

Sandstrom, Pauline

TIME-LOSS COMPENSATION (RCW 51.32.090)

Wage continuation precludes time-loss compensation (RCW 51.32.090(6))

A poll worker employed by the county for one day, two or three times per year, was considered to have a monthly wage at the time of her injury equal to \$59.95 -- her daily rate of pay. The employer's continued payment of such wages precludes payment of time-loss compensation.*In re Pauline Sandstrom*, BIIA Dec., 85 2110 (1987)

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS

In Re: PAULINE I. SANDSTROM ~~STATE OF WASHINGTON~~ DOCKET NO. 85 2110
CLAIM NO. S-804275) DECISION AND ORDER

APPEARANCES:

Claimant, Pauline I. Sandstrom, by
Donald C. Cramer

Employer, King County, by
Perkins Coie, per
Michael L. Hall

Department of Labor and Industries, by
The Attorney General, per
William R. Strange, Assistant

This is an appeal filed by the claimant on August 6, 1985 from an order of the Department of Labor and Industries dated July 23, 1985 which provided that as the self insured employer had continued to pay the claimant the wages which she was earning at the time of the industrial injury, the claimant was being kept on salary and was not entitled to time loss benefits. The Department order is affirmed.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on timely Petitions for Review filed by the Department of Labor and Industries and the employer to a Proposed Decision and Order issued on March 26, 1987 in which the order of the Department dated July 23, 1985 was reversed and the claim remanded to the Department with direction to pay to the claimant time-loss compensation beginning April 1, 1985 in the amount of \$215.00 per month, less the wages paid to the claimant by the self-insured

10/12/87

1 employer.

2 The claimant's motion to dismiss the self-insured employer's
3 Petition for Review as untimely is hereby denied. RCW 51.52.104
4 specifically states that filing a Petition for Review is perfected by
5 mailing. The employer's Petition was both mailed, and received, by the
6 Board before May 1, 1987, the deadline. The civil rules of practice
7 only apply unless otherwise provided in Chapter 51. See RCW
8 51.52.140.

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

12 The issue presented by this appeal is whether the Department was
13 correct in denying Ms. Sandstrom time-loss compensation benefits for
14 the reason that the self-insured employer had continued to pay the
15 claimant the wages she was earning at the time of the industrial
16 injury. The claimant contends that \$59.95 does not constitute the
17 wages which she was earning at the time of her industrial injury, and
18 that she is entitled to the minimum time-loss compensation rate set out
19 in RCW 51.32.060(1).

20 Ms. Sandstrom is a 79 year old married woman with no dependents.
21 Over the past several years she worked with the King County Elections
22 Division as an election poll worker. In this capacity she worked for
23 one day, two or three times a year, at the primary, general, and
24 special elections. She was paid at the rate of \$3.35 an hour for a

1 fifteen hour day, plus an additional \$9.70 as inspector pay and \$3.00
2 zone fee, for a total daily rate of \$59.95.

3 On September 18, 1984, Ms. Sandstrom, during the course of
4 this election poll work, fell and broke her right hip. The claim was
5 allowed by the Department of Labor and Industries, and the self-insured
6 employer began paying time-loss compensation in the amount of \$215.00
7 per month through the period of March 31, 1985. At that time, the
8 self-insured employer informed the claimant that she would be kept on
9 salary in lieu of receiving time-loss compensation. Effective April 1,
10 1985, King County commenced paying \$48.58 per month which was increased
11 retroactively to \$59.95 per month. On July 23, 1985 the Department
12 entered an order holding that since the self-insured employer had
13 continued to pay the wages which the claimant was earning at the time
14 of injury, she was not entitled to time-loss compensation.

15 Ms. Sandstrom contends that the \$59.95 per month does not
16 constitute the wage Ms. Sandstrom was receiving at the time of her
17 injury. RCW 51.08.178 sets forth the basis for computing the monthly
18 wages the worker was receiving from all employment at the time of
19 injury. The statute obviously contemplates a worker who is, at the
20 least, attached to the labor market to the extent of working one day a
21 week. The Industrial Insurance Act was intended to provide
22 compensation as a replacement for lost wages while an injured worker is
23 totally or partially disabled and recovering from the effects of an
24 injury incurred during the course of employment. Although not
25 explicitly set forth in RCW 51.08.178, the monthly wage for Ms.
26 Sandstrom's two to three days a year of work can be logically and

1 reasonably determined to be no more than \$59.95 per month. Ms.
2 Sandstrom was a voluntarily retired woman who made herself available
3 three days a year to participate in civic service as a poll worker.
4 The wage of \$59.95 fairly represents her earnings that she became
5 unable to receive because of the industrial injury.

6 Having concluded that the \$59.95 per month represents the wage Ms.
7 Sandstrom was receiving at the time of her injury, the next question is
8 whether the self-insured employer's payment of that wage to the
9 claimant precludes her receipt of time-loss compensation benefits by
10 operation of RCW 51.32.090(6).

