

# Maid-For-You

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## APPEALABLE ORDERS

### Informal letters

A letter from a Department auditor informing an employer that premiums are due and requesting payment is an appealable decision under either RCW 51.48.131 or RCW 51.52.050 and .060, even though the letter fails to contain the required statutory language regarding the employer's appeal rights. ....*In re Maid-For-You*, BIIA Dec., **88 4843 (1990)**

## ASSESSMENTS

### Reassumption of jurisdiction (RCW 51.48.131)

Department's failure to act to modify, reverse or change its assessment decision within thirty days of receipt of the employer's appeal renders all subsequent orders null and void and vests jurisdiction with the Board even though the Department failed to forward the appeal to the Board. ....*In re Maid-For-You*, BIIA Dec., **88 4843 (1990)**

## DEPARTMENT

### Reassumption of jurisdiction (RCW 51.52.060)

Department's failure to act to modify, reverse or change its assessment decision within thirty days of receipt of the employer's appeal renders all subsequent orders null and void and vests jurisdiction with the Board even though the Department failed to forward the appeal to the Board. ....*In re Maid-For-You*, BIIA Dec., **88 4843 (1990)** [Editor's Note: Consider impact of *Marley v. Department of Labor & Indus.*, 125 Wn.2d 533 (1994) on determination that orders are "null and void."]

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON**

1     **IN RE: MAID-FOR-YOU**                             )     **DOCKET NO. 88 4843**  
2   )  
3   )     **ORDER VACATING PROPOSED DECISION**  
4   )     **AND ORDER AND REMANDING FOR FURTHER**  
5     **FIRM NO. 451,297-00-6**                             )     **PROCEEDINGS**  
6 \_\_\_\_\_

7 APPEARANCES:

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9         Firm, Maid-For-You, by  
10         Anderson, Hunter, Dewell, Baker & Collins, P.S., per  
11         Vickie K. Norris

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13         Department of Labor and Industries, by  
14         The Attorney General, per  
15         Ann Silvernale, Assistant, and  
16         William Bayness, Legal Examiner  
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18         This is an appeal filed by the firm on December 22, 1988 from an order of the Department of  
19         Labor and Industries dated November 22, 1988 which affirmed Notice and Order of Assessment No.  
20         57587, assessing \$6,812.17 in industrial insurance premiums for the audit period July 1, 1985 through  
21         September 30, 1986.  
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24         The Proposed Decision and Order issued on November 22, 1989, which vacated the  
25         Department orders of October 26, 1988 and November 22, 1988, is vacated and the matter is  
26         remanded to the Industrial Appeals Judge for the purpose of holding hearings on the merits of the  
27         appeal taken by the firm on November 24, 1987 from the decision of the Department dated November  
28         5, 1987.  
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32   )     **DECISION**

