

Pittis, Harry

PROTEST AND REQUEST FOR RECONSIDERATION (RCW 51.52.050)

Filing with self-insured employer (WAC 296-20-09701)

WAC 296-20-09701, allowing attending physicians to file requests for reconsideration with the self-insured employer, makes the self-insured employer the agent for the Department for receiving protests from attending physicians. A protest timely filed by the attending physician with the self-insured employer, but not with the Department, therefore constitutes a timely request for reconsideration under RCW 51.52.050.

...*In re Harry Pittis*, BIIA Dec., 88 3651 (1989)

Scroll down for order.

1 self-insured employer's service company within sixty days of receipt of the order, the protest was not
2 forwarded to and received by the Department until after that time period had expired.
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4 Our Industrial Appeals Judge held that the self-insured employer's service company owed a
5 duty to the Department, pursuant to RCW 51.14.110 and RCW 51.32.195, to forward a request for
6 reconsideration to the Department in a "reasonably prompt manner." He found that the employer's
7 statutory responsibility and breach thereof preserved, under the circumstances here, the claimant's
8 right to challenge the May 25, 1988 order.
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11 The self-insured employer's Petition for Review alleges that the filing of a request for
12 reconsideration with its service company is not synonymous to filing with the Department and did not
13 comply with RCW 51.52.050 and RCW 51.52.060. The self-insured's position implies that a breach of
14 the requirements of RCW 51.14.110 and RCW 51.32.195 cannot be remedied by relieving a party
15 from timely filing a protest with the Department. The self-insured employer asserts that the
16 Department's May 25, 1988 order became final, as determined by the order here on appeal dated
17 August 25, 1988.
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22 An essentially undisputed evidentiary record shows that on July 28, 1987 the claimant, Harry D.
23 Pittis, applied for industrial insurance benefits based upon a respiratory condition related to his
24 employment as a carpenter at Stevens Memorial Hospital (Public Hospital District # 2 of Snohomish).
25 Robert E. Cox, M.D., was the attending physician for this problem. Dr. Cox's billings for treatment and
26 correspondence regarding the industrial insurance claim were directed exclusively to the employer's
27 service company, James L. Groves Company (Maxson Young Groves, hereinafter referenced as
28 Groves).
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32 On May 25, 1988, the Department issued an order (Exhibit No. 3) allowing the claim on the
33 basis of a temporary aggravation of a preexisting condition and thereupon closing the claim. Mr. Pittis
34 and Dr. Cox received this order within the regular course of the mails.
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37 In accordance with RCW 51.52.050, the Department's order contained a statement on its face
38 that it would become "final within sixty days from the date the order is communicated to the parties
39 unless a written request for reconsideration is filed with the Department of Labor and Industries in
40 Olympia"
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43 Mr. Pittis and Dr. Cox read the May 25, 1988 order upon receipt. Each of them acknowledged
44 that the language on the order directed filing requests for reconsideration with the Department in
45 Olympia.
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1 Mr. Pittis exercised his right to request reconsideration of the order by writing a letter. In a
2 letter dated July 3, 1988, Dr. Cox, acting on Mr. Pittis' behalf, requested reconsideration of the May 25,
3 1988 order. Each of these letters was mailed to Groves, but copies were not sent to the Department.
4 Mr. Pittis explained that he sent his protest and request for reconsideration to Groves because it was
5 "the insurance company" for his employer and would follow through with necessary contact with the
6 Department. Dr. Cox was basically under the same impression. In fact, he had received a copy of a
7 Department letter of August 19, 1987, also sent to Mr. Pittis, which stated "Because your employer is
8 self-insured, your accident report is being referred to self-insurance section to be forwarded to your
9 employer. If you have any questions, direct them to your employer or the company's service
10 organization." Exhibit No. 7.

