Chavez, Isaias, Dec'd

TIMELINESS OF CLAIM (RCW 51.28.050; RCW 51.28.055)

Child's claim for survivors' benefits

Minority does not toll the time within which a child's application for survivor's benefits under the Industrial Insurance Act must be filed. A claim filed more than a year beyond the day the rights of the beneficiaries accrued is not valid or enforceable and the Board is without authority to excuse, on equitable grounds, an untimely application for benefits. ***….In re Isaias Chavez, Dec'd*, BIIA Dec., 85 2867 (1987)** [dissent] [*Editor's Note*: The Board's decision was appealed to superior court under Franklin County Cause No.87-2-50284-1.]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: ISAIAS CHAVEZ, DEC'D	**)**	**DOCKET NO. 852867**
	)	
CLAIM NO. J-604442	**)**	**DECISION AND ORDER**

APPEARANCES:

Petitioners, Reynalda Arceo, Nora Chavez and
Veronica Chavez, by
Charles H. Barr, Attorney at Law

Employer, Desert Canyon Ranch
None

Department of Labor and Industries, by
The Attorney General, per
Lesley A. Allan, Assistant

This is an appeal filed by the petitioners, survivors of the deceased worker Isaias Chavez, on November 27, 1985 from an order of the Department of Labor and Industries dated September 26, 1985 which adhered to an earlier order rejecting the worker's and survivors' claims for benefits on the grounds that they were not filed within one year of the date of injury or within one year of the worker's death. **SUSTAINED**.

DECISION

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 petitioners to a Proposed Decision and Order issued on December 23, 1986 in which the order of the Department dated September 26, 1985 was affirmed.

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

The issue in this appeal is whether the applications for benefits filed on behalf of the deceased worker and his survivors were timely filed as required by RCW 51.28.050. That statute provides:

> No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued . . . .

It is alleged that the deceased worker, Isaias Chavez, sustained an injury in October 1979 while in the course of his employment with Desert Canyon Ranch. It is further alleged that he died as a result of

this injury on September 27, 1980. Because the applications for benefits were first filed with the Department in July 1985 they were denied by the Department as untimely.

In their Petition for Review the petitioners maintain that since the worker's death was the result of a disease process the time limitations for filing a claim for occupational disease, RCW 51.28.055, should apply. Furthermore, it is their contention that the time for filing an application for benefits should be tolled in their case for a variety of reasons. Such reasons include the employer's failure to post notices advising workers of workers' compensation coverage; the employer's failure to report the injury and death to the Department of Labor and Industries; the Department's failure to enforce the posting and reporting requirements; the worker's and the petitioners' ignorance of their rights under the Industrial Insurance Act, their inability to communicate in the English language, and their residence in Mexico during the time allowed for filing the claim; and, the minority of the deceased's children, Veronica and Nora Chavez. Petitioners also contend that RCW 51.28.050 as applied to them constitutes a denial of equal protection and due process as well as an infringement upon their fundamental right to travel.

Petitioners are the "wife" and children of Isaias Chavez. Reynalda Arceo and Isaias Chavez held themselves out as husband and wife but never went through a formal marriage ceremony. It is Ms. Arceo's contention that she is the common law wife of the deceased. As the Department's brief indicates, it would not appear that Arceo and Chavez ever established a common law marriage under the law of any state, which could in turn be recognized as a valid marriage under Washington law. Nevertheless, the issue of whether Reynalda Arceo was the "wife" of Isaias Chavez, and therefore a beneficiary as defined in RCW 51.08.020, is not presently before us. We must assume, for our purposes, that she was a spouse of the deceased. There does not appear to be any dispute that Nora and Veronica are the natural children of Isaias Chavez and Reynalda Arceo. Nora Chavez was born June 2, 1978 in Pasco, Washington while Veronica Chavez was born August 27, 1980 in Mexico.

In October 1979 Isaias Chavez was employed as an agricultural laborer for Desert Canyon Ranch, which was owned and operated by Alan Fielding. On some date during that month it appears that the deceased's left calf was pinched between a tractor and a disk. Isaias Chavez did not seek medical attention at the time nor did he complain about his injury to his employer. He did, however, have a noticeable limp. He was able to complete the harvest before returning to his home in Mexico.

