by a hearings examiner for this Board on April 17, 1981, dismissing both appeals.

31  
32        The question for decision is the timeliness of the claimant's appeals herein which were filed  
33        on October 7, 1980, and taken in regard to both the above-referenced claims. Exhibit 1 through 28  
34        for identification are hereby admitted in evidence.

35  
36        The transcript in this matter is not a model of resolute clarity. Certain salient facts, however,  
37        can be gleaned from the official record. Sometime in early August, 1978, the claimant met with  
38        Attorney Charles Talbot, who was associated in these two matters by Attorney David Scott. Mr.  
39        Herring presented to Mr. Talbot final orders dated July 28, 1978, in each of the claims before us.  
40        Both orders were appealable departmental orders denying applications to reopen each respective  
41        claim for aggravation of disability. By letter dated August 7, 1978, the claimant notified the  
42        Department of change of address in both claims to that of his attorneys who share the same  
43        Department of change of address in both claims to that of his attorneys who share the same  
44        Department of change of address in both claims to that of his attorneys who share the same  
45        Department of change of address in both claims to that of his attorneys who share the same  
46        Department of change of address in both claims to that of his attorneys who share the same  
47        Department of change of address in both claims to that of his attorneys who share the same

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.  
5

6  
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.  
15

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.  
19

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.  
26

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  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

1 directed to the last known address of the claimant (or his authorized representative as shown by the  
2 Department's records).  
3

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 hearing examiner of the Board with instructions to schedule testimony on the merits of the  
8 claimant's appeals as to both claims.  
9  
10

11 It is so ORDERED.

12 Dated this 30th day of July, 1981.

13  
14  
15 BOARD OF INDUSTRIAL INSURANCE APPEALS

16  
17  
18 /s/  
19 MICHAEL L. HALL Chairman

20  
21 /s/  
22 FRANK E. FENNERTY, JR. Member  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47