

## Gonzalez, Tina

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### BOARD

#### Moot Appeals

Where a worker appealed an order closing the claim with permanent partial disability award and also appealed a vocational services determination and dismissed the appeal of the closure order, the appeal challenging the vocational determination became moot since a claim cannot be reopened solely for vocational rehabilitation purposes.  
RCW 51.32.095(7). ...*In re Tina Gonzalez*, BIA Dec., 89 5233 (1991)

Scroll down for order.



1 applicable law." Hadley, at 674 (Emphasis added). Thus Hadley establishes a two-pronged test. The  
2  
3 first question is whether the Department has interpreted the law correctly. Since this is "a pure  
4 question of law, it is fully reviewable." Hadley, at 674.

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6 We have also granted review because, while the Industrial Appeals Judge reached the right  
7 result, she did so for the wrong reasons. Some background is necessary.

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9 On September 21, 1989 the Director determined that the claimant was not eligible for  
10 vocational services. Ms. Gonzalez appealed that determination on November 16, 1989 (Docket No.  
11 89 5233). On September 27, 1989, the Department closed the claim with time loss compensation as  
12 paid through May 11, 1989 and with a permanent partial disability award equal to 22% of the  
13 amputation value of the left arm at any point from below the elbow joint distal to the insertion of the  
14 biceps tendon to and including mid-metacarpal amputation of the hand. On October 16, 1989, the  
15 claimant appealed that order (Docket No. 89 4634). We have considered the record in Docket No. 89  
16 4634 as part of the record in this appeal. By a letter received at the Board on July 30, 1990, the  
17 claimant requested that her appeal from the closure order be dismissed. In response to that request,  
18 this Board entered an Order Dismissing Appeal in Docket No. 89 4634 on August 2, 1990.

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20 The Assistant Attorney General representing the Department immediately filed a Motion and  
21 Declaration for Summary Judgment of Dismissal in Docket No. 89 5233. She argued that the  
22 claimant's appeal from the Director's letter denying vocational services should be dismissed because  
23 RCW 51.32.095(7) prohibits the reopening of a claim "solely for vocational rehabilitation purposes."  
24 Thus the Assistant Attorney General argued that because of the dismissal of the appeal in Docket No.  
25 89 4634, there was no relief which could be granted in the claimant's appeal from the Director's letter  
26 determination in Docket No. 89 5233.

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28 The Industrial Appeals Judge declined to rule on the Assistant Attorney General's motion "as  
29 this is a matter which is to be resolved on stipulated facts only." 8/13/90 letter. In the Proposed  
30 Decision and Order, the Industrial Appeals Judge merely restated that position. The Proposed  
31 Decision and Order then proceeded to focus on the issue of "whether the Director abused his  
32 discretion when he decided that claimant was not eligible for vocational services because she was  
33 employable as a safety person, and work as a safety person exists in the State of Washington, even  
34 though claimant resides in the State of Alabama." PD&O, at 3.

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36 That issue became moot when the claimant dismissed her appeal in Docket No. 89 4634. In  
37 dismissing her appeal from the September 27, 1989 Department order closing her claim with time loss  
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1 compensation as paid through May 11, 1989 and with a permanent partial disability award, Ms.  
2 Gonzalez conceded that she was employable from May 12, 1989 on. She has therefore conceded  
3 that the Director's September 21, 1989 decision to deny vocational services was correct since she was  
4 employable at that time.  
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6

7 Secondly, as the Assistant Attorney General correctly pointed out, under RCW 51.32.095(7) a  
8 claim cannot be reopened solely for vocational rehabilitation purposes. Having already agreed that  
9 her claim was properly closed on September 27, 1989, the claimant cannot now seek reopening of the  
10 claim solely for vocational rehabilitation services.  
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13 The Director's letter of September 21, 1989 is therefore correct and must be affirmed.  
14

### 15 FINDINGS OF FACT

- 16  
17 1. On September 14, 1987, the Department of Labor and Industries received  
18 an accident report alleging an injury to the claimant's left ring finger on  
19 September 10, 1987, while in the course of her employment with A B Hop  
20 Farms, Inc. The claim was accepted and benefits, including time loss  
21 compensation, were paid.

22 On September 21, 1989, the Director issued an employability  
23 determination which determined that vocational services were not  
24 necessary to assist the claimant to return to work, as she was qualified to  
25 work as a safety person.

26 On November 16, 1989, the claimant filed a notice of appeal with the  
27 Board of Industrial Insurance Appeals from the Director's determination of  
28 September 21, 1989. On December 18, 1989, the Board issued an order  
29 granting the appeal, and assigning it Docket No. 89 5233.  
30

- 31 2. On May 11, 1989, the Department of Labor and Industries issued a letter  
32 to the claimant approving the claimant to do the job of safety person for  
33 the claimant's employer at the time of the industrial injury.  
34 3. As of May 11, 1989 and thereafter, the claimant was a resident of the  
35 State of Alabama.  
36 4. On May 19, 1989 the Department terminated time loss compensation with  
37 payment through May 11, 1989.  
38 5. On June 5, 1989 the claimant protested the May 19, 1989 order.  
39 6. On September 27, 1989 the Department issued an order affirming the May  
40 19, 1989 order, and closing the claim with time loss compensation as paid  
41 and with a permanent partial disability award equal to 22% of the  
42 amputation value of the left arm at any point from below the elbow joint  
43 distal to the insertion of the biceps tendon, to and including  
44 mid-metacarpal amputation of the hand.  
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1 On October 16, 1989 the claimant appealed the September 27, 1989  
2 Department order to the Board. On November 14, 1989 that appeal was  
3 granted and assigned Docket No. 89 4634.

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5 By a letter received at the Board on July 30, 1990, the claimant's attorney  
6 moved to dismiss her appeal in Docket No. 89 4634.

7 Accordingly, on August 2, 1990 the Board issued an Order Dismissing  
8 Appeal in Docket No. 89 4634.

- 9  
10 7. On August 9, 1990 the Assistant Attorney General representing the  
11 Department filed a Motion and Declaration for Summary Judgment of  
12 Dismissal in Docket No. 89 5233.

13 **CONCLUSIONS OF LAW**

- 14 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties  
15 and the subject matter of this appeal.  
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17 2. By dismissing her appeal in Docket No. 89 4634, the claimant conceded  
18 that she was employable from May 12, 1989 through September 27, 1989.  
19 She therefore has conceded that the Director was correct on September  
20 21, 1989 when he concluded that she was employable and that vocational  
21 services should not be provided. Thus no justiciable issue is raised in  
22 Docket No. 89 5233.  
23  
24 3. Claimant agrees that Claim No. K-595231 was properly closed on  
25 September 27, 1989. Under RCW 51.32.095(7), the claim cannot be  
26 reopened solely for vocational rehabilitation purposes.  
27  
28 4. The Director's determination of September 21, 1989 is correct and is  
29 affirmed.

30 It is so ORDERED.

31 Dated this 24<sup>th</sup> of April, 1991.

32 BOARD OF INDUSTRIAL INSURANCE APPEALS

33  
34  
35 /s/  
36 SARA T. HARMON Chairperson

37  
38 /s/  
39 PHILLIP T. BORK Member