In Mexico Chavez was initially treated with home remedies. He attempted to work to support his family, but his condition deteriorated and eventually, his leg was amputated. He died on

September 27, 1980. The exact cause of death is not clear from the record. The Petition for Review and petitioners' brief indicate that death was the result of a gangrene infection, while the certificate of death indicates that death was the result of a tumeration in the left leg with probable metastasis. We would only note that the cause of death and the relationship of death to the injury of October 1979 are issues which are also not presently before us. For our purposes we will therefore assume that the medical evidence would establish the requisite causal relationship between Isaias Chavez's alleged injury and subsequent death.

Upon his return to Mexico in 1979, Isaias Chavez advised Reynalda Arceo of the injury which had occurred at Desert Canyon Ranch. When it finally became necessary for Chavez to seek medical attention Reynalda Arceo, on August 24, 1980, wrote to Alan Fielding attempting to describe the injury and requesting financial help to pay for Chavez's medical expenses. Fielding sent Arceo $200.00 which Arceo later acknowledged receiving. He did not provide Arceo or Chavez with any industrial insurance claim forms and, although he learned of Chavez's death within a year of the death, he made no attempt to advise Arceo or the Chavez children of any rights they may have had under the Industrial Insurance Act. He considered the incident of October, 1979 to be fairly minor and did not believe it could have resulted in Chavez's death. Fielding, who spoke Spanish, believed that he had received Spanish language notices from the Department which were to be posted advising workers of their rights under the Industrial Insurance Act. He admitted, however, that he had not posted such notices at the job site.

Neither Isaias Chavez nor Reynalda Arceo could read or write English. Arceo testified that neither she nor Chavez were aware of their rights under the Industrial Insurance Act or the procedures for filing claims. She did testify that in 1982 a "lady from Texas" told her that she could do something so that her children could get help. She then consulted a lawyer in Pasco who advised her that she would "need a lot of proof and documentation" but did not advise her that it was too late to file a claim for workers' compensation benefits.

The timely filing of an application for benefits is a statutorily imposed jurisdictional limitation upon the right to receive compensation and upon the Department's authority to accept the claim for benefits. Wheaton v. Department of Labor and Industries, 40 Wn.2d 56, 240 P.2d 567 (1952). RCW 51.28.050 is a statute of non-claim. It does more than prescribe the time within which the right to benefits must be asserted. It imposes a limitation on the right to receive benefits. See Lane v.

Department of Labor and Industries, 21 Wn.2d 420, 425-26, 151 P.2d 440 (1944); Bellevue School District v. Brazier Construction, 103 Wn.2d 111, 691 P.2d 178 (1984).

It is clear that the employer had sufficient notice of the injury to be required to report the injury to the Department. Se RCW51.28.025. The failure of the employer to make such a report, however, does not relieve the worker or his beneficiaries of the obligation to timely file a claim. Pate v. General Electric Company, 43 Wn.2d 185, 260 P.2d 901 (1953) adhered to on rehearing, 44 Wn.2d 919, 269 P.2d 589 (1954); Wilbur v. Department of Labor and Industries, 38 Wn. App. 553, 686 P.2d 509 (1984).

The issue of whether an employer's failure to post the notices as required by RCW 51.14.100(1) will relieve a worker or his beneficiaries from the timely filing requirements of RCW 51.28.050, has never been decided by a Washington appellate court. Inasmuch as the failure of an employer to report an accident to the Department does not relieve the worker or his beneficiaries of the obligation to file a timely application for benefits, it would seem that an employer's failure to comply with the posting requirement, or the Department's failure to enforce that requirement, would also fail to remedy an untimely filing. We note that the petitioners have failed to cite either Wilbur or Pate or distinguish those cases in any way from the instant case. We therefore see no reason to find that the failure of either the employer or the Department to comply with any statutory duty should relieve the petitioners of the primary obligation to file applications for benefits.

The petitioners contend that since Isaias Chavez died of a disease the time limitations for filing a claim for occupational disease, RCW 51.28.055, should apply in lieu of the time limitations for filing a claim for injury. This contention is without merit. The worker's condition and death are alleged to be the result of a sudden and traumatic incident. The fact that this traumatic incident led to a disease process does not convert the condition into an occupational disease, a claim for which is subject to the time limitations of RCW 51.28.055 rather than the limitations contained under RCW 51.28.050.

