

Olds, Richard

TIMELINESS OF CLAIM (RCW 51.28.050; RCW 51.28.055)

Occupational disease [prior to 1984 amendment to RCW 51.28.055]

Divisible claims

Although a worker failed to file a timely claim for carpal tunnel syndrome in his right hand, his claim for carpal tunnel syndrome in his left hand was timely since the condition in that extremity only became disabling within one year of the date the claim was filed. ...*In re Richard Olds*, BIIA Dec., 61,534 (1983) [dissent]

Scroll down for order.

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

1 **IN RE: RICHARD H. OLDS**) **DOCKET NO. 61,534**
2)
3 **CLAIM NO. S-426748**) **DECISION AND ORDER**
4

5 APPEARANCES:

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7 Claimant, Richard H. Olds, by
8 Rovai, McGoffin, Rentel and Turner, per
9 Gary Rentel and Jim Orlando

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11 Employer, Hygrade Food Products Corp., by
12 Rolland and O'Malley, per
13 Thomas O'Malley

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15 This is an appeal filed by the self-insured employer on February 16, 1982, from an order of
16 the Department of Labor and Industries dated February 3, 1982. The order appealed from adhered
17 to the provisions of a prior Department order allowing the claim for bilateral carpal tunnel syndrome.
18 The Department order is **REVERSED** and the claim is **REMANDED**.
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21 **PROCEDURAL STATUS AND EVIDENTIARY RULINGS**

22 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
23 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order
24 issued on January 19, 1983, in which the order of the Department dated February 3, 1982 was
25 reversed and the claim remanded to the Department with direction to reject the claim on the ground
26 that Mr. Olds' application for benefits was not filed within one year from the date on which he was
27 informed by a physician that his carpal tunnel syndrome was occupationally related in its nature and
28 causation.
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30 The Board has reviewed the evidentiary rulings and the record of proceedings and finds that
31 no prejudicial error was committed. Said rulings are hereby affirmed.
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33 **DECISION**

34 The evidence presented by the parties is adequately set forth in the Proposed Decision and
35 Order, and will not be reiterated herein. We agree with the determination in the Proposed Decision
36 and Order that the claimant's right-side carpal tunnel syndrome should not be covered by industrial
37 insurance. Review has been granted because the evidence demonstrates that claimant Olds'
38 application for benefits in connection with his left-side carpal tunnel syndrome was timely filed, thus
39 entitling him to medical aid and compensation for that condition.
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1 The record discloses that in November, 1979, Richard H. Olds complained to Dr. Robert
2 Bond of paresthesia and pain in both hands.
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4 Dr. Bond referred the claimant to Dr. Stevens Dimant for treatment, and Dr. Dimant informed
5 the claimant that both of his hands were affected by carpal tunnel syndrome, but that because his
6 left hand was presenting no significant problems, surgical intervention was justified only for the right
7 hand. Surgery was performed on the right hand in February, 1980. Accordingly, as of February,
8 1980, Mr. Olds' right-side carpal tunnel syndrome had resulted in impairment of function which
9 required medical treatment and Mr. Olds had notice from Dr. Dimant that the disease producing that
10 impairment was occupational in causation. The claimant's application for worker's compensation
11 benefits was posted on October 29, 1981, and received by the Department on November 3, 1981.
12 Accordingly, with respect to the claimant's right-side carpal tunnel syndrome, his application for
13 benefits cannot be considered timely. RCW 51.28.055; Williams v. Department of Labor and
14 Industries, 45 Wn. 2d 574 (1954); Nygaard v. Department of Labor and Industries, 51 Wn. 2d 659
15 (1958).
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22 Mr. Olds returned to Dr. Bond in September, 1981, with significant complaints of left-hand
23 pain and paresthesia. Again, Dr. Bond referred the claimant to Dr. Dimant who noted the significant
24 increase in symptomology (over and above that found in November, 1979) and performed left hand
25 surgery in October, 1981. Thus it is clear that as of October, 1981 (and not prior thereto), the
26 claimant's left hand carpal tunnel syndrome had resulted in impairment of function which required
27 medical treatment, and Mr. Olds had noticed from Dr. Dimant that the disease producing that
28 impairment was occupational in nature and causation.
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32 It has been the consistent position of this Board that a worker's "cause of action" or claim for
33 occupational disease benefits will not accrue until the disease results in impairment of function
34 which requires medical treatment and the claimant receives notice that the disease is occupational
35 in nature and causation. Thus, although the claimant knew of the work-related nature of his left-
36 hand carpal tunnel syndrome in February, 1980, the left hand was not producing "disability" until
37 October, 1981, when surgical intervention was required. It follows that the application for industrial
38 insurance benefits which was filed on November 3, 1981, must be seen as timely with respect to
39 Mr. Olds' left-side carpal tunnel syndrome. RCW 51.28 .055; Williams, supra; Nygaard, supra.
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45 After consideration of the Proposed Decision and Order, the Petition for Review filed thereto,
46 and a careful review of the entire record before us, we hereby enter the following:
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FINDINGS OF FACT