11 While Groves received Mr. Pittis's request for reconsideration on July 5, 1988 and Dr. Cox's
12 request on July 8, 1988, it did not forward these letters to the Department until August 17, 1988.
13 Thereafter, the Department entered its August 25, 1988 order finding that the protest and request for
14 reconsideration was untimely and that there would be no reconsideration of the May 25, 1988 order
15 because it was considered "final and binding."

16 The right to file a protest or request for reconsideration and the procedures governing this
17 right are set forth in RCW 51.52.050. The relevant provisions of RCW 51.52.050 read:

18 Whenever the department has made any order, decision, or award, it shall
19 promptly serve the worker, beneficiary, employer, or other person affected
20 thereby, with a copy thereof by mail, which shall be addressed to such
21 person at his or her last known address as shown by the records of the
22 department. The copy, in case the same is a final order, decision, or
23 award, shall bear on the same side of the same page on which is found
24 the amount of the award, a statement, set in black face type of at least ten
25 point body or size, that such final order, decision, or award shall become
26 final within sixty days from the date the order is communicated to the
27 parties unless a written request for reconsideration is filed with the
28 department of labor and industries, Olympia, or an appeal is filed with the
29 board of industrial insurance appeals, Olympia

30 Whenever the department has taken any action or made any decision
31 relating to any phase of the administration of this title the worker,
32 beneficiary, employer, or other person aggrieved thereby may request
33 reconsideration of the department,

34 RCW 51.52.050 obligates the Department to provide notice whenever it enters a
35 determination affecting a party. The second sentence of the first paragraph of the statute controls the
36 language which must be included in every order, decision, or award issued under the terms of the
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1 statute to assure adequate notice of a party's procedural rights. However, it is the second paragraph
2 of the statute which creates the right to request reconsideration by the Department. The first
3 paragraph, specifying the language which must be contained on an order, is distinct from and
4 independent of the right to request reconsideration. Arguably, it has no legal effect upon or
5 relationship to an aggrieved party's right to request reconsideration.
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9 RCW 51.52.050 does identify the Department as the entity for receipt of requests for
10 reconsideration. However, the statute does not restrict the Department from promulgating rules of
11 procedure governing the fair and orderly processing of requests for reconsideration involving
12 self-insured claims. Similarly, RCW 51.52.050 does not contain a time limitation for filing a
13 reconsideration request except to the extent such a limitation is incorporated in the "notice of rights"
14 language requirements of the first paragraph of the statute.
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18 RCW 51.04.020(1) directs the Department to establish rules governing the administration of
19 Title 51 RCW. Furthermore, RCW 51.32.190(6) explicitly confers upon the director the power to
20 "enact rules and regulations providing for procedures to ensure fair and prompt handling by
21 self-insurers of the claims of workers and beneficiaries." Acting pursuant to these rule-making powers,
22 the Department, effective March 1, 1981, promulgated WAC 296-20-09701. It reads:
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26 On occasion, a claim may be closed prematurely or in error or other
27 adjudication action may be taken, which may seem inappropriate to the
28 doctor or injured worker. When this occurs the attending doctor should
29 submit immediately in writing his request for reconsideration of the
30 adjudication action, supported by an outline of:

- 31 (1) The claimant's current condition.
32 (2) The treatment program being received.
33 (3) The prognosis of when stabilization will occur.
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35 All requests for reconsideration must be received by the department or
36 self-insurer within sixty days from date of the order and notice of closure.
37 Request for reconsideration of other department or self-insurer orders or
38 actions must be made in writing by either the doctor or the injured worker
39 within sixty days of the date of the action or order.
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41 (Emphasis Added)
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1 Generally, rules promulgated by the Department carry the force of law and should be
2 interpreted to be valid, unless they are inconsistent with applicable statutes or the intent or policy of
3 the Act. See Vliet v. Dept. of Labor & Indus., 30 Wn.App. 709 (1981), review denied, 97 Wn.2d 1002
4 (1982); Watt v. Weyerhaeuser, 18 Wn.App. 731 (1977). Furthermore, a liberal rather than strict or
5 narrow construction is favored, particularly when interpreting procedural statutes and rules. Similarly,
6 in matters of procedure, substantial compliance may be sufficient. See, e.g., RCW 51.04.010; Wilbur
7 v. Dept. of Labor & Indus., 61 Wn.2d 439 (1963); Sacred Heart Medical Center v. Carrado, 92 Wn.2d
8 631 (1979); In re Saltis, 94 Wn.2d 889 (1980).