With respect to the constitutional issues raised by the petitioners we would note that this Board cannot rule on the constitutionality of RCW 51.28.050. Bare v. Gorton, 84 Wn.2d 380, 383, 526 P.2d 379 (1974). Furthermore, we find nothing in RCW 51.28.050 which denies the worker or his beneficiaries equal protection of the laws or due process of law. Likewise, there is nothing in the requirement that a claim be filed within one year of the date of injury, or within one year of the date the rights of the beneficiaries accrued, which would constitute an infringement upon the right to travel as articulated in Macias v. Department of Labor and Industries, 100 Wn.2d 263, 668 P.2d 1278 (1983).

The right to file a claim for benefits is not conditioned upon a worker or his beneficiaries residing in the State of Washington or any particular area thereof for any particular length of time.

The petitioners also raise an argument that the employer's failure to comply with the reporting requirements of RCW 51.28.025 or the posting requirements of RCW 51.14.100(1), and the Department's failure to enforce such statutory obligations, should estop the Department from asserting the time limitation bar. Equitable estoppel may conceivably excuse an untimely filing of a claim under RCW 51.28.050. See Wilbur, supra; Shafer v. State, 83 Wn.2d 618, 521 P.2d 736 (1974). The facts presented, however, do not support the application of that doctrine. The requisites of an equitable estoppel are: (1) an admission, statement, or act, inconsistent with the claim afterwards asserted; (2) action by the other party on the faith of such admission, statement, or act; and (3) injury to such other party arising from permitting the first party to contradict or repudiate such admission, statement, or act. Shafer, supra, at 83 Wn.2d 623. Neither the employer nor the Department made any statement upon which the worker or his beneficiaries had a reasonable right to rely and which led the worker or his beneficiaries to delay filing a timely claim. Furthermore, even if the employer's inaction or omissions could be held to have misled the worker or his beneficiaries the employer is not an agent of the Department and its actions or inactions could not be imputed to the Department.

The petitioners maintain that the failure to timely file their applications for benefits should be excused because of their ignorance of the law, their lack of education, and their lack of English language ability. In this regard they rely on Rodriguez v. Department of Labor and Industries, 85 Wn.2d 949, 540 P.2d 1359 (1975) and Ames v. Department of Labor and Industries, 176 Wash. 509, 30 P.2d 239 (1934). In Rodriguez the court held that a Spanish speaking illiterate who was unable to understand a written decision which had been communicated to him by the Department was equitably excused from strict compliance with the sixty day time limit for filing a notice of appeal pursuant to RCW 51.52.060. In Ames a worker, who at the time he received the Department's order rejecting his claim was insane, was likewise excused from filing a notice of appeal within the sixty day appeal period.

Neither Rodriguez nor Ames apply to the instant case. In both cases a claim for benefits had already been filed by the worker and the Department knew or should have known that a worker who was illiterate or non compos mentis would be unable to understand and appreciate the import of the decision which was entered. As the Department correctly points out in its brief, the instant case does not involve an untimely appeal from a Department order, but rather, an untimely application for

benefits. The Department did not know and had no reason to know that Isaias Chavez had been injured or had died from his injury. This distinction, we think, is significant.

In essence, petitioners have requested this Board to provide equitable relief. We have repeatedly indicated, however, that this Board lacks any broad equitable powers. In re Seth E. Jackson, BIIA Dec., 61,088 (1982); In re Ronald E. Jamieson, BIIA Dec., 62,551 (1983). The Board applies the law as established by cases such as Rodriguez and Ames, not because it holds any equitable power but because it is anticipating the relief which would be granted under the principle of stare decisis upon further appeal to superior court. It is without authority to expand those doctrines to cases presenting dissimilar facts. Jamieson, supra, at 5. No authority has been brought to our attention which would allow us to find that ignorance of the law or illiteracy constitute sufficient excuses for not filing a timely claim as required by RCW 51.28.050. Under these circumstances and for the aforementioned reasons we are unable to extend the principles of Rodriguez and Ames to the facts of this case. We therefore feel compelled to sustain the Department order rejecting the claims of Isaias Chavez and Reynalda Arceo.

