

## Jackson, Ralph

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### FRAUD

#### Effect of worker's failure to present evidence when due

In a fraud case, the Department has the initial burden of producing all evidence to establish the correctness of its order. A proposed decision and order dismissing the appeal for failure to present evidence when due on the basis of worker's failure to appear at hearing is not within the authority of RCW 51.52.050 or RCW 51.52.102.

**...*In re Ralph Jackson, BIIA Dec., 90 1095 (1991)*** [*Editor's Note: Department also has burden under "willful misrepresentation."*]

Scroll