11 RCW 51.32.090 provides in part:

12 (1) When the total disability is only temporary,
13 the schedule of payments contained in subdivisions
14 (1) through (13) of RCW 51.32.060 as amended shall
15 apply, so long as the total disability continues.
16 (6) Should a worker suffer a temporary total
17 disability and should his or her employer at the
18 time of the injury continue to pay him or her the
19 wages which he or she was earning at the time of
20 such injury, such injured worker shall not receive
21 a payment provided in subsection (1) of this
22 section during the period his or her employer shall
23 so pay such wages. . . . (Emphasis added)
24

25 RCW 51.32.060 sets out the schedule of benefits based on a
26 worker's marital status and number of dependents, and establishing a
27 minimum level of benefits. However this minimum level of temporary
28 total disability benefits is to be provided only when an injured worker
29 satisfies the provisions of RCW 51.32.090. The Legislature created
30 exceptions to the providing of time-loss compensation, one of which is
31 contained in RCW 51.32.090(6). This provision clearly and
32 unequivocally sets out an exception to the receipt of temporary total

1 disability benefits where the employer at the time of injury continues
2 to pay the worker the wages she was earning at the time of injury.
3 This exception provides a reasonable and rational device to care for a
4 worker injured during a brief and irregular encounter with covered
5 employment such as Ms. Sandstrom's. The Industrial Insurance Act was
6 not designed to pay injured workers an income for not working far in
7 excess of their earning power or the wages earned at the time of
8 injury.

9 The statutory scheme set forth in RCW 51.32.090(1) and (6) clearly
10 makes no mention that it is to operate only to the extent that the
11 wages paid to the worker exceed the minimum levels established by RCW
12 51.32.060, as contended by the Industrial Appeals Judge in the Proposed
13 Decision and Order. Such an interpretation of the law would result in
14 the absurd consequence of compensating Ms. Sandstrom 14 times more
15 in time-loss compensation than she would be entitled to receive in
16 wages had she been able to continue to work, and it would result in
17 King County's being responsible for 14 times the amount of actual loss
18 by Ms. Sandstrom. Such consequences run counter to the intent of the
19 Act, which is to compensate workers for lost earnings while they are
20 recovering from injury and to permit employers the ability to structure
21 their obligations so as to be responsible only for the amount of loss
22 actually incurred by an injured worker.

23 In summary, we conclude that King County's payment of the wages
24 Ms. Sandstrom was earning at the time of the injury, precludes her
25 receipt of time-loss compensation benefits by operation of RCW
26 51.32.090(1) and (6). The Department order of July 23, 1985 should

1 therefore be affirmed.

2 FINDINGS OF FACT

3 1. On January 17, 1985, a report of accident was
4 received at the Department of Labor and Industries
5 alleging an industrial injury to Pauline Sandstrom
6 on September 18, 1984 during the course of her
7 employment with King County. On January 31, 1985
8 the Department entered an order allowing the claim.

9 On July 23, 1985, the Department issued an order
10 holding that since the claimant had been kept on
11 salary and King County, a self-insured employer,
12 had continued to pay the wages she was earning at
13 the time of her industrial injury, she was not
14 entitled to time-loss compensation during such
15 period as King County should pay such wages. The
16 claimant filed a notice of appeal with the Board of
17 Industrial Insurance Appeals on August 6, 1985, and
18 on August 23, 1985 the Board entered an order
19 granting the appeal and assigning it Docket No. 85
20 2110.

21
22 2. On September 18, 1984, while in the course of her
23 employment with King County as an elections
24 inspector, Pauline Sandstrom fell and broke her
25 right hip. She required medical treatment and the
26 injury has thereafter temporarily prevented her
27 from engaging in employment.

28
29 3 As of September 18, 1984, Ms. Sandstrom was a 79
30 year old voluntarily retired woman who, for the
31 preceding three years had worked for King County
32 for two or three days per year during the primary,
33 general and special elections as a poll worker. It
34 was expected by both King County and Ms. Sandstrom
35 that this pattern of employment would continue.
36 Throughout the preceding three years Ms. Sandstrom
37 has made no other attempt at employment. As of
38 September 18, 1984, the claimant's rate of pay was
39 \$59.95 for the day that she worked.

40
41 4. King County, the self-insured employer, paid Ms.
42 Sandstrom temporary total disability benefits at
43 the rate of \$215.00 per month from September 19,
44 1984 through March 31, 1985. As of April 1, 1985,
45 the self-insured employer ceased paying temporary
46 total disability benefits and informed Ms.
47 Sandstrom that she would be paid her wages that she
48 was earning at the time of her injury in lieu of
49 temporary total disability benefits. After April
50 1, 1985 the self-insured employer began paying Ms.
51 Sandstrom the wages she was earning at the time of

1 injury in the amount of \$48.58 per month which was
2 later retroactively increased to \$59.95 per month.
3

4 CONCLUSIONS OF LAW
5

- 6 1. The Board has jurisdiction over the parties and the
7 subject matter of this appeal.
8
- 9 2. Pursuant to the provisions of RCW 51.32.090(1) and
10 (6), King County's payment of wages that Ms.
11 Sandstrom was earning at the time of injury
12 precludes Ms. Sandstrom's entitlement to temporary
13 total disability benefits.
14
- 15 3. The order of the Department of Labor and Industries
16 dated July 23, 1985 denying Ms. Sandstrom temporary
17 total disability benefits for the reason that the
18 employer had continued to pay her the wages she was
19 earning at the time of the industrial injury on
20 September 18, 1984, is correct and should be
21 affirmed.
22

23 It is so ORDERED.
24

25 Dated this 12th day of October, 1987.
26

27 BOARD OF INDUSTRIAL INSURANCE APPEALS
28

29
30 /s/ _____
31 SARA T. HARMON Chairperson
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33
34 /s/ _____
35 FRANK E. FENNERTY, JR. Member
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38 /s/ _____
39 PHILLIP T. BORK Member
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