9 An examination of WAC 296-20-09701 clearly reveals that it was intended as a delegation of
10 authority by the Department to self-insured employers to receive, on behalf of the Department,
11 attending doctors' requests for reconsideration based on medical reasons. Since the delegation was
12 created through the rule-making process, all interested parties and those whose rights may be
13 affected were put on notice of the Department's intent to essentially make self-insured employers the
14 Department's agent for receipt of requests for reconsideration made by attending physicians for
15 medical reasons, in self-insured claims.

16 Within the context of the Act, and specifically within the context of the administration of the
17 self-insurance program, WAC 296-20-09701 is a reasonable and valid means of allowing such
18 requests for reconsideration to be perfected. A self-insured employer and the Department are jointly
19 responsible for fair and prompt claims administration. The rule assures that either the Department or
20 the self-insured employer be provided timely notice of an attending doctor's challenge to an order of
21 the Department or the self-insured employer. Neither the Department nor the self-insured employer
22 sustains any harm from this alternative manner for filing such requests for reconsideration. Both have
23 an interest in the fair and expeditious adjudication of claims, including requests for reconsideration
24 thereof, and they can and should be expected to promptly share any information received by the other.
25 Furthermore, this WAC regulation provides equal treatment for all injured workers, whether under a
26 state fund-insured claim or under a self-insured claim. If the attending doctor believes an adjudication
27 action should be challenged in a state fund-insured claim, his request for reconsideration is obviously
28 directed to the state fund, i.e., the Department. If he believes such action should be challenged in a
29 self-insured claim, the doctor's request for reconsideration can properly be directed to the self-insurer,
30 with whom the doctor has normally been communicating on medical treatment matters in any event.
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1 Dr. Cox's letter (Exhibit No. 8) clearly complies with the provisions of WAC 296-20-09701. It
2 discusses Mr. Pittis' current condition and the current and recommended treatment program. It
3 specifically protests the closing of the claim, indicating that Mr. Pittis' condition is not fixed and is in
4 need of "continued medical care." It was filed with the self-insured employer within sixty days of the
5 Department's May 25, 1988 order, as specifically directed by the Department's rule.
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8 We conclude that WAC 296-20-09701 is a valid use by the Department of its rule-making
9 powers and that, under the rule's provisions and the beneficent purposes thereof, Dr. Cox had
10 perfected the filing of a request for reconsideration as contemplated by RCW 51.52.050. Dr. Cox's
11 request for reconsideration of the May 25, 1988 Department order was timely filed. The order of
12 August 25, 1988 is therefore reversed and the claim is remanded to the Department to reconsider its
13 order of May 25, 1988 and to take further action as indicated.
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18 **FINDINGS OF FACT**

