

Herrin, John

BOARD

Order on agreement of parties

An industrial appeals judge does not render a final judgment or final decision and order; only the Board has such authority under RCW 51.52.050. Where an industrial appeals judge declined to accept the parties' stipulation after the hearing date on the basis that issuance of a proposed decision and order, dismissing the matter for failure to present evidence when due, was merely a ministerial act, the proposed decision and order should be vacated and an order, based upon the agreement of parties, entered. ...*In re John Herrin*, BIIA Dec., 89 5253 (1991)

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

1 **IN RE: JOHN A. HERRIN**) **DOCKET NO. 89 5253**
2)
3 **CLAIM NO. K-423198**) **ORDER ON AGREEMENT OF PARTIES**
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5 APPEARANCES:

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7 Claimant, John A. Herrin, Pro Se, and by
8 Kenneth W. Trapp, D.C.

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10 Employer, Callen Construction Co., Inc., by
11 None

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13 Department of Labor and Industries, by
14 The Attorney General, per
15 Dennis J. Beemer, Assistant, Gary W. McGuire and Sherry Silver, Paralegals, and
16 Dale E. Becker, Legal Intern
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18 This is an appeal filed by the claimant on November 21, 1989 from an order of the Department
19 of Labor and Industries dated November 1, 1989, affirming an order dated July 25, 1989, which
20 provided the claim had been reopened on January 28, 1989 for authorized treatment, the record
21 revealed treatment was no longer necessary, there was no permanent partial disability, and the claim
22 was closed. **REVERSED AND REMANDED.**

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26 **DECISION**

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28 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
29 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order
30 issued on January 28, 1991 in which the appeal was dismissed.

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32 The Board has reviewed the record of proceedings and finds that the Proposed Decision and
33 Order contains an error of law. The Proposed Decision and Order states a dismissal of the appeal
34 occurred at a hearing held on December 28, 1990 and the Proposed Decision and Order issued on
35 January 28, 1991 was a ministerial act. It further states that even though a signed stipulation of the
36 parties, designed to form the basis of an Order on Agreement of Parties was received on December
37 31, 1990 at the Board offices, it could be given no force and effect.

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39 The law is clear that an industrial appeals judge does not render a final judgment or a final
40 decision and order. Only the Board has such authority under the statute. RCW 51.52.020. Rosales v.
41 Dep't of Labor & Indus., 40 Wn. App. 712, 700 P.2d 748 (1985). The action which occurred on
42 December 28, 1990 at the hearing was not determinative of the appeal except to form the basis in the
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1 record for the Proposed Decision and Order issued thereafter. The appeal could not have been
2 dismissed by the judge at the hearing and it could not be dismissed by the Proposed Decision and
3 Order except by formal adoption by the Board of that Proposed Decision and Order. That formal
4 adoption has not occurred. RCW 51.52.104.
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7 After negotiations at a conference held upon due and proper notice, the parties apparently
8 reached an agreement and a means of settling the appeal. The Assistant Attorney General drafted a
9 stipulation, signed it, and sent it to Mr. Herrin. The industrial appeals judge required that the stipulation
10 be returned, signed by Mr. Herrin, before December 28, 1990. Otherwise Mr. Herrin would be
11 expected to appear and proceed with the presentation of witnesses in support of his appeal. Though
12 Mr. Herrin technically may have failed to abide by our industrial appeals judge's directions to return the
13 signed stipulation by December 28, he did return it on December 31, signed and prior to the issuance
14 of the Proposed Decision and Order. The interests of the parties and justice would have been better
15 served had our industrial appeals judge immediately drafted an Order on Agreement of Parties based
16 upon that stipulation. Instead, unnecessary delay has occurred and the Proposed Decision and Order
17 must be vacated.
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24 **ORDER**

25 The claimant and the Department have requested that based on the record and a written
26 stipulation, the Board enter an order resolving the issues presented by this appeal. The Board finds
27 that the agreement conforms to the law and the facts of the case and concludes that a final Decision
28 and Order should be entered. The Proposed Decision and Order of January 28, 1991 is vacated. The
29 Department order of November 1, 1989 is reversed and the claim is remanded to the Department to
30 issue an order reimbursing Kenneth W. Trapp, D.C. for chiropractic services rendered to John A.
31 Herrin from July 26, 1989 through April 24, 1990 in the amount of \$412.80 and to reimburse Joseph
32 Sueno, M.D., for treatment rendered to John A. Herrin in the amount of \$272.00, and to thereupon
33 close the claim without further time loss compensation or permanent partial disability.
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39 It is so ORDERED.

40 Dated this 21st day of March, 1991.

41 BOARD OF INDUSTRIAL INSURANCE APPEALS

42 /s/ _____
43 SARA T. HARMON Chairperson

44 /s/ _____
45 FRANK E. FENNERTY, JR. Member
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