

Ramahlo, Ben

BOARD

Equitable powers

The Board has no inherent equitable powers.*In re Ben Ramahlo*, BIIA Dec., 85 C025 (1987)

TIMELINESS OF CLAIM (RCW 51.28.050; RCW 51.28.055)

Crime victims' compensation

Minority tolls the time period for filing a claim for crime victims' compensation.*In re Ben Ramahlo*, BIIA Dec., 85 C025 (1987)

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS

STATE OF WASHINGTON

In Re: BEN RAMAHLO) DOCKET NO. 85 C025
CLAIM NO. V-851126) DECISION AND ORDER

APPEARANCES:

Claimant, Ben Ramahlo, and
Guardian, April Ramahlo, by
Anderson, Caraher, Brown & Burns, per
Randall M. Johnson

Department of Labor and Industries, by
The Attorney General, per
Barbara Gary and Pamela Morse, Assistants

This is an appeal filed by the claimant through his guardian on October 10, 1985, from an order of the Department of Labor and Industries dated August 9, 1985, which adhered to the provisions of an order issued on June 13, 1985. That order rejected the claimant's application for benefits because it was not filed within one year of the date the criminal act of which he was a victim took place, as required by RCW 7.68.060(1). Reversed and remanded.

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 Department of Labor and Industries to a Proposed Decision and Order issued on October 2, 1986, in which the order of the Department dated August 9, 1985, was reversed, and the claim remanded to the Department with directions to allow the application

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1 for benefits.

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

5 Ben Ramahlo, who was born on January 3, 1975, attended a day care
6 facility between July 1977, and December 1983. During that time, he
7 was sexually assaulted on at least one occasion by Earl Erskine, the
8 day care operator's husband, although Ben, due to his tender age, was
9 unaware that he was the victim of a crime. April Ramahlo, Ben's
10 mother, first learned of the assault in February 1985, and on the 18th
11 day of the month, she reported the crime to the Pierce County
12 Sheriff's Office. On Ben's behalf, April filed an application for
13 crime victim benefits with the Department of Labor and Industries on
14 March 4, 1985. The Department rejected the application because it was
15 not filed within one year of the date the criminal activity took
16 place. This appeal followed.

17 The issue before this Board is whether the claimant's application
18 for benefits is barred by RCW 7.68.060(1). Ben Ramahlo presents
19 several arguments that it is not.

20 Ben Ramahlo through counsel argues that amendments to the statute
21 which were enacted after he filed his claim apply retroactively and
22 extend the time within which he had to file the claim. At the time
23 Mr. Ramahlo filed his claim, RCW 7.68.060(1) provided:
24 For the purposes of applying for benefits under
25 this chapter, the rights, privileges,
26 responsibilities, duties, limitations and
27 procedures contained in RCW 51.28.010, 51.28.030,
28 51.28.040 and 51.28.060 as now or hereafter
29 amended shall apply: Provided, That no

1 compensation of any kind shall be available under
2 this chapter if:

3
4 (a) An application for benefits is not
5 received by the Department within one

6
7
8 year after the date the criminal act or
9 the date the rights of dependents or
10 beneficiaries accrued.
11

12 The Legislature amended the statute in 1985 to provide that a
13 crime victim could file a claim within one year after the date the
14 criminal act was reported to a local police department or sheriff's
15 office. RCW 7.68.060. If this amendment is applied retroactively,
16 Mr. Ramahlo's claim was filed in timely fashion since it was filed
17 within three weeks of the criminal activity being reported to the
18 police.

19 The 1985 amendment was, however, limited to criminal acts
20 occurring after December 31, 1985. Section 3, Sec. 17, Ch. 443, Laws
21 of 1985 uncodified. An amendment passed in 1986 was also limited to
22 criminal acts reported after December 31, 1985. RCW 7.68.060: Senate
23 Amended -SHB 1869, page 2, 11. 5-7.