The claims for benefits filed on behalf of Nora and Veronica Chavez present more compelling reasons for granting relief. Nora Chavez was only two years old at the time of her father's death while Veronica Chavez was born after the alleged injury, only a month before her father's death. We would note that despite the well-established case law that strict compliance with the filing requirement of RCW 51.28.050 is required, no Washington appellate court has addressed the issue of whether a minor beneficiary can be excused from a failure to file a timely claim for benefits.

The issue of whether minority will toll the period for filing an application for benefits was discussed but not decided by this Board in In re Jackie L. Davis, Jr., Dec'd., BIIA Dec., 66,123 (1985). There we held that a claim for benefits filed on behalf of the children of a prior marriage was timely even though filed more than one year after the deceased worker's death. However, in Davis an application for benefits had been timely filed on behalf of the children of a subsequent marriage within the one year time period. We held that RCW 51.28.040, permitting the Department to increase or rearrange compensation where a change of circumstances had occurred, gave the Department continuing jurisdiction to "rearrange" the compensation and pay benefits to the children of the prior marriage. In the present case no application was ever filed within the time allowed by RCW 51.28.050.

Petitioners maintain that the Board should apply the tolling provisions of RCW 4.16.190 in order to find that the claims of the Chavez children are timely. That statute provides:

> If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to Chapter 11.88 RCW, or imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than his natural life, the time of such disability shall not be a part of the time limited for the commencement of action. (Emphasis added)

The weakness in petitioners' argument is that RCW 4.16.190, although indicative of this state's general policy in favor of protecting persons under a mental or legal disability, applies only to the civil causes of action mentioned in Chapter 4, RCW. It does not apply to special statutory proceedings or rights such as those which accrue under Chapter 51, RCW. Ames, supra, 176 Wash. at 512-513. Recently, we did rely, in part, on the policy expressed by RCW 4.16.190 to excuse a minor's otherwise untimely claim for crime victim's compensation. In re Ben Ramahlo, BIIA Dec., 85 C025 (1987). In Ramahlo, however, we noted that the origin and nature of the Crime Victim's Compensation Act would permit excusing a minor from strict compliance with the timeliness requirement of RCW 7.68.060(1).

An additional reason for finding that the minor crime victim's claim was timely filed in Ramahlo centered on RCW 51.04.070 which makes a minor worker sui juris for purposes of the Industrial Insurance Act. While we felt it reasonable to hold a person who is old enough to work, albeit a minor, to the same standard of compliance as an adult for filing claims for work injuries, we felt that had the Legislature intended to make minors sui juris for purposes of filing claims for crime victims" compensation, it would have specifically enacted a statute similar to RCW 51.04.070.

We would also note that RCW 51.04.070 does not expressly make minor beneficiaries sui juris for purposes of the Industrial Insurance Act. Applying the same rationale as in Ramahlo, it could be argued that by failing to specifically make beneficiaries sui juris for purposes of the Act, the Legislature did not intend to thereby remove the legal disability which might otherwise attach to the minor child of a deceased worker. We are unable, however, to predicate our decision solely on the sui juris provisions of RCW 51.04.070. To find that the applications of these minor beneficiaries were timely filed we must be satisfied that there is judicial precedent for tolling the period within which a minor must file a claim under RCW 51.28.050.

Although there is no case authority construing RCW 51.28.050 as applied to claims by minor beneficiaries, the courts have had the opportunity to address the issue of whether minority will toll the time for filing a claim subject to an analogous non-claim statute. In Cook v. State, 83 Wn.2d 599, 521 P.2d 725 (1974) the court considered the issue of whether a claim by a minor against the state of Washington was barred by her failure to file a claim within the 120 day time limitation of RCW 4.92.100, the tort non-claim statute. The minor, who was 13 years of age at the time of the injury, sustained serious injuries and was hospitalized for almost six months. Her mother had only an eighth grade education, was stricken by the grief of the death of another child killed in the same accident, and failed to file a timely claim under the statute's provisions which allowed a relative to file a claim on behalf of a minor.

