

Carder, Robert

FRAUD

Discovery (RCW 51.32.240(4))

The Department must demand repayment of benefits fraudulently obtained within "one year of discovery of the fraud." That phrase refers to the date the Department has sufficient facts in hand to commence an investigation. Receipt by the Department of cancelled "payroll" checks evidencing employment by the worker constituted the date of discovery of fraud in this particular case.*In re Robert Carder*, BIIA Dec., 69 461 (1988)

Scroll down for order.

1 from the Department between the dates of August 31, 1981 and May 17, 1982. The Proposed
2 Decision and Order also determined that, contrary to the provisions of RCW 51.32.240(4), the
3 Department did not initiate the demand for repayment within a year of the discovery of the fraud.
4 While we feel the Proposed Decision and Order is correct in its result, we feel that further comment
5 upon the meaning of the term "discovery of the fraud," and further findings concerning that issue, are
6 in order.
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10 First of all, we are not concerned here with the basic elements of the allegation of fraud. Those
11 are dealt with sufficiently by the Proposed Decision and Order. What is at issue here is the right of the
12 Department to make a demand for sums fraudulently obtained. RCW 51.32.240(4) provides that:
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14 "Whenever any payment of benefits under this title has been induced by
15 fraud the recipient thereof shall repay any such payment together with a
16 penalty of fifty percent of the total of any such payments and the amount
17 of such total sum may be recouped from any future payments due to the
18 recipient on any claim with the state fund or self-insurer against whom the
19 fraud was committed, as the case may be, and the amount of such penalty
20 shall be placed in the supplemental pension fund. Such repayment or
21 recoupment must be demanded or ordered within one year of the
22 discovery of the fraud." (Emphasis added)
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24 Thus the Department must make a timely demand for repayment for sums fraudulently obtained within
25 one year of the date it discovers the fraudulent circumstances underlying the receipt of benefits.
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27 The Department, in its Petition for Review from the Proposed Decision and Order, raises two
28 points regarding this issue. First, it states that the findings did not include a statement regarding the
29 date when the Department was supposed to have "discovered" Mr. Carder's fraud. With this point we
30 agree and it is for this reason we have granted review in this case.
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33 Second, the Department contends that it was not advised that the timeliness of demand would
34 be an issue in the case and that therefore it was unable to defend properly. We reject this second
35 contention as being without merit. The very statute which gives the Department the right to demand
36 repayment of fraudulently obtained sums also provides that such demand must be made within a year
37 of the date of discovery. Therefore an essential element of the demand for repayment is its timeliness.
38 The Department cannot contend that it was unaware of its statutory obligation to make its demand for
39 payment within the period provided by RCW 51.32.240(4).
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1 As the statute gives the Department a limited period of time to demand repayment in cases
2 such as this, it is of critical importance to set, with some particularity, the date from which the time
3 limitation begins to run.
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5 There is much evidence in this case about the Department's procedures in Following up on an
6 allegation of fraud. When the Department receives information that suggests the possibility of fraud it
7 initiates what it calls a "pre-fraud investigation". Thereafter, according to the Department's evidence, if
8 there is sufficient substantiation of the information or tip as to fraud, the Department will pursue it
9 further with a "full fraud investigation". In this case, the Department's full fraud investigation was
10 completed in January of 1984 and the order demanding repayment was issued in August of that same
11 year. We believe, however, that the Department's "staged" or "layered" investigatory process clouds
12 the issue of discovery, and frustrates the purpose of the demand portion of the statute to provide a
13 limited period for collecting improperly paid benefits.
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15 The statute requires the Department to make a demand for repayment within one year of the
16 "discovery" of the fraudulent circumstances. In the present case the Department was advised by
17 telephone that Mr. Carder was employed as a minister or pastor at a church in Centerville,
18 Washington. On July 19, 1983 a Departmental investigator met with the individuals making this
19 complaint and was provided with 95 canceled "payroll" checks as evidence of the claimant's
20 employment. In all of the Department's subsequent investigative activities, the only other actions
21 taken were to interview Mr. Carder in September of 1983 and his attending physician in December of
22 1983. All the truly incriminating evidence, however, was in the investigator's possession by at least
23 July 19, 1983 when the 95 canceled checks were turned over. This was the Department's first
24 substantial evidence as to the facts in the case.
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26 The cases in Washington discussing the point at which it may be said fraud is "discovered"
27 contain no language about "pre-fraud" or "full fraud" investigations. Rather, fraud is said to be
28 discovered when the party to be charged with its knowledge is aware of facts or circumstances which
29 are calculated to lead to an inquiry, which inquiry would lead to a belief in, or knowledge of, the fraud.
30 Columbia International Corp. v. Perry, 54 Wn. 2d 876 (1959); Corliss v. Hartge, 180 Wash. 685
31 (1935). While it appears that mere suspicion is insufficient to generate the kind of inquiry referred to
32 above, possession of specific facts or evidence is enough to require the party investigating the fraud to
33 exercise due diligence in pursuing those facts further. Columbia International Corp. at 879; Davison v.
34 Hewitt, 6 Wn.2d 131 (1940); Larson v. McMillan, 99 Wash. 626 (1918). Indeed, a party in possession
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1 of sufficient facts will be deemed to have a knowledge of fraud if due diligence in the investigation of
2 those facts would have led to a knowledge of the fraud. Interlake Porsche v. Bucholz, 45 Wn. App.
3 502 (1986). In the present case it is clear that by July 19, 1983 the Department had "discovered"
4 important documentary evidence which demonstrated that the claimant had been working during the
5 time he was receiving time-loss compensation from the Department.
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9 The chief distinction between the cases cited above and the Department's investigative
10 procedure is in the question of when the discovery process starts and stops. The discovery of fraud,
11 rather than making conclusive knowledge, signifies the earliest point at which an investigation should
12 start. The Department's investigative stages represent the completion of the inquiry when all the
13 evidence is in hand. It is clear that "discovery," as set forth in RCW 51.32.040(4), marks the beginning
14 of inquiry, not the end. The Department does not have one year from the date its investigation is
15 finally complete to demand repayment. The Department discovers fraud when it has sufficient facts in
16 hand to commence an investigation. Any subsequent demand for repayment under RCW
17 51.32.240(4) must be made one year from that date.
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22 It is not necessary for our purposes to determine whether or not a telephone tip amounts to the
23 kind of information which would constitute "discovery" of fraud. In this case there is an objective basis
24 to determine when the Department had discovered Mr. Carder's fraud. The documentary evidence in
25 the form of the numerous canceled checks constituted sufficient facts demanding the Department's
26 further inquiry and action. When these were received, the Department had discovered the fraud.
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30 After consideration of the Proposed Decision and Order and the Petition for Review filed
31 thereto, and a careful review of the entire record before us, we are persuaded that the result in the
32 Proposed Decision and Order is supported by the preponderance of the evidence and is correct.
33 Based on the foregoing, however, the Board adopts proposed Findings of Fact 1 through 6 as our final
34 findings, deletes proposed Finding of Fact No. 8, and substitutes a new Finding of Fact No. 7 for that
35 entered by the Proposed Decision and Order. Further, the Board adopts proposed Conclusion of Law
36 1 as our final conclusion. Proposed Conclusions of Law Nos. 2 through 4 are deleted. New
37 Conclusions of Law Nos. 2 through 5 are entered as set forth below.
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42 **FINDINGS OF FACT**