33         Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
34         and decision on a timely Petition for Review filed by the firm to the Proposed Decision and Order.  
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36         The issue presented by this appeal and the evidence presented by the parties are adequately  
37         set forth in the Proposed Decision and Order. The parties stipulated to the evidentiary facts.  
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39         Maid-For-You was audited in August 1987 by Richard Scott, a Department field auditor. He  
40         wrote a letter to the employer on August 26, 1987, stating that the audit's preliminary finding was a  
41         debit balance of \$4,686.17 and that, in approximately 35 days, a statement would be sent reflecting  
42         the balance found due after any adjustments. On November 5, 1987, Nadine Phillips, an industrial  
43         insurance accounts auditor, sent a letter to the employer, stating that based upon the audit summary  
44         of August 17, 1987, premiums were due in the amount of \$6,866.17. The letter requested that amount  
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1 be remitted within ten days. On November 24, 1987, Marilyn S. Puckett, as owner of Maid-For-You,  
2 wrote a letter to Nadine Phillips, stating, inter alia, "I am requesting an appeal of the actions taken on  
3 August 17, 1987 by Richard Scott, Auditor. I understand you will contact me regarding this appeal."  
4 The letters dated November 5th and November 24th are Exhibit Nos. 2 and 3 to the Employer's  
5 Memorandum of Authorities.  
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9 On January 14, 1988 a formal notice and order of assessment was issued by the Department  
10 and served upon Maid-For-You. On or about May 12, 1988 one of the employer's bank accounts was  
11 levied. Approximately a month later, a meeting was held between Department personnel and Ms.  
12 Puckett. Ms. Puckett showed the Department personnel her earlier appeal letter. They suggested an  
13 addition to the appeal in the form of a reason why the appeal was taken. Ms. Puckett added the  
14 reason, in long hand, to the appeal letter and handed the letter back to the Department personnel.  
15 See Exhibit No. 4 to the Employer's Memorandum of Authorities. Thereafter, the Department  
16 purported to hold the January 14, 1988 order in abeyance by an order dated October 26, 1988. Then,  
17 on November 22, 1988, the Department purported to affirm the notice and order of assessment issued  
18 on January 14, 1988. The employer filed a timely appeal from the November 22, 1988 order.  
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24 Based upon the language of the statute, RCW 51.48.131, the letter dated November 24, 1987  
25 responding to the Department's letter of November 5, 1987, which advised the employer of the amount  
26 due and owing and required a remittance of that amount within ten days, was a valid appeal.  
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29 The Department letter of November 5th, though not containing the statutory language regarding  
30 appeal rights, was still an action or determination of the Department from which an appeal could be  
31 taken. The Department has argued that the November 5th letter was not a "Notice and Order" and,  
32 therefore, could not be appealed. However, the Department may not use its failure to invoke the  
33 statutory language concerning appeals and protests as a defense. The November 5th letter advised  
34 the firm there was an audit debit balance and requested payment within ten days. That was a decision  
35 of the Department, appealable pursuant to RCW 51.48.131, or certainly pursuant to the second  
36 paragraph of RCW 51.52.050.  
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1 After the employer filed the November 24, 1987 notice of appeal, the Department did not act to  
2 modify, reverse, or change the November 5, 1987 decision within thirty days. See, RCW 51.48.131  
3 and 51.52.060. Furthermore, the Notice and Order of Assessment dated January 14, 1988 merely  
4 reiterated the decision of November 5, 1987. Under the reasoning of In re Richard Wagner, BIIA Dec.,  
5 88 0962 (1988), the Department was without authority to issue the January 14, 1988 Notice and Order  
6 of Assessment and all subsequent orders issued by the Department thereafter are null and void.  
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10 Whether the letter of November 5, 1987 is viewed as a Notice and Order of Assessment  
11 appealable under RCW 51.48.131, or a decision of the Department appealable under RCW 51.52.050  
12 and .060, either statute allows an appeal to be filed with this Board or the Department. Here, the  
13 employer chose to file the notice of appeal with the Department. Since the Department did not choose  
14 to modify, reverse, or change its decision of November 5, 1987, the appeal should have been  
15 forwarded to the Board.  
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19 The parties' stipulation contains the Department decision of November 5, 1987 and the  
20 employer's notice of appeal of November 24, 1987. It would be an action which would simply delay  
21 the inevitable if we were to remand this matter to the Department with directions to forward the appeal  
22 to us. In any event, we acquired jurisdiction by any theory prior to the issuance of the January 14,  
23 1988 Notice and Order of Assessment since the Department failed to modify, reverse, or change the  
24 November 5, 1987 decision within thirty days of receiving the November 24, 1987 notice of appeal.  
25 The November 24, 1987 appeal will therefore be remanded to our Industrial Appeals Judge to conduct  
26 hearings on the merits.  
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31 After consideration of the Proposed Decision and Order and the Petition for Review filed  
32 thereto, and a careful review of the entire record before us, we are persuaded that the Proposed  
33 Decision and Order of November 22, 1989 must be vacated, and proceedings be held on the merits of  
34 the November 24, 1987 appeal from the November 5, 1987 Department decision. Pursuant to WAC  
35 263-12-145(3) the matter is remanded to the Industrial Appeals Judge with directions to hold such  
36 proceedings. The parties are advised that this order is not a final decision and order of the Board  
37 within the meaning of RCW 51.52.110. At the conclusion of the proceedings the Industrial Appeals  
38 Judge shall, unless the matter is dismissed or resolved by an Order on Agreement of Parties, enter a  
39 Proposed Decision and Order containing findings and conclusions as to each contested issue of fact  
40 and law, based upon the entire record, and consistent with this order. Any party aggrieved by such  
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Proposed Decision and Order may petition the Board for review of such further Proposed Decision and Order, pursuant to RCW 51.52.104.

It is so ORDERED.

Dated this ninth day of July, 1990.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/  
SARA T. HARMON Chairperson

/s/  
FRANK E. FENNERTY, JR. Member

/s/  
PHILLIP T. BORK Member