Noting the child's minority, severe physical injuries, hospitalization, and major surgery, coupled with the mother's asserted grief, worry, and educational disadvantage, the court in Cook felt it would be manifestly unjust and fundamentally unfair to permit to excuse from strict compliance with the filing requirement of RCW 4.92.100. In noting the inadequacy of the remedy of allowing a relative to file a claim on the injured minor's behalf the court said:

> The possibility that a friend or relative may possess the foresight to file a timely claim on behalf of an incapacitated victim in our view provides too slender a reed to bridge the inherent discrimination and it becomes arbitrary and unreasonable when it penalizes the incapacitated if a friend or relative through inadvertence or ignorance fails to act. 83 Wn.2d at 605.

The court in Cook therefore excused the late filing and adopted a rule allowing the filing of a claim within a reasonable time after the child's physical disability had ceased. It is true, of course, that in Cook the party alleging the time-limitation bar was the party allegedly responsible for the injuries sustained by the minor child. The rule in Cook was adopted, then, in part to prevent the tortfeasor from benefiting from its own wrong. In the instant case there is no contention that the Department of Labor and Industries was in any way responsible for Isaias Chavez' injury or death. Furthermore, in Cook the child was incapacitated by reason of her physical disabilities in addition to her minority.

More on point is the case of Hunter v. North Mason High School, 12 Wn. App. 304, 529 P.2d 898 (Div. II, 1974). In Hunter a high school student was injured in a rugby game and did not file his claim against the school district until after the 120 day time limitation of RCW 4.96.020 had passed. Noting that the injuries sustained by the minor were not as severe as those sustained by the minor in

Cook, the court nevertheless felt that basic concepts of due process and equal protection favored an extension of the decision in Cook. Because minors are by statute and common law under a legal disability the court believed it would be fundamentally unfair for a minor to be denied recourse to the courts because of circumstances which were both legally and practically beyond his control. The court considered the extent of the minor's physical injuries immaterial when, in any event, the minor was legally incapable of preserving his claim. Following the rationale of Cook, the Hunter court did not believe that the viability of a child's right of action should depend on the good fortune of having an astute relative or friend to take the proper steps on his behalf. The court therefore held, as a matter of law, that a person under the age of 18 is excused from compliance with RCW 4.96.020 and that a claim is timely if filed within 120 days from the day of removal of the disability (i.e., 120 days from the day minority ceased).

On appeal to the Supreme Court, the decision of the Court of Appeals in Hunter was affirmed on other grounds. The Supreme Court held that non-claim statutes constituted a denial of equal protection to the extent they required plaintiffs with actions against a government to present their claims in a much shorter period than was required of plaintiffs generally. Hunter v. North Mason School District, 85 Wn.2d 810, 539 P.2d 845 (1975). There is nothing in the Supreme Court's decision in Hunter which is in any way critical of the Court of Appeal's conclusion that minority will toll the time for filing a claim under the non-claim statute. On the other hand, we cannot state that the Court of Appeal's decision in Hunter is controlling authority, or precedent for that proposition. It is certainly insufficient precedent requiring us to conclude that minority will toll the time for filing a claim for survivor's benefits under RCW 51.28.050.

Even though RCW 51.28.030 would allow a minor's application for benefits under the Act to be filed by "someone in their behalf," we agree that such a provision is an inadequate protection for a minor dependent beneficiary's rights. As noted by the Supreme Court in Cook and the Court of Appeals in Hunter such a provision fails to protect a minor where, as here, a relative fails to act through ignorance or illiteracy. We suspect that a superior or appellate court might conclude, based on the circumstances of this case, that minority will toll the time for filing a claim for survivors' benefits under RCW 51.28.050. Such a determination, however, is beyond the powers of this Board.

We are not unsympathetic to the difficult situation in which the Chavez children have been placed. Yet RCW 51.28.050 is clear, by its terms, that claims filed more than a year beyond the day the rights of the beneficiaries accrued are not valid or enforceable. What the Chavez children need

and seek is equitable relief from strict compliance with that statute. Because there is no clear judicial precedent condoning the application of equitable relief under circumstances such as those present in the instant case, this Board is without authority to excuse the untimely applications of Nora and Veronica Chavez. We must therefore sustain the Department order under appeal.

The Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On July 15, 1985 an application for industrial insurance benefits was filed on behalf of Isaias Chavez alleging that he had sustained an industrial injury on October 1, 1979 while in the course of his employment with Desert Canyon Ranch. On September 27, 1980 Isaias Chavez died as an alleged result of the injury sustained on October 1, 1979. On or about July 8, 1985 an application for survivor's benefits was filed on behalf of the putative widow of Isaias Chavez and his minor children. By order dated September 11, 1985 the Department denied the applications for benefits on the grounds that no claim for injury had been filed within one year of the date of injury nor within one year of the date of the worker's death. On September 25, 1985 a protest and request for reconsideration was filed. On September 27, 1985 the Department mailed an order, dated September 26, 1985, which adhered to the provisions of the order of September 11, 1985 rejecting the claim. This order was received by representatives of the beneficiaries not earlier than September 28, 1985, which was a Saturday. On November 27, 1985 a notice of appeal from the order of the Department dated September 26, 1985 was filed on behalf of the beneficiaries with the Board of Industrial Insurance Appeals. On December 13, 1985 the Board issued an order granting the appeal subject to proof of timeliness and assigned Docket No. 85 2867.

2. On some date specific in October 1979 Isaias Chavez injured his left leg while in the course of his employment with Desert Canyon Ranch.

3. On September 27, 1980 Isaias Chavez died, allegedly as a result of the injury sustained in October 1979.

4. Neither Isaias Chavez nor Reynalda Arceo, his putative spouse, were able to read or write English. Isaias Chavez spoke only Spanish.

5. Nora and Veronica Chavez were the natural born children of Isaias Chavez and were born on June 2, 1978 and August 27, 1980 respectively.

6. A report of accident for the injury alleged to have occurred on October 1, 1979 was first filed with the Department on July 15, 1985 and the claims for benefits for the survivors of the deceased were first filed with the Department on July 8, 1985.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the subject matter and parties to this appeal.

2. The application for benefits filed on behalf of Isaias Chavez was not filed within one year after the day upon which the alleged injury occurred and was therefore not timely filed as required by RCW 51.28.050.

3. The applications for survivors' benefits filed by Reynalda Arceo, the putative spouse of Isaias Chavez, and on behalf of Nora and Veronica Chavez, the minor children of Isaias Chavez, were not filed within one year after the day any rights they may have had under the Act accrued and were therefore not timely filed as required by RCW 51.28.050.

5. The order of the Department of Labor and Industries dated September 26, 1985 which adhered to an earlier order rejecting the applications for benefits of Isaias Chavez, Reynalda Arceo, Nora Chavez, and Veronica Chavez on the grounds that said applications had not been filed within one year of the date of injury or within one year of the date of death of Isaias Chavez is correct and should be affirmed.

It is so ORDERED.

Dated this 17th day of July, 1987.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
SARA T. HARMON Chairperson

/s/_____
PHILLIP T. BORK Member

DISSENTING OPINION

I must concur in the affirmance of the Department order denying the untimely applications of Isaias Chavez and Reynalda Arceo only because I do not believe there is any authority which would excuse compliance with RCW 51.28.050 for reason of ignorance or illiteracy. I would not, however, impute the ignorance or neglect of the parents to Nora and Veronica Chavez. I believe minority does toll the time for filing a claim for survivors' benefits. I must therefore dissent from the denial of the children's applications.

The majority is clearly anticipating a court will find minority will excuse strict compliance with RCW 51.28.050. Notwithstanding that confidence they feel constrained to strictly adhere to the one-year time limitations for filing an application for benefits. Although the Court of Appeals decision in Hunter may not technically be authority for excusing the late filing of a claim by a minor, it seems to me it is at least strongly indicative of what a higher authority is likely to do in this case. Where the handwriting is written on the wall, so to speak, I do not believe we should feel any restraint in exercising our authority to grant appropriate relief. By denying the claims of these children we are merely forcing them to go through the added delay and expense of litigation to obtain the relief which they are rightfully due. That seems to me a rather inefficient use of judicial resources and is hardly consistent with the spirit of the Act.

Dated this 17th day of July, 1987.

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