24 Mr. Ramahlo correctly asserts that the Crime Victims Compensation
25 Act is a remedial statute. RCW 7.69.010; Haddenham v. State, 87 Wn.2d
26 145 (1976). If the purpose of such a statute is furthered by
27 retroactive application of an amendment, retroactivity is presumed
28 unless a contrary intent appears. Agency Budget Corporation v.
29 Washington Insurance Guaranty Association, 93 Wn.2d 416 (1980). The
30 language in the amendments limiting their application to acts which
31 occurred or which were reported after December 31, 1985, unmistakably
32 evidences a legislative intent of prospective application. The
33 statute as it read on March 4, 1985, applies to Mr. Ramahlo's

1 application for benefits.

2 RCW 7.68 is silent on the issue of the effect of a crime victim's
3 minority, incapacity, or incompetency on the time for filing a claim
4 for benefits. If a strict construction is given the requirements of
5 the statute, as was done by the Department, Mr. Ramahlo must, of
6 course, be denied benefits. Given the facts of this case, such would,
7 indeed, be a harsh and inequitable result.

8 Mr. Ramahlo urges that alternative means exist for the Board to
9 avoid a strict construction of the filing requirement. First, he
10 contends that the Washington Administrative Code grants this Board the
11 equitable power necessary to find his claim timely filed. WAC

12 263-12-045(2)(f) provides:

13 It shall be the duty of the industrial appeals
14 judge to conduct conferences or hearings in cases
15 assigned to him or her in an impartial and orderly
16 manner. The industrial appeals judge shall have
17 the authority, subject to other provisions of
18 these rules: to secure and present in an
19 impartial manner such evidence, in addition to
20 that presented by the parties, as he or she deems
21 necessary to fairly and equitably decide the
22 appeal, . . .
23

24 An administrative tribunal possesses no inherent powers and it
25 may exercise only those powers granted to it by the document which
26 creates it. Tacoma v. Civil Service Board of Tacoma, 6 Wn. App. 600,
27 494 P.2d 1380 (1972); State v. Higher Education Personnel Board, 16
28 Wn. App. 642, 558 P.2d 1364, (1976). The cited Code subsection
29 pertains only to the authority of an industrial appeals judge to
30 secure evidence in addition to that presented by the parties. Neither
31 the statute or any other section of the administrative code which sets
32 forth the powers and duties of this Board grant the broad, generic
33 equitable power urged by Mr. Ramahlo.

1 The claimant encourages this Board to be guided by case law
2 developed in workers compensation cases in determining whether he was
3 excused from the filing requirements of RCW 7.68.060(1) because of his
4 minority. No such case is directly on point with the facts before us.

5
6 Neither Ames v. Department of Labor and Industries, 176 Wash. 509, 30
7 P.2d 239 (1934) nor Rodriguez v. Department of Labor and Industries,
8 85 Wn.2d 949, 540 P.2d 1359 (1975), is authority regarding the impact
9 of one's minority on statutes of limitation. Ames, supra, involved a
10 claimant who was insane; Mr. Rodriguez was illiterate. Furthermore,
11 as pointed out by the Department, both cases involve the statute of
12 limitations for filing an appeal before this Board, not the time
13 limitation for filing a claim for worker's compensation benefits per
14 RCW 51.28.050. RCW 51.28.050 is a non-claim statute which cannot be
15 waived by application of equitable principles. Wheaton v. Department
16 of Labor and Industries, 40 Wn.2d 56, 240 P.2d 567 (1952).

17 RCW 7.68.060 also is a non-claim statute. Reliance on the
18 workers' compensation case law cited by claimant does not permit us to
19 reach the result advocated by Mr. Ramahlo.

20 The central question before us is whether the two statutes are so
21 similar as to lead us inexorably toward application of the law
22 interpreting the Industrial Insurance Act to the Crime Victims
23 Compensation Act. At first glance, Chapter 7, RCW seems to
24 incorporate a great deal of the law of worker's compensation. RCW
25 7.68.030 mandates application of RCW 51.04.020, .030, .040, .050, and
26 .100 to its subject matter and authorizes adoption of other provisions
27 of RCW 51.04, as appropriate in keeping with the intent of the Crime
28 Victims Compensation Act.