- 43 7. In June of 1983 the Department of Labor and Industries received a
44 telephone call informing the Department of Mr. Carder's employment as a
45 pastor or minister at the Church of Christ at Centerville, Washington. On
46 July 19, 1983 the Department's investigator, Phillip Z. Whitman, received
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1 95 canceled checks from the Church of Christ at Centerville made out
2 either to the claimant, Robert A. Carder, or to his daughter, for services as
3 the congregation's minister from July 1981 through June of 1983.
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5 **CONCLUSIONS OF LAW**

- 6 2. Payment of time-loss compensation to Robert A. Carder between August
7 31, 1981 and May 17, 1982 was induced by fraud within the meaning of
8 RCW 51.32.240(4).
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10 3. The Department of Labor and Industries discovered Robert A. Carder's
11 fraudulent misrepresentation of his work activities on July 19, 1983.
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13 4. The Department's demand on August 16, 1984 for repayment of benefits
14 fraudulently paid to Robert A. Carder between August 31, 1981 and May
15 17, 1982 was not made within a year of the discovery thereof as required
16 by RCW 51.32.240(4).
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18 5. The Department order of October 24, 1984 which adhered to the
19 provisions of a prior order of August 16, 1984 is incorrect and is reversed
20 and remanded to the Department to issue an order stating that claimant
21 fraudulently obtained time-loss compensation benefits during the period of
22 August 31, 1981 through May 17, 1982 in the amount of \$7,498.08; that
23 the Department discovered the fraud on July 19, 1983; that the
24 Department failed to demand repayment within one year of the discovery
25 of the fraud; and that demand for repayment of time-loss compensation
26 and penalties for that period is time-barred pursuant to the provisions of
27 RCW 51.32.240(4).

28 It is so ORDERED.

29 Dated this 18th day of April, 1988.

30 BOARD OF INDUSTRIAL INSURANCE APPEALS

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34 /s/
35 SARA T. HARMON Chairperson

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38 /s/
39 FRANK E. FENNERTY, JR. Member

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42 /s/
43 PHILLIP T. BORK Member
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