

Oshiro, Melvin

TIME-LOSS COMPENSATION (RCW 51.32.090)

Provisional time-loss compensation (RCW 51.32.190(3) and RCW 51.32.210)

Provisional time-loss compensation must be paid despite the subsequent rejection of the claim. ...*In re Melvin Oshiro*, BIIA Dec., 67,112 (1985) [*Editor's Note*: The Board's decision was appealed to superior court under King County Cause No. 85-2-068807.]; *In re Lynnette Murray (II)*, BIIA Dec., 42,296 [dissent] (1974) [*Editor's Note*: See later statutory amendment of RCW 51.32.240(2) allowing recovery of provisional time-loss overpayment where claim subsequently rejected.]

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS

STATE OF WASHINGTON

1
2 **In Re: MELVIN OSHIRO) DOCKET NO. 67,112**
3)
4 **Claim No. S-693994) DECISION AND ORDER**
5

6 APPEARANCES:

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8 Claimant, Melvin Oshiro, by
9 Pro Se,

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11 Self-insured employer, Safeway Stores, Inc., by
12 Perkins, Coie, Stone, Olsen & Williams, per
13 Calhoun Dickinson

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15 Department of Labor and Industries, by
16 The Attorney General, per
17 Francois L. Fischer, Assistant and
18 Deborah E. Hilsman, Law Clerk
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20 This is an appeal filed by the self-insured employer on
21 February 29, 1984, from an order of the Department of Labor and
22 Industries dated January 5, 1984, adhering to the provisions of a prior
23 order dated November 10, 1983, which rejected this claim for an alleged
24 industrial injury of May 30, 1983, and which further ordered payment to
25 the claimant of "provisional time-loss benefits as may be certified up
26 to the date of this rejection order pursuant to RCW 51.32.190."
27 Affirmed.

28 DECISION

29 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before
30 the Board for review and decision on a timely Petition for Review filed
31 by the employer to a Proposed Decision and Order issued on October 2,
32 1984, in which the order of the Department dated January 5, 1984 was
33 affirmed.

34 The Board has reviewed the evidentiary rulings in the record of
35 proceedings and finds that no prejudicial error was committed and said
36 rulings are hereby affirmed.

37 The general nature and background of this appeal are very well set
38 forth in the Proposed Decision and Order, and shall not be reiterated
39 at great length herein. Our review of this appeal is prompted by the
40 employer's complaint that an adequate discussion of legal issues raised
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1 during the course of hearing were not addressed or disposed of in the
2 Proposed Decision and Order.

3 It is the employer's position that the Department's authority to
4 order the payment of provisional time-loss compensation is contingent
5 upon there first being a prima facie showing by the claimant's original
6 application for benefits, that the subject condition or injury is
7 industrial. In effect, the employer's position would relate
8 provisional time-loss compensation to the merits, or lack thereof, of
9 the underlying claim itself.

10 It is, of course, well established that the legal criterion for
11 allowance of a claim is at least a prima facie showing that the subject
12 condition or injury is work-related. Provisional time-loss
13 compensation, however, is not predicated upon the eventual validity of
14 the underlying claim, but upon the failure to adjudicate the claim
15 within fourteen days after "notice of claim". The purpose, of
16 course, in requiring such compensation is to enforce expeditious
17 adjudication of contested claims where the claimant is temporarily
18 disabled and without wages. The statutory requirement that provisional
19 time-loss compensation be paid must be evaluated separate from the
20 question of a claimant's "rightful entitlement" to benefits under the
21 Act. That is why the statute, in effect, provides that neither the
22 payment nor the receipt of such provisional compensation shall, on the
23 one hand, obligate the employer to further benefits under the Act, or,
24 on the other, vest the employee with coverage thereunder.

25 Alternatively, it is the employer's position that where, as here,
26 the Department's adjudicative order in a disputed claim upholds the
27 employer's request that the claim be denied, the employer's liability
28 to pay provisional time-loss compensation ceases as of the day it filed
29 its SIF-4 form (request for claim denial) with the Department.

30 Certainly, the position urged by the employer finds no support in
31 the express wording of the governing statute, RCW 51.32.190. If, in
32 effect, the employer could stop the running of the "14-day clock" by
33 merely submitting a SIF-4 by the 14th day, the financial incentive to
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1 resolve controverted claims expeditiously would be nullified, thereby
2 undermining the very purpose of the provisional time-loss compensation
3 statute. Moreover, as noted in the Proposed Decision and Order, this
4 Board has previously held that provisional time-loss compensation, once
5 triggered, is thereafter payable until such time as the Department
6 issues its determinative order of allowance or rejection. Lynette A.
7 Murray, Docket No. 42,296 (1974); Sandra Lucille Walster, Docket No.
8 43,049 (1973).

9 It is clear that the true gravamen underlying the employer's
10 appeal is its ire over the protracted delay it encountered in securing
11 a determinative order out of the Department, thereby prolonging its
12 liability for provisional time-loss compensation. In this respect, the
13 employer argues that the Department should not be empowered to order
14 the employer to pay provisional time-loss compensation where the delay
15 giving rise to the employer's liability for such compensation was
16 occasioned by the Department's own inefficiency and negligence in
17 adjudicating the claim.

18 In response, we would note that the employer's liability to pay
19 provisional time-loss compensation does not stem from the order of the
20 Department ordering the employer to pay such compensation, but from the
21 statute itself. It is compensation statutorily mandated to the
22 claimant as a matter of right, and neither the Department nor this
23 Board is empowered by law to waive such mandate for any equitable
24 reason.

25 Before concluding, in all fairness, we think, it must be pointed
26 out that the inordinate delay by the Department in the adjudication of
27 this claim was due in substantial measure to the employer's own claim
28 service representative. To begin with, it was impossible for a
29 determinative order to have been issued in this matter within the
30 statutory 14-day time limitation. Mr. Oshiro's notice of claim to the
31 employer was completed on July 5, 1983. However, the employer's
32 request for denial of claim, the SIF-4, did not reach the Department
33 until July 20, 1983, because of a mailing error on the part of the
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1 employer's service representative. The request for denial of claim was
2 not accompanied by any report or records of Dr. Kenneth E. Mayeda, the
3 medical physician who first saw and treated the claimant for his
4 alleged industrial injury. Subsequent requests made for such records
5 on July 29, August 1, October 13 and October 28, 1983, by the
6 Department to the employer's service representative were to no avail.

7 Various reasons and explanations for the overall delay in this
8 matter appear in the record -- each side attempting to assign blame to
9 the other. In our view, it is sufficient to say that had the report of
10 the initial physician been submitted to the Department with the SIF-4,
11 as contemplated by WAC 296-15-070(2), this claim could have been
12 adjudicated in a much more timely fashion. In this regard, the
13 above-cited administrative rule provides in material part:

14 "With every such claim denial a self-insurer shall
15 send to the Department all information on which the
16 denial was based." (Emphasis added).
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18 Under the testimony of Pamela DeMille, it is clear that the
19 employer's notice of denial of the claim was based in part upon
20 information it received from Dr. Mayeda's office, information which
21 should have been immediately forwarded to the Department.

22 The proposed findings, conclusions and order of the Proposed
23 Decision and Order entered October 2, 1984, are hereby adopted as the
24 Board's final findings, conclusions and order, and are incorporated
25 herein by this reference.

26 It is so ORDERED.

27 Dated this 9th day of April, 1985.

28 BOARD OF INDUSTRIAL INSURANCE

29 APPEALS

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31
32 /S/ _____
33 MICHAEL L. HALL
34 Chairman

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39 /S/ _____
40 FRANK E. FENNERTY, JR.
41 Member