1 We note that RCW 51.04.070 makes a minor worker sui juris for
2 purposes of the Industrial Insurance Act. It is reasonable to hold a
3 person who is old enough to work, albeit a minor, to the same standard
4 of compliance as an adult for filing claims for injuries. We also note
5
6 that RCW 7.68.030 does not mandate adoption of the sui juris statute
7 in crime victim compensation cases and, since such a statute is
8 inappropriate to the purpose of the act before us, we determine that
9 minors are not sui juris for purposes of filing claims for Crime
10 Victim Compensation Act benefits.

11 It is enlightening to reflect that the Legislature must have
12 contemplated that failure to include a sui juris statute would lead to
13 application of a different standard for filing claims by injured
14 minors than adults, else it would not have specifically adopted it in
15 the Industrial Insurance Act. Viewed in that light, the failure to
16 include a sui juris statute in the Crime Victim Compensation Act seems
17 to demonstrate a legislative intent that a different standard apply to
18 minors than to adults in filing for benefits as a crime victim.

19 It is of interest that those sections of RCW 51.04 which are
20 required to be followed in administering Chapter 7, RCW deal only with
21 procedures to be followed in administering the claims. From the
22 statute, itself, we can discern no reason why case law of worker's
23 compensation must be followed in all cases in interpreting the rights
24 of victims of crime. It appears, as recited in RCW 7.68.010, that the
25 legislative twine binding the two statutes was manufactured only to
26 provide a convenient method of computing the benefits payable to crime
27 victims and in order to provide an already in place means of
28 administering the claims.

1 In determining whether it is appropriate to use workers'
2 compensation case law as a guideline in all aspects of defining the
3 rights of crime victims, we must look to the fundamental nature of the
4 statutes. While they are similar in many respects, the Industrial
5
6 Insurance Act is, in fact, a statute enacted in derogation of common
7 law. It extinguished the right of injured workers to sue negligent
8 employers and co-employees in tort, providing an exclusive remedy in
9 its place. RCW 51.04.010. A statute which is in derogation of common
10 law must be strictly construed. Keller v. City of Bellingham, 92
11 Wn.2d 726 (1979); McNeal v. Allen, 95 Wn.2d 265 (1980). Thus, because
12 of its fundamental nature, cases are manifold which hold that while
13 the Industrial Insurance Act should be liberally construed in favor of
14 those who come within its terms, people who claim rights and benefits
15 thereunder should be held to strict proof of their right to receive
16 the benefits provided by the act. Cyr v. Department of Labor and
17 Industries, 47 Wn.2d 92 (1955); Olympia Brewing Co. v. Department of
18 Labor and Industries, 34 Wn.2d 498 (1949).

19 The Crime Victims Compensation Act, in contrast to the Industrial
20 Insurance Act, is a truly remedial statute, providing a means of
21 relief to victims of crime in addition to that existing at common law.
22 A remedial statute is not to be strictly construed against its
23 intended beneficiaries. State v. Douty, 92 Wn.2d 930 (1979). RCW
24 7.68.060 should not, therefore, be strictly construed against victims
25 of crime who are too young to appreciate their status as victims.

26 In light of the differences in the fundamental nature of the
27 statutes, we believe it is more appropriate to look for guidance to
28 common law and statutes interpreting intentional torts than to cases

1 interpreting the Industrial Insurance Act in construing the effect of
2 minority on the period within which a crime victim has to file a
3 claim.

4
5
6 The victim of an assault has two years within which to file a
7 civil action against the perpetrator. RCW 4.16.100. Furthermore, RCW
8 4.16.190 tolls the filing requirement for minors. That statute
9 provides:

10 If a person entitled to bring an action mentioned
11 in this chapter, except for a penalty or
12 forfeiture, or against a sheriff or other officer,
13 for an escape, be at the time the cause of action
14 accrued either under the age of 18 years, or
15 incompetent or disabled to such a degree that he
16 or she cannot understand the nature of the
17 proceedings, such incompetency or disability as
18 determined according to chapter 11.88 RCW, or
19 imprisoned on a criminal charge, or in execution
20 under the sentence of a court for a term less than
21 his natural life, the time of such disability
22 shall not be a part of the time limited for the
23 commencement of action.
24

25 A minor victim of assault retains the right, no matter whether he
26 or she receives Crime Victims Compensation Act benefits, to sue the
27 perpetrator within the time limits expanded by RCW 4.16.190. We see
28 no reason to distinguish those common law and statutory rights from
29 rights the victim has under Chapter 7, RCW, especially given the
30 remedial nature of the Act.

