Francis, Harold

NOTICE OF APPEAL (RCW 51.52.050, RCW 51.52.060)

Timeliness

A notice of appeal from a Department order is effectively filed when it is properly posted in the mail on or before the sixtieth day from the date the Department order was communicated to the party. **….*In re Harold Francis*, BIIA Dec., 68,154 (1985)**

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: HAROLD D. FRANCIS	)	**DOCKET NO. 68,154**
	)	
	)	**ORDER SETTING ASIDE PROPOSED DECISION**
	)	**AND ORDER AND REMANDING CASE FOR**
CLAIM NO. S-651459	)	**FURTHER HEARING**

APPEARANCES:

Claimant, Harold D. Francis, by
Springer, Norman and Workman, per
John Dick

Self-insured Employer, Denny's Inc., by
Roberts, Reinisch and Klor, per
Steven R. Reinisch

This is an appeal filed by the claimant on July 5, 1984 from an order of the Department of Labor and Industries dated May 1, 1984. The order adhered to the provisions of an October 31, 1983 Department order denying the claimant's application to reopen this claim on the grounds of aggravation of condition. **REMANDED TO INDUSTRIAL APPEALS JUDGE**.

PROCEDURAL STATUS AND EVIDENTIARY RULINGS

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order issued on October 16, 1984, in which the claimant's appeal from the order of the Department dated May 1, 1984 was dismissed for lack of jurisdiction.

DECISION

The operative facts in this matter are not in dispute. The record presently before us supports that on August 9, 1982, Harold D. Francis sustained an industrial injury during the course of his employment with Denny's Inc. An application for industrial insurance benefits was filed on Mr. Francis' behalf on October 5, 1982, and on December 29, 1982 the Department issued an order allowing the claim. On June 14, 1983, the Department issued an order closing the claim with time-loss compensation as paid to October 3, 1982, and no permanent partial disability award for low back residuals. The closing order was not appealed. An application to reopen the claim on grounds of aggravation of condition was filed on the claimant's behalf on September 7, 1983, and on October 31, 1983 the Department issued an order denying the application to reopen. The October 31, 1983 Department order was timely protested and was reconsidered by the Department. On May 1, 1984

the Department issued an order adhering to its provisions. The Department's May 1, 1984 order was first communicated to the claimant through his agents on May 4, 1984. A notice of appeal from the Department's May 1, 1984 order was placed in the mail on July 3, 1984, and received by this Board on July 5, 1984. Sufficient postage was affixed to the notice of appeal and it bore the correct address. On July 20, 1984, this Board issued an order granting the appeal subject to proof of timeliness, assigned it Docket No. 68,154, and directed that proceedings be held on the issue raised by the notice of appeal.

From the foregoing recitation, it can be seen that the claimant's notice of appeal was placed in the mail on the 60th day following the day on which the contents of the May 1, 1984 Department order were communicated to the claimant's representatives. Certainly, by placing in the mails a notice of appeal on the 60th day, as was done here, the actual presentation or delivery to this Board within the same 60 days is not likely to occur. The parties acknowledge that no recognizable rule of law or equity will excuse Mr. Francis' untimely filing of this notice of appeal, if this filing is ultimately seen as untimely.

The issue now before us is whether the foregoing facts would support jurisdiction of this Board to hear the appeal on its merits.

The Proposed Decision and Order under scrutiny here holds that "filing", as contemplated by RCW 51.52.060, is an act of delivery or presentation, and that unless the notice of appeal is mailed soon enough that it may reasonably be expected to arrive at the Board of Industrial Insurance Appeals within the 60 day period set forth in the aforementioned statute, the notice has not been timely filed, and this Board lacks jurisdiction to entertain the appeal. The claimant argues, on statutory and constitutional grounds, that his notice of appeal must be seen as "filed" as of the date it was placed in the mails, given the unique language of RCW 51.52.060, as contrasted with other filing statutes under the workers' compensation law. We agree with the claimant's position.

As we find sufficient statutory basis to resolve the question presented, we will not comment on the claimant's constitutional arguments. The claimant's statutory construction argument is that because RCW 51.52.060 provides that an aggrieved party may file a notice of appeal with this Board "by mail or personally", placement in the mails within the 60-day appeal period constitutes timely filing of the notice of appeal, -- whether or not the notice was mailed in time to reach the Board, in the ordinary course of the mails, within the 60-day time period. It is pointed out that all filing statutes in the workers' compensation area permit filing by mail, but that none of the other filing statutes include the

above- quoted phrase. Therefore, the claimant posits, the phrase must be seen to do more than just permit the use of the mails, or it would be mere surplussage.

It is apparent that RCW 51.52.060 can be susceptible to more than one meaning, for the meaning ascribed by our industrial appeals judge is diametrically opposed to that put forward by the claimant's counsel. Finding no legislative history to aid in resolving the ambiguity, we look to rules of statutory construction to determine the legislature's intent in including within RCW 51.52.060 the phrase "by mail or personally".

It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded every word, phrase, clause, sentence, paragraph and section in a statute. Murray v. Department of Labor and Industries, 151 Wash. 95 (1929); Lowry v. Department of Labor and Industries, 21 Wn. 2d 538 (1944), opinion adhered to 23 Wn.2d 936 (1945); Department of Labor and Industries v. Cook, 44 Wn.2d 671 (1954); Department of Labor and Industries v. Kinville, 35 Wn.App. 80 (1983). Language in a statute must be given such construction as will make it purposeful and effective, rather than superfluous, futile and meaningless. See Davis v. Washington Toll Bridge Authority, 57 Wn.2d 428, 439 (1961); DeGrief v. City of Seattle, 50 Wn.2d 1, 10 (1956). The construction placed on the phrase "by mail or personally" by the Proposed Decision and Order, would, in our view, render that phrase superfluous, since RCW 51.52.060 would permit use of the mail to accomplish service of the notice of appeal even if the critical phrase were not included. Therefore, our analysis requires a holding that the phrase "by mail or personally" does not merely indicate the manner in which a person may deliver his notice of appeal. It indicates the legislature's intent that placement in the mails within the 60-day period set forth in RCW 51.52.060 constitutes timely "filing" of a notice of appeal.

Other support for the foregoing interpretation exists as well. It has been this Board's practice ever since its inception, to regard placement in the mail on or before the 60th day as a timely filing of a notice of appeal. As the addendum to the claimant's Petition for Review correctly points out, great weight is given the contemporaneous construction placed upon a statute by officials charged with its enforcement, particularly where, as is the case here, that construction has been accompanied by silent acquiescence of the legislature over a period of time. See e.g., Ball v. Smith, 87 Wn.2d 717 (1976).

We hold that because RCW 51.52.060 specifically authorizes service "by mail" of a notice of appeal from a determinative Department order, such service is deemed complete when the notice is deposited in the post office, properly addressed and with sufficient postage affixed. We hold such

filing to be sufficient if the notice is deposited in the mail on the last day allowed for filing, even though the notice is not received by the Department or this Board until after that day.

Thus, this matter should be remanded to an industrial appeals judge for further proceedings on the merits of the issues raised by the appeal. WAC 263-12-145(3).

Now, therefore, it is hereby ORDERED that the Proposed Decision and Order issued October 16, 1984 be set aside and held for naught. The appeal is remanded to the hearing process with instructions to schedule such further proceedings as may be required to resolve this appeal on its merits. Following closure of the record, a further Proposed Decision and Order is to be issued on all contested issues of fact and law.

Dated this 8th day of January, 1985.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
MICHAEL L HALL Chairperson

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

/s/_____
PHILLIP T. BORK Member