- 19 1. On July 28, 1987 the claimant, Harry D. Pittis, filed an accident report with
20 the Department of Labor and Industries alleging he sustained an
21 occupational respiratory condition during the course of his employment
22 with Stevens Memorial Hospital (Public Hospital District # 2 of
23 Snohomish).
- 24 2. On May 25, 1988 the Department issued an order allowing the claim for a
25 temporary aggravation of a preexisting condition diagnosed as "asthma"
26 and thereupon closing the claim.
- 27 3. Robert E. Cox, M.D., is claimant's attending physician for problems arising
28 from a respiratory condition compensable under this claim.
- 29 4. The order of the Department dated May 25, 1988 was communicated to
30 the claimant and Dr. Cox in the regular course of the mails.
- 31 5. Public Hospital District #2 of Snohomish is a self- insured employer.
32 During a period extending at least from July 28, 1987 through August 25,
33 1988 the James L. Groves Company (Maxson Young Groves) was the
34 duly authorized service company charged with the administration of
35 self-insured workers' compensation claims for Public Hospital District #2 of
36 Snohomish.
- 37 6. On July 3, 1988 Robert E. Cox, M.D., acting as claimant's attending
38 physician and on claimant's behalf, sent a protest to the James L. Groves
39 Company which was received by the James L. Groves Company on July
40 8, 1988. In the protest, Dr. Cox requested reconsideration of the May 25,
41 1988 order closing the claim. Dr. Cox's letter indicated the asthma was
42 exacerbated, was not fixed, and continued to require medical care.
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- 1 7. Neither the claimant nor Dr. Cox wrote a request for reconsideration or
2 sent a copy of the request directed to the self-insured employer to the
3 Department of Labor and Industries or to the Board of Industrial Insurance
4 Appeals.
- 5 8. On August 17, 1988, the Department of Labor and Industries received
6 from the James L. Groves Company Dr. Cox's protest and request for
7 reconsideration of the May 25, 1988 Department order.
- 8 9. On August 25, 1988 the Department issued an order denying
9 reconsideration of the May 25, 1988 order on the grounds that the
10 Department lacked jurisdiction because the doctor's request for
11 reconsideration was not received by the Department within the statutory
12 time limitations.
- 13 10. On September 7, 1988, Dr. Cox, on behalf of the claimant, filed with the
14 Department a notice of appeal of the August 25, 1988 Department order.
- 15 11. On September 19, 1988 the Department sent the notice of appeal it had
16 received on September 7, 1988 from Dr. Cox to the Board of Industrial
17 Insurance Appeals. On September 23, 1988 this Board issued an order
18 granting the appeal, assigning it Docket No. 88 3651, and directing that
19 further proceedings be held.
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CONCLUSIONS OF LAW

- 22 1. The Board of Industrial Insurance Appeals has jurisdiction over the subject
23 matter and the parties to this appeal.
- 24 2. Pursuant to the rule-making power contained in RCW 51.04.020(1) and
25 RCW 51.32.190(6), the director is empowered with the authority and
26 responsibility for establishing procedures such as those contained in WAC
27 296-20-09701. WAC 296-20-09701 establishes a procedure which
28 ensures fair and prompt handling of claims, particularly those of a
29 self-insured employer.
- 30 3. Within the contemplation of RCW 51.52.050, the self-insured employer
31 and its service company, James L. Groves, was the legally authorized
32 agent of the director of the Department for receipt of requests for
33 reconsideration from a worker's attending doctor, pursuant to WAC
34 296-20-09701 and its authorizing statute, RCW 51.32.190(6).
- 35 4. Dr. Cox's protest and request for reconsideration satisfies the
36 requirements of WAC 296-20-09701. Dr. Cox's request for
37 reconsideration filed on behalf of the claimant with the self-insured
38 employer on July 8, 1988 was filed within the time allowed by RCW
39 51.52.050 and WAC 296-20-09701.
- 40 5. The order of the Department of Labor and Industries dated August 25,
41 1988 which denied reconsideration of the May 25, 1988 order for the
42 reason that the protest and request for reconsideration was not received
43 within the sixty day statutory time limit, is incorrect and should be
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1 reversed. This matter is remanded to the Department of Labor and
2 Industries to accept Dr. Cox's request for reconsideration as timely filed
3 and to reconsider the May 25, 1988 order and to take such further action
4 as indicated, authorized or required by the law and the facts.
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6 It is so ORDERED.

7 Dated this 13th day of December, 1989.

8 BOARD OF INDUSTRIAL INSURANCE APPEALS
9

10
11 /s/
12 SARA T. HARMON Chairperson
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14
15 /s/
16 FRANK E. FENNERTY, JR. Member
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19 /s/
20 PHILLIP T. BORK Member
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