

Lapierre, Leo

TIMELINESS OF CLAIM (RCW 51.28.050; RCW 51.28.055)

Occupational disease [prior to 1984 amendment to RCW 51.28.055]

Compensable disability

The time limit for filing an occupational disease claim does not begin to run until the worker has a compensable disability; that is, until he is temporarily totally disabled, permanently partially disabled or permanently totally disabled.

...*In re Leo Lapierre*, BIA Dec., 69044 (1986)

Scroll down for order.

1 RCW 51.28.055, as it read prior to the 1984 amendment, provided:

2 "Claims for occupational disease or infection to be valid and compensable
3 must be filed within one year following the date the worker had notice from
4 a physician of the existence of his or her occupational disease, without
5 reference to its date of origin."
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8 Two events are required under RCW 51.28.055 before the time limitation begins to run:

- 9 1. Notice to the worker from his "doctor that his disabling disease is
10 occupational in its nature and causation". Williams v. Department of Labor
11 and Industries, 45 Wn. 2d. 574, 576 (1954); and
12 2. "Some degree of disability, amounting to a compensable disability".
13 Nygaard v. Department of Labor and Industries, 51 Wn. 2d. 659, 662
14 (1958).
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16 Mr. LaPierre was notified in September 1980 by Dr. Ries that his right forearm pain, the tenosynovitis
17 of his abductor and extensor pollicis, which controls the right thumb, and the pain he was experiencing
18 in both shoulders, were all "job connected". While the condition for which the claim was filed in
19 December, 1982 was post-traumatic arthritis, which was not diagnosed until October 15, 1982, Dr.
20 Ries testified that claimant's condition in 1982 was the same, though worse, as his condition in 1980.
21 We will assume, without deciding, that notification of the occupational nature of a disease, though
22 incorrectly labeled, satisfies the requirements of RCW 51.28.055.
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24 In Dr. Ries's opinion Mr. LaPierre was able in 1980 to "carry out almost any other physical job
25 that he has ever done" but might "well end out with an Industrial disability . . . if he remains doing his
26 work on the "chain". Thus, Dr. Ries did not consider Mr. LaPierre disabled in 1980 but predicted that
27 he would become disabled if he continued to work on the green chain.
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29 Under Nygaard the claimant's occupational disease must impair his efficiency as a worker and
30 he must have a "compensable disability" before the statute of limitations begins to run. The facts in
31 this case are strikingly similar to those in Nygaard. In that case, the worker was treated for bronchial
32 asthma for nine years prior to his collapse due to that condition on November 4, 1953. Sometime
33 between 1944 and 1953 he was advised of the occupational nature of his condition. He filed his claim
34 for benefits on November 27, 1953 and the court found that application timely, noting that there was
35 no evidence that his efficiency as a worker had been impaired until his collapse on November 4, 1953.
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1 In prior Decisions and Orders, this Board has interpreted the language in Nygaard requiring a
2 "compensable disability" before the statute of limitations begins to run to mean temporary total
3 disability, permanent total disability or permanent partial disability. See In re Robert D. Kutzer, Docket
4 No. 44, 305, Claim No. G-525281, issued 2-27-76. Mr. LaPierre missed only two to three days of work
5 in 1980 due to his arthritic condition and his treatment consisted of cortisone injections, medication,
6 several doctor visits, and a transfer at his doctor's recommendation in September, 1980 from the
7 green chain to the job of dryer-feeder. While the claimant required treatment in 1980, his condition
8 was neither temporarily nor permanently disabling. RCW 51.32.090(5) precludes the payment of
9 time-loss compensation for the two to three days of work which the claimant lost in 1980 due to his
10 arthritis. Therefore, the claimant cannot be considered to have sustained a compensable temporary
11 total disability in 1980.
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18 There is an important distinction to be made between the terms "compensable" and
19 "compensable disability". Claimant's condition may well have been "compensable" in 1980 in the
20 sense that, had he filed a claim, it might have been allowed for medical treatment only and closed.
21 However, the time limit for filing an occupational disease claim does not begin to run until the claimant
22 has a compensable disability, that is, until the claimant is temporarily totally disabled, permanently
23 partially disabled, or permanently totally disabled.
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27 Between September, 1980 and September, 1982 Mr. LaPierre's condition was essentially
28 asymptomatic and resulted in no absences from work. Between September 20, 1982 and October 19,
29 1982 his arthritic condition flared up due to his full-time reassignment to the green chain. The claimant
30 did not miss any work during this period because, despite the pain, he could not afford to do so. He
31 did again seek medical treatment from Dr. Ries on October 15, 1982. For the first time Dr. Ries
32 diagnosed his condition as post-traumatic arthritis. He considered this condition a more severe
33 manifestation of the same condition which he had seen in 1980. He treated claimant with Motrin and
34 recommended that he be transferred from the green chain.
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38 This time, however, the employer was not so receptive to Dr. Ries's request that the claimant
39 be transferred and in response to that request informed the claimant that he was temporarily laid off on
40 October 19, 1982. With the assistance of the Human Rights Commission, the claimant was reinstated
41 to the position of dryer-feeder on November 29, 1982 and he has worked in that position ever since.
42 He filed a claim for benefits under the Workers' Compensation Act on December 3, 1982.
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1 This claim was timely pursuant to RCW 51.28.055. While the claimant was notified of the
2 occupational nature of his condition back in 1980, he did not have a compensable disability at that
3 time. Thus the one year time limitation did not begin to run in 1980. Mr. LaPierre maintained his
4 employment without problem up until September 20, 1982 and continued working despite pain up to
5 October 19, 1982. Any compensable disability which Mr. LaPierre may have emerged after
6 September, 1982 and his claim for benefits was filed on December 3, 1982, well within the requisite
7 one-year period.¹

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9 The self-insured employer's second contention, that claimant's condition was required to be
10 asymptomatic "prior to the filing of the accident report", is incorrect. In Snyder v. Department of Labor
11 and Industries, 40 Wn. App. 566 (1985) the court held that

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13 "aggravation of a pre-existing asymptomatic disease may be compensable
14 as an occupational disease within the meaning of RCW 51.08.140,
15 provided that the employment conditions producing the aggravation are
16 peculiar to, or inherent in, the particular occupation. See Kinville, 35 Wn.
17 App. at 87"

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19 Snyder at 575.

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21 To satisfy the requirements of Snyder, the claimant must show that his arthritic condition was
22 asymptomatic prior to his employment with Boise Cascade, not prior to the filing of his claim for
23 benefits. In addition, under Department of Labor and Industries v. Kinville, 35 Wn. App. 80 (1983), the
24 claimant is required to prove cause in fact and that there is a greater risk of contracting the disease
25 inherent in his employment as opposed to other employments or non-employment life.

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27 Mr. LaPierre has been employed by Boise Cascade from 1964 to 1966 and from March 1971 to
28 the present. His testimony establishes that his arthritis was asymptomatic prior to 1980 when it was
29 lighted up by full-time assignment to the green chain, which was being operated at an increased
30 speed. Thus, the Snyder requirement has been met.

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¹ Because we find this claim timely pursuant to the provisions of RCW 51.28.055 as that statute read prior to the 1984 amendment, we have no occasion to reach the question of whether the 1984 amendment extending the time period to two years and adding the requirement that a physician notify the worker that a claim for disability benefits may be filed is applicable here. We would note that RCW 51.28.055 is a non-claim statute. Once the one-year period has been triggered and elapsed, any right to compensation, not just the remedy, would be extinguished and could not be revived by the subsequent 1984 amendment to RCW 51.28.055. See Lane v. Department of Labor and Industries, 21 Wn. 2d. 420 (1944); Wheaton v. Department of Labor and Industries, 40 Wn. 2d. 56 (1952).

1 In addition, all of the medical witnesses concurred that claimant's work on the green chain was
2 a contributing cause of his arthritis condition. Dr. Ries, who testified on behalf of the claimant, and Dr.
3 Place, who testified on behalf of the self-insurer, both testified that there was a greater risk of arthritis
4 for workers on the green chain than in other employments or non-employment life. Thus, the
5 two-pronged Kinville test has also been met.
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8 We conclude that Mr. LaPierre's arthritic condition was asymptomatic until 1980, when it was
9 lighted up by the conditions of his employment on the green chain at Boise Cascade. While he was
10 notified of the occupational nature of his condition in September, 1980, he did not develop any
11 compensable disability until September 20, 1982, at the earliest. His claim for benefits filed on
12 December 3, 1982 was therefore timely pursuant to RCW 51.28.055. The Proposed Decision and
13 Order is correct in reversing the Department order of August 29, 1984, and remanding the claim to the
14 Department with direction to allow the claim as an occupational disease, and to take such further
15 action as is appropriate.
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21 **FINDINGS OF FACT**

- 22 1. On December 3, 1982 an accident report was filed with the Department of
23 Labor and Industries alleging the occurrence of an industrial injury on
24 September 20, 1982 to Leo LaPierre while in the course of his
25 employment with Boise Cascade. On January 7, 1983 the Department
26 issued an order allowing the claim on a temporary and interlocutory basis,
27 indicating the employer had demonstrated the need for further
28 investigation and indicating that a further determinative order would be
29 issued by January 29, 1983. On April 19, 1983 the Department issued an
30 order rejecting the claim on the grounds that there was no proof of a
31 specific injury at a definite time and place while in the course of
32 employment. The Department order of April 19, 1983 was mailed to
33 claimant on April 21, 1983 and received by claimant on April 23, 1983. On
34 June 23, 1983 a notice of appeal was received by the Board of Industrial
35 Insurance Appeals from the claimant, appealing the April 19, 1983
36 Department order. That notice of appeal was mailed on June 22, 1983.
37 On July 13, 1983 the Department issued an order reassuming jurisdiction
38 and holding the order of April 19, 1983 in abeyance. On July 15, 1983 the
39 Board issued an order returning the case to the Department for further
40 action. On August 29, 1984 the Department issued an order rejecting the
41 claim on the basis that there was no proof of a specific injury at a definite
42 time and place while in the course employment, that the condition was not
43 the result of an industrial injury nor of an occupational disease. On
44 October 25, 1984 a notice of appeal was filed with the Board of Industrial
45 Insurance Appeals by the claimant from the Department order dated
46 August 29, 1984. The Board issued an order on November 7, 1984
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1 granting the appeal under Docket No. 69,044 and directing that hearings
2 be held on the issues raised by the appeal.

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4 2. In mid-1980, while working full-time on the green chain at Boise Cascade,
5 claimant developed pain in his right forearm and hand. He sought medical
6 treatment on June 4, 1980, was diagnosed as having tenosynovitis of his
7 abductor and extensor pollicis and treated with cortisone injections. Later
8 that summer he sought further medical treatment for bilateral shoulder
9 pain. He was treated with anti-arthritic preparations and, at his doctor's
10 recommendation, was transferred in September, 1980 from the green
11 chain to dryer-feeder work. He lost only two to three days of work due to
12 his condition in 1980, and his symptoms subsided after his transfer from
13 the green chain.
- 14 3. In September, 1980 claimant was notified by a physician that the
15 tenosynovitis of his abductor and extensor pollicis and the bilateral
16 shoulder pain were job connected.
- 17 4. On September 20, 1982 claimant was transferred back to full-time
18 employment on the green chain at Boise Cascade. He developed bilateral
19 shoulder pain and sought medical treatment on October 15, 1982. On that
20 day he was diagnosed as having post-traumatic arthritis. His symptoms
21 and condition in October, 1982 were the same, although more severe, as
22 in 1980. Medical treatment in 1982 consisted of medication and the
23 recommendation from his doctor that he be transferred from the green
24 chain to lighter work.
- 25 5. Claimant's arthritic condition was asymptomatic prior to his full-time work
26 on the green chain at Boise Cascade in mid-1980. The conditions of his
27 employment on the green chain in 1980 made his arthritic condition
28 symptomatic.
- 29 6. Prior to September 20, 1982, claimant's arthritic condition was productive
30 of no permanent impairment. Prior to September 20, 1982 claimant was
31 not precluded by his arthritic condition, either permanently or temporarily,
32 from engaging in gainful employment on a reasonably continuous basis in
33 light of his age, education and training.
- 34 7. Claimant's post-traumatic arthritis condition arose naturally and
35 proximately out of the conditions of his employment on the green chain at
36 Boise Cascade.

37 **CONCLUSIONS OF LAW**

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40 1. Claimant had no compensable disability attributable to his post-traumatic
41 arthritis prior to September 20, 1982. His claim for benefits was timely
42 filed pursuant to RCW 51.28.055. This Board has jurisdiction over the
43 parties and subject matter of this appeal.
- 44 2. Claimant's post-traumatic arthritis condition is an occupational disease
45 within the meaning of RCW 51.08.140.
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1 3. The order of the Department of Labor and Industries dated August 29,
2 1984 rejecting the claim for the reason that there was no proof of a
3 specific injury at a definite time and place while in the course of
4 employment, and that the condition was not the result of an industrial
5 injury or an occupational disease, is incorrect and should be reversed and
6 this claim remanded to the Department of Labor and Industries with
7 direction to allow the claim for an occupational disease and to take further
8 action as required by law.

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10 It is so ORDERED.

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12 Dated this 12th day of March, 1986.

13 BOARD OF INDUSTRIAL INSURANCE APPEALS

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