1. On November 3, 1981, the claimant, Richard H. Olds, filed an application for industrial insurance benefits alleging the occurrence of an industrial injury or the contraction of an occupational disease on or about January 1, 1980, during the course of the claimant's employment with Hygrade Food Products Corporation, a self-insured employer under the Industrial Insurance Act. On December 21, 1981, the Department issued its order allowing the claim as an industrial injury. On January 20, 1982, a protest and request for reconsideration of the Department order dated December 21, 1981, was filed on behalf of the self-insured employer. On February 3, 1982, the Department issued its order adhering to the provisions of the December 21, 1981 order allowing the claim. Notice of appeal from that order was filed by the employer with the Board of Industrial Insurance Appeals on February 16, 1982, and on March 9, 1982, the Board entered its order granting the appeal and directed that proceedings be held on the issues raised by the appeal.
2. Richard H. Olds has been employed by Hygrade Food Products Corporation for approximately twelve years, primarily boning hog heads.
3. In approximately 1976, Mr. Olds began noticing a problem with his hands tingling and going to sleep. In November 1979, the claimant suffered from bilateral carpal tunnel syndrome. This condition was directly related to his work at Hygrade Food Products Corporation.
4. As of December, 1979, the claimant's right-side carpal tunnel syndrome constituted an impairment of physical function which required surgical intervention. During December, 1979, the claimant was first advised by a physician that his right-side carpal tunnel syndrome was in nature and causation related to his job duties for Hygrade Food Products Corporation.
5. During the month of October, 1981, the claimant's left-side carpal tunnel syndrome constituted a significant impairment of physical function which for the first time required surgical intervention. During December 1979, the claimant had been first advised by a physician that his left-side carpal tunnel syndrome was in nature and causation related to his job duties for Hygrade Food Products Corporation; however, at that time the left-side condition was not significant enough to warrant treatment.

CONCLUSIONS OF LAW

40 Based upon the foregoing Findings of Fact, this Board concludes as follows:

- 41 1. The Board of Industrial Insurance Appeals has jurisdiction of the parties
42 and subject matter of this appeal.
- 43 2. With respect to Richard H. Olds' right-side carpal tunnel syndrome, his
44 claim for occupational disease benefits, filed with the Department of
45 Labor and Industries on November 3, 1981, was not timely filed, and
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1 coverage for his right-side carpal tunnel syndrome is barred by the
2 provisions of RCW 51.28.055.

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4 3. With respect to Richard H. Olds' left-side carpal tunnel syndrome, his
5 claim for occupational disease benefits, filed with the Department of
6 Labor and Industries on November 3, 1981, was timely filed, and
7 coverage is not barred by the provisions of RCW 51.28.055.
- 8 4. The order of the Department of Labor and Industries dated February 3,
9 1982, which allowed the claim for bilateral carpal tunnel syndrome, is
10 incorrect in providing coverage for claimant Olds' right-side carpal tunnel
11 syndrome, should be reversed, and this claim remanded to the
12 Department with direction to withhold the benefits for the claimant's
13 right-side carpal tunnel syndrome, and to process the claim for benefits
14 for left-side carpal tunnel syndrome on the basis that a timely application
15 for occupational disease benefits has been filed.

16 It is so ORDERED.

17 Dated this 29th day of April, 1983

18 BOARD OF INDUSTRIAL INSURANCE APPEALS

19 /s/ _____
20 MICHAEL L. HALL Chairman

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

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28 **DISSENTING OPINION**

29 The Board majority is partially avoiding the statute of limitations which, in my view, clearly
30 bars the allowance of this claim in its entirety. The majority does this by deciding that the claimant
31 has not one, but two, occupational diseases or conditions -- a "right-side" carpal tunnel syndrome
32 (against which the statute of limitations had run), and a "left-side" carpal tunnel syndrome (against
33 which, says the majority, the statute of limitations had not run). I will not concur in this kind of
34 reasoning.

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38 There is clearly only one occupationally caused condition here, and that is bilateral carpal
39 tunnel syndrome. From its inception, the claimant had symptoms in both hands, and he knew in
40 December 1979 that the carpal tunnel syndrome on both sides was caused by his work.
41 Furthermore, at that time the bilateral condition did in fact constitute a compensable "disability".
42 The mere fact that the symptoms and findings in the right hand and wrist were somewhat more
43 severe at that time so that surgery on that side was advisable, and that the symptoms and findings
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1 of the same disease in the left hand and wrist progressed more slowly so that surgery on that side
2 was not done until twenty months later, does not change or affect the legal bar against this claim, in
3 my opinion. There is only one occupational disease entity in this case, and the claim for it was not
4 timely.
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7 I would adopt the reasoning, as well as the findings and conclusions, in the Proposed
8 Decision and Order of January 19, 1983, and thereby reverse the Department's order of February
9 3, 1982, and direct the rejection of this claim.
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11 Dated this 29th day of April, 1983.
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15 /s/
16 PHILLIP T. BORK Member
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