

## Jackl, Eugene

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### STATUTES

#### Substantial compliance

A Department order which is defective with regard to the statutorily mandated type size substantially complies with notice requirements, absent a showing that the defect prejudiced the worker. ...*In re Eugene Jackl*, BIA Dec., 86 2528 (1988)

Scroll down for order.



1 The issue presented is whether the Department order of October 1, 1984 closing the claim  
2 complied with the statutory notice requirements of RCW 51.52.050. Mr. Jackl contends that because  
3 the requisite notification of appeal and protest rights was in 9 point, 40% black faced type rather than  
4 10 point type, the sixty day statute of limitations is inapplicable and the October 1, 1984 order has not  
5 become final and binding on the parties. According to claimant's theory, the Department therefore had  
6 authority to issue its March 3, 1986 order, denying claimant's request for the time-loss compensation  
7 on the merits.  
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11 The Department, on the other hand, concluded that the March 3, 1986 order was null and void  
12 based upon its determination that Mr. Jackl had failed to file a timely appeal or protest from the  
13 October 1, 1984 order. According to the Department, therefore, the October 1, 1984 order is a res  
14 judicata determination that Mr. Jackl is not entitled to the time-loss compensation for the requested  
15 period prior to October 1, 1984, and the Department lacks jurisdiction to make any further decision on  
16 that question.  
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19 The parties stipulated that the October 1, 1984 order included statutorily mandated language  
20 regarding the claimant's right to protest or appeal from that order. It was further stipulated that the  
21 "notice of appeal rights" was printed in 9 point, 40% black faced type. RCW 51.52.050 requires that  
22 such language be printed "in black faced type of at least ten point body or size." Based upon the  
23 foregoing stipulation, the Industrial Appeals Judge determined that the October 1, 1984 order did not  
24 become final because it did not strictly comply with the notice requirements mandated by RCW  
25 51.52.050. We disagree.  
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28 No evidence was presented that the claimant was in any way prejudiced by the Department's  
29 failure to print the "notice of appeal rights" in ten point, 100% black faced type. There is nothing in the  
30 record to suggest that due to the defects in the size or color of the type, the claimant was unable to  
31 understand or properly exercise his protest or appeal rights.  
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34 Any reliance which the claimant may have placed on the Board's prior decision of In re Molly L.  
35 McMillon, BIIA Dec., 22,173 (1966) is misplaced. The Board in McMillon held that mere knowledge of  
36 an order (as evidenced by a general appearance in an ancillary proceeding) was not sufficient to begin  
37 the running of the statutorily prescribed period to appeal the Department order. This differs  
38 substantially from the circumstances presently before us where the claimant did, in fact, promptly  
39 receive the notice as required by statute, but the provisions of the order relative to the claimant's right  
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1 to protest and/or appeal the order of October 1, 1984 were not in the statutorily prescribed ten point  
2 bold face type.  
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4 A case factually similar to the appeal presently before us is Porter v. Department of Labor and  
5 Industries, 44 Wn.2d 798, 271 P.2d 429 (1954). Porter involved a Department order which did not  
6 comply in all respects with the statutory "notice of appeal rights" provisions then in effect. There was  
7 no question, however, that the order had been served upon the claimant. Despite the failure of the  
8 Department order to strictly comply with the statute, the court held:  
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10 "In the absence of a showing that the workman or person aggrieved by the  
11 action of the Department was misled to his prejudice in the preparation or  
12 prosecution of his appeal, the variation from the language specified in the  
13 statute, while not to be approved, is not particularly important." Porter at  
14 800-801.  
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17 We cannot condone the Department's failure to comply with the statutorily mandated type size in the  
18 design and printing of its orders. However, absent a showing that the defect in the order prejudiced  
19 the claimant in some fashion, we conclude that the order of October 1, 1984 substantially complied  
20 with the requirements of RCW 51.52.050. In so concluding, we note the judicial trend toward a rule of  
21 substantial compliance with respect to the somewhat analogous service requirements of RCW  
22 51.52.110. In re Saltis, 94 Wn.2d 889 (1980).  
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25 Thus, because the claimant failed to file a timely protest or appeal from the October 1, 1984  
26 order, it is res judicata that Mr. Jackl was not entitled to time-loss compensation for the period of July 5,  
27 1984 through July 20, 1984, and the Department was without authority to reconsider that question on  
28 March 3, 1986. The Department order of May 19, 1986 which determined that the Department was  
29 without jurisdiction to enter the March 3, 1986 order is correct and must be affirmed.  
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### 34 FINDINGS OF FACT