31 Accordingly, we believe that Mr. Ramahlo's claim for benefits was
32 timely filed. The Department order of August 9, 1985, which adhered
33 to the provisions of an order issued on June 13, 1985, which rejected
34 the application for benefits because the claim was not filed within
35 one year of the date of the criminal act should be reversed and this

claim remanded to the Department with directions to allow the claim and to take such other and further action as is consistent with the law and the facts.

FINDINGS OF FACT

1. On March 4, 1985, the claimant, by and through his guardian, applied for benefits under the Crime Victims Compensation Act, alleging a criminal act occurred with resulting injury on December 1, 1983. On June 13, 1985, the Department issued an order denying the claim on grounds the application for benefits was not received by the Department within one year after the date of the criminal act as is required by RCW 7.68.060(1). On August 6, 1985, the claimant, by and through his attorney, protested and requested reconsideration of the Department's order of June 13, 1985. On August 9, 1985, the Department issued an order adhering to the provisions of the Department order of June 13, 1985. On October 10, 1985, the claimant filed a notice of appeal with the Board of Industrial Insurance Appeals from the Department's August 9, 1985, order. On October 22, 1985, this Board issued an order granting the appeal, subject to proof of timeliness, assigning it Docket No. 85 C025 and directing that further proceedings be held.
2. The Department order dated August 9, 1985, was received by the claimant on August 15, 1985, and he placed his notice of appeal to this Board in the United States mails, postage prepaid, on October 9, 1985.
3. Ben Ramahlo was born on November 3, 1975, and attended a day care facility between July 1977, and December 1983.
4. Between July 1977, and December 1983, Ben Ramahlo was sexually assaulted on at least one occasion by Earl Erskine, the day care operator's husband.
5. Because of his tender age, Ben Ramahlo was not aware that he was the victim of a crime at the time it occurred.
6. April Ramahlo, Ben Ramahlo's mother, first learned

1 of the incidence of sexual assault in February
2 1985.

- 3
4 7. On February 18, 1985, April Ramahlo reported the
5 crime to the Pierce County Sheriff's Office.
6
7 8. On March 4, 1985, the Department of Labor and
8 Industries, Crime Victim Section, received an
9 application for crime victim benefits filed by
10 April Ramahlo on behalf of Ben Ramahlo.
11
12
13

14 CONCLUSIONS OF LAW
15

- 16 1. The Board of Industrial Insurance Appeals has
17 jurisdiction of the parties and subject matter of
18 this appeal.
19
20 2. Because of Ben Ramahlo's tender age and inability
21 to appreciate his status as a victim of crime, the
22 time limit he had under RCW 7.68.060(1) to file a
23 claim for Crime Victim Compensation Act benefits
24 was expanded by RCW 4.16.190 and his application
25 was filed in timely fashion.
26
27 3. The claimant's appeal to this Board was filed in
28 timely fashion within the meaning of RCW
29 51.52.060.
30
31 4. The order of the Department of Labor and
32 Industries dated August 9, 1985, which adhered to
33 the provisions of an order dated June 13, 1985,
34 which rejected the claim on grounds the claimant
35 did file an application for benefits within one
36 year of the date of the criminal act as required
37 by RCW 7.68.060(1) is incorrect and should be
38 reversed and the claim remanded to the Department
39 with directions to allow the application for
40 benefits and to take such other and further action
41 as is indicated by the law and the facts.
42

43 It is so ORDERED.

44
45 Dated this 11th day of February, 1987.
46

47 BOARD OF INDUSTRIAL INSURANCE APPEALS
48

49
50 /s/_____
51 GARY B. WIGGS Chairperson
52

53
54 /s/_____
55 FRANK E. FENNERTY, JR. Member
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/s/ _____
PHILLIP T. BORK Member