

Logan, Ruth

APPEALABLE ORDERS

Provisional time-loss compensation orders (RCW 51.32.210)

TIME-LOSS COMPENSATION (RCW 51.32.090)

Provisional time-loss compensation (RCW 51.32.190(3) and RCW 51.32.210)

Orders of the Department paying provisional time-loss compensation, entered prior to the issuance of an order rejecting or allowing the claim on its merits, are not final orders of the Department under RCW 51.52.050 and .060. Until the Department issues a determinative order either rejecting or allowing the claim, the payment of provisional time-loss compensation cannot be challenged by an appeal to the Board. ...*In re Ruth Logan*, BIIA Dec., [89 0189](#) (1989)

Scroll down for order.

1 51.12.020(1). However, we concluded that it was inappropriate, under the circumstances, to direct the
2 Department to allow the claim, since the Department had not passed on any issue other than whether
3 the claimant was a worker covered by the Act. We directed the Department to issue an order
4 determining that the claimant was a mandatorily covered worker under RCW 51.12.010. We also
5 directed that, after a full and complete investigation, the Department should issue a further order
6 adjudicating the question of whether the claimant sustained an industrial injury during the course of
7 employment with Mae Cochran. On October 4, 1988 the employer filed an appeal from our Decision
8 and Order in Thurston County Superior Court (Cause No. 88-2-02247-7). There is no indication from
9 the Department's record that the Superior Court has entered an order staying implementation of our
10 order of September 8, 1988.
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12 Our authority to hear an appeal from a determination made by the Department is specified in
13 RCW 51.52.050 and 060. That authority extends to an appeal of any "order, decision or award" of the
14 Department. An implicit limitation on our authority to hear an appeal is that any such "order, decision
15 or award" must be a final decision of the Department. This is not to say that we will decline to hear an
16 appeal from a final decision of the Department which the Department chooses to characterize as an
17 "interlocutory" decision or which does not contain a recitation of the parties' appeal rights as set forth in
18 RCW 51.52.050. On the other hand, where the finality of a determination concerning issues
19 addressed by a Department order is contingent upon further investigation or further determinations, we
20 cannot take jurisdiction to review what is truly only an "interlocutory" or preliminary determination.
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22 In particular, we note that the "interlocutory" orders of November 30, 1988, were issued under
23 the specific statutory authority of RCW 51.32.210. That statute reads as follows:
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25 **RCW 51.32.210 Claims of injured workers to be acted upon**
26 **promptly--Payment--Acceptance--Effect.** Claims of injured workers of
27 employers who have secured the payment of compensation by insuring
28 with the department shall be promptly acted upon by the department.
29 Where temporary disability compensation is payable, the first payment
30 thereof shall be mailed within fourteen days after receipt of the claim at the
31 department's offices in Olympia and shall continue at regular semimonthly
32 intervals. The payment of this or any other benefits under this title, prior to
33 the entry of an order by the department in accordance with RCW
34 51.52.050 as now or hereafter amended, shall be not considered a binding
35 determination of the obligations of the department under this title. The
36 acceptance of compensation by the worker or his or her beneficiaries prior
37 to such order shall likewise not be considered a binding determination of
38 their rights under this title.
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1 By characterizing provisional time-loss compensation orders as payments made "prior to the entry of
2 an order by the department in accordance with RCW 51.52.050," the Legislature excluded such orders
3 from the types of Department decisions which can be appealed to the Board pursuant to RCW
4 51.52.050 and .060. Payment of provisional time- loss compensation is nothing more than a
5 preliminary, tentative, non- binding determination that the claimant was temporarily totally disabled,
6 from whatever cause, and for the specified periods. Only after the Department makes its final
7 determination can the question of whether Ms. Logan was in fact temporarily totally disabled from
8 September 14, 1987 through November 30, 1988 be addressed in an appeal to this Board.
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11 The correctness of this approach is apparent. If the Department ultimately rejects the claim,
12 provisional time-loss compensation can be recouped pursuant to RCW 51.32.240(2) and the
13 employer's current appeals would likely be rendered moot. On the other hand, if the Department
14 eventually allows the claim, then the issues of claim allowance and whether Ms. Logan was in fact
15 temporarily totally disabled from September 14, 1987 through November 30, 1988 would become ripe
16 for resolution. Until then, the authority to make the initial, tentative determination with respect to
17 whether the claimant is temporarily totally disabled, from whatever cause, rests with the Department.
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19 Thus the employer's appeals from the "interlocutory" orders of November 30, 1988 are
20 premature. Since the Department has not as yet decided whether the claim should be allowed on
21 the merits, no appeal lies to this Board from orders directing payment of provisional time- loss
22 compensation pursuant to RCW 51.32.210.
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24 We would note that both of the November 30, 1988 interlocutory orders advise the parties to
25 contact the Department if they have any question regarding those orders. If the employer has
26 information indicating that the claimant was "employed or employable" from September 14, 1987
27 through November 30, 1988 as alleged in the notice of appeal, then that information should be
28 presented to the Department. Obviously provisional time-loss compensation should not be paid if the
29 claimant was actually employed and not suffering from a compensable loss of earning power or,
30 alternatively, if appropriate certification has not been provided pursuant to WAC 296-20-01002.
31 However, in light of the language of RCW 51.32.210 we believe orders paying provisional time-loss
32 compensation, entered by the Department prior to the issuance of an order rejecting or allowing the
33 claim on its merits, were not intended by the Legislature to be final orders of the Department
34 appealable to the Board under RCW 51.52.050 and .060.
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1 Therefore, it is ORDERED that these appeals be denied. This is without prejudice to the right
2 of any party to appeal from any final order of the Department concerning rejection or allowance of the
3 claim, the claimant's eligibility for time-loss compensation for the period September 14, 1987 through
4 November 30, 1988, or any other matter within the adjudicatory authority of the Department.
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7 It is so ORDERED.

8 Dated this 23rd day of February, 1989.
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10 BOARD OF INDUSTRIAL INSURANCE APPEALS
11

12
13 /s/
14 SARA T. HARMON Chairperson
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17 /s/
18 FRANK E. FENNERTY, JR. Member
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21 /s/
22 PHILLIP T. BORK Member
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