- 35  
36 1. On July 10, 1984, the Department of Labor and Industries received a  
37 report of accident alleging that the claimant, Eugene J. Jackl, had  
38 sustained an injury on July 5, 1984, while in the course of his employment  
39 with Tacoma Towing, Inc. On October 1, 1984, the Department issued an  
40 order allowing the claim for medical treatment only, and closing the claim  
41 with no time-loss compensation and with no award for permanent partial  
42 disability.

43 On February 11, 1986, the Department received a letter from the claimant,  
44 through his attorney, Robert Izzo, contending that the claimant did not  
45 receive time-loss compensation from July 5, 1984 to July 20, 1984. On  
46 March 3, 1986, the Department issued an order stating that review of the  
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1 evidence disclosed no error in the order of October 1, 1984, and that the  
2 claim remained closed pursuant to the provisions of that order.

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4 On May 5, 1986, the claimant filed a notice of appeal from the Department  
5 order of March 3, 1986. On May 16, 1986, the Department issued an  
6 order reassuming jurisdiction, and holding its prior order of March 3, 1986  
7 in abeyance. On May 16, 1986, the Board of Industrial Insurance Appeals  
8 issued an order returning the case to the Department for further action.

9 On May 19, 1986, the Department issued an order stating that the  
10 Department was without jurisdiction to enter its order of March 3, 1986,  
11 and that the order was therefore declared null and void. On July 18, 1986,  
12 the claimant filed a notice of appeal from the Department order of May 19,  
13 1986. On August 1, 1986, the Board of Industrial Insurance Appeals  
14 issued an order granting the appeal, assigning Docket No. 86 2528, and  
15 directing that proceedings be held on the issues raised.

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17 2. On July 5, 1984, the claimant sustained an injury to his right hand while  
18 working at Tacoma Towing, Inc. He filed a timely claim with the  
19 Department of Labor and Industries, and the claim was accepted.
- 20 3. Mr. Jackl's claim was closed on October 1, 1984, which closure was  
21 communicated to the claimant via a postcard order. This postcard  
22 provided, in part, in 9 point, 40% black-face type:

23 "ANY PROTEST OR REQUEST FOR RECONSIDERATION OF THIS  
24 ORDER MUST BE MADE IN WRITING TO THE DEPARTMENT OF  
25 LABOR AND INDUSTRIES IN OLYMPIA WITHIN SIXTY DAYS. A  
26 FURTHER APPEALABLE ORDER WILL FOLLOW SUCH A REQUEST.  
27 ANY APPEAL FROM THIS ORDER MUST BE MADE TO THE BOARD  
28 OF INDUSTRIAL INSURANCE APPEALS, OLYMPIA, WITHIN SIXTY  
29 DAYS FROM THE DATE THIS ORDER IS COMMUNICATED TO THE  
30 PARTIES, OR THE SAME SHALL BECOME FINAL."

31 The claimant received this postcard order.

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33 4. No appeal or protest was filed by the claimant within sixty days of  
34 communication of the Department order of October 1, 1984.

#### 35 **CONCLUSIONS OF LAW**

- 36  
37 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties  
38 and the subject matter of this appeal.
- 39 2. The order of October 1, 1984, substantially complies with the notification  
40 requirements of RCW 51.52.050 and the sixty day statute of limitations  
41 prescribed by RCW 51.52.050 therefore applies. Since no appeal or  
42 protest was filed within sixty days of communication of the order of  
43 October 1, 1984, that order is final and binding on the parties.  
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1 3. The Department order of May 19, 1986 finding that it had no jurisdiction to  
2 enter the order of March 3, 1986, and declaring that order null and void, is  
3 correct and must be affirmed.  
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5 It is so ORDERED.

6 Dated this 18th day of February, 1988.  
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8 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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10  
11 /s/  
12 SARA T. HARMON \_\_\_\_\_ Chairperson  
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14  
15 /s/  
16 PHILLIP T. BORK \_\_\_\_\_ Member  
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