

Jackson, Seth

BOARD

Equitable powers

The Board's powers are limited to those expressly granted by the legislation which created it. Since the Board has no equitable powers under Ch 51 RCW, it may only, under the doctrine of stare decisis, apply equitable principles determined by the appellate courts in similar cases. ...*In re Seth Jackson*, BIIA Dec., 61,088 (1982)

Scroll down for order.

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

1 **IN RE: SETH E. JACKSON**) **DOCKET NO. 61,088**
2)
3 **CLAIM NO. H-614937**) **DECISION AND ORDER**
4

5 APPEARANCES:

6
7 Claimant, Seth E. Jackson, by
8 Salter, McKeehen, Gudger and Rabine, P.S., per
9 Carleton H. A. Taber

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11 Employer, Security Savesco, Inc.,
12 None

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14 Department of Labor and Industries, by
15 The Attorney General, per
16 James S. Kallmer, Assistant
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18 This is an appeal filed by the claimant on December 9, 1981, from an order of the
19 Department of Labor and Industries dated July 28, 1981, which denied claimant's application to
20 reopen this claim on the ground that the evidence discloses no aggravation of the injury, and which
21 segregated and denied a condition described as "convulsive disorder" as being causally unrelated
22 to the injury of November 2, 1979. Appeal **DISMISSED**.
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25 **DECISION**

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27 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
28 and decision on a timely Petition for Review filed by the claimant to a Proposed decision and Order
29 issued on September 10, 1982, in which claimant's appeal from the order of the Department dated
30 July 28, 1981 was dismissed.
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33 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no
34 prejudicial error was committed and said rulings are hereby affirmed.
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36 The issue presented by this appeal and the evidence presented by the parties are
37 adequately set forth in the Proposed Decision and Order. No testimony was received as to the
38 merits since it was concluded in the Proposed Decision and Order that this Board lacked jurisdiction
39 to hear the claimant's appeal. We agree.
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1 The Department's order dated July 28, 1981 (Exhibit No. 1) contained a clerical error in the
2 spelling of Mr. Jackson's first name ("Seith" instead of the correct "Seth"). We view this as a matter
3 of no consequence. The transcript contains nothing to suggest that the error delayed delivery of
4 the order to the claimant -- to any extent, or at all. The error was not of such magnitude as to
5 provide any basis for confusion as to applicability, despite Mr. Jackson's testimony to the contrary.
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8 The claimant's notice of appeal purports to be taken both from the order dated July 28, 1981
9 (Exhibit No. 1) and from the Department's letter dated October 26, 1981 (Exhibit No. 4). The latter
10 does not re-adjudicate the claim and cannot relieve the claimant from timely appealing from the
11 order of July 28. Exhibit No. 4 is simply a letter of explanation to the former attorney of the
12 claimant, explaining why the Department could take no further action on the matter.
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15 The burden of proving those facts essential to support the jurisdiction of this Board is upon
16 the claimant as the appellant. Lewis v. Department of Labor and Industries, 46 Wn. 2d 391, 397
17 (1955). RCW 51.52.060 requires the filing of an appeal with this Board by the aggrieved person
18 within 60 days of the date of communication of the Department's order. The record of this appeal
19 contains no evidence purporting to show that Mr. Jackson filed his appeal with this Board within 60
20 days of the date of delivery of Exhibit No. 1 to him. To the contrary, Mr. Jackson's testimony tends
21 to show receipt of Exhibit No. 1 in due course of mail delivery, and his appeal was not filed with this
22 Board until December 9, 1981.
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25 Alternatively, in his Petition for Review Mr. Jackson urges the Board to exercise equitable
26 powers to accept jurisdiction, based either upon equitable estoppel or upon Mr. Jackson's lack of
27 capacity to understand any communication of Exhibit No. 1.
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30 We find the testimony of Lola Gentry to be more persuasive than that of Mr. Jackson. We do
31 not believe her conversation with him provided any basis for equitable estoppel. Further, it does
32 not appear an agency such as this Board can be conferred with subject matter jurisdiction because
33 of estoppel. An administrative tribunal has a more restricted scope of authority. State v. Higher
34 Education Personnel Board, 16 Wn. App. 642 (1976).
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37 The case cited immediately above points out that the powers of a state agency are limited to
38 those expressly granted to it by the legislation which created it. Title 51 of RCW confers no
39 equitable power to this Board. This Board may by stare decisis apply only those equitable
40 principles previously determined by appellate courts, which inherently have such equitable powers,
41 to fact situations compatible with cases such as Ames v. Department of Labor and Industries, 176
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1 Wash. 609 (1934) and Rodriquez v. Department of Labor and Industries, 85 Wn. 2d 949 (1975).
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3 This case is clearly not compatible with those cases.

4 Mr. Jackson urges this Board to consider certain allegations, which did not enter the record
5 of this appeal as sworn testimony, which purport to show his limited understanding or "perceptual
6 abilities". Speaking in Kaiser Aluminum and Chemical Corporation v. Department of Labor and
7 Industries, 45 Wn. 2d 745, 747 (1954), the court stated that this Board, being a quasi-judicial body,
8 must base its findings and determinations upon evidence rather than upon the information or
9 experience of its members. See Watt v. Weyerhaeuser Company, 18 Wn. App. 731, 739 (1977).
10 The evidence contained in the record is insufficient to show this claimant to be either illiterate or of
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unsound mind.

All of the findings and conclusions in the Proposed Decision and Order are stricken, and are replaced by those which follow.

FINDINGS OF FACT

After a careful review of the entire record, the Board finds as follows:

1. On November 26, 1979, the claimant, Seth E. Jackson, filed an accident report with the Department of Labor and Industries alleging that he had sustained an industrial injury on November 2, 1979, while in the course of his employment with Security Savesco, Inc. On August 19, 1980, the Department issued its order allowing and closing the claim, having provided medical treatment only. On November 19, 1980, the Department issued an order indicating that a request for reconsideration had been timely filed, but that no error had been committed and again closed the claim in accordance with its prior order dated August 19, 1980.
2. On July 7, 1981, Mr. Jackson filed with the Department an application to reopen his claim for alleged aggravation of condition. On July 28, 1981, the Department issued its order segregating and denying a condition described as "convulsive disorder" as being causally unrelated to the industrial injury of November 2, 1979. The order denied the application to reopen the claim on the ground that the evidence disclosed no aggravation of the injury and further stated that the claim shall remain closed pursuant to the provisions of the order dated August 19, 1980. On October 21, 1981, the Department received a notice of protest from an attorney then representing the claimant. On October 26, 1981, the Department, acting by and through its claims consultant, Sarah C. Frederick, wrote a letter to the claimant's attorney stating that the order dated July 28, 1981 (denying the application to reopen the claim for aggravation of condition) had been issued and that no timely notice of protest had been received either from the claimant or an attending

1 physician. On December 9, 1981, the Board of Industrial Insurance
2 Appeals received a notice of appeal (signed and mailed December 8,
3 1981) in which present counsel for claimant purported to appeal from
4 both the order dated July 28, 1981, and from the Department's letter
5 dated October 26, 1981. On January 4, 1982, this Board issued its
6 order granting the appeal, subject to proof of timeliness, and directed
7 that proceedings be held on the issues raised in the notice of appeal.
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- 10 3. The order of the Department dated July 28, 1981, which denied Mr.
11 Jackson's application to reopen his claim for aggravation of condition,
12 included the following heading:
13 "ANY PROTEST OR REQUEST FOR RECONSIDERATION OF THIS
14 ORDER MUST BE MADE IN WRITING TO THE DEPARTMENT OF
15 LABOR AND INDUSTRIES IN OLYMPIA WITHIN 60 DAYS. A
16 FURTHER APPEALABLE ORDER WILL FOLLOW SUCH A REQUEST.
17 ANY APPEAL FROM THIS ORDER MUST BE MADE TO THE BOARD
18 OF INDUSTRIAL INSURANCE APPEALS, OLYMPIA, WITHIN 60
19 DAYS FROM THE DATE THIS ORDER WAS COMMUNICATED TO
20 THE PARTIES, OR THE SAME SHALL BECOME FINAL."
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 - 22 4. Mr. Jackson received the order issued by the Department on July 28,
23 1981, in due course of mail.
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 - 25 5. The letter from the Department to the claimant, dated October 26, 1981,
26 was not a final appealable order; it was simply a letter of explanation.
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 - 28 6. The claimant's notice of appeal, received by this Board on December 9,
29 1981, was not filed within 60 days from the date of communication to
30 claimant of that order issued by the Department on July 28, 1981.
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 - 32 7. On or about July 28, 1981, claimant was neither illiterate nor of unsound
33 mind.
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 - 35 8. The Department's order issued July 28, 1981, contained a clerical error
36 in the spelling of Mr. Jackson's first name, in that "Seth" was misspelled
37 as "Seith." This error did not delay delivery of that order to the claimant,
38 nor did it confuse the claimant as to its applicability to him or as to the
39 contents of said order.
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 - 41 9. Mr. Jackson was not misled by any contact with any employee of the
42 Department into believing that there was no need to appeal from, or to
43 protest from, the Department order dated July 28, 1981.
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45 **CONCLUSIONS OF LAW**

46 Based upon the foregoing findings of fact, this Board reaches the following conclusions:

- 47 1. The Board of Industrial Insurance Appeals lacks jurisdiction over the
subject matter of this appeal, because of the failure of the claimant to
comply with the requirements of RCW 51.52.060.

1 2. The appeal filed by the claimant with this Board on December 9, 1981,
2 should be dismissed for lack of jurisdiction.

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4 It is so ORDERED.

5 Dated this 30th day of November, 1982.

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7 BOARD OF INDUSTRIAL INSURANCE APPEALS

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9
10 /s/
11 MICHAEL L. HALL Chairman

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14 /s/
15 PHILLIP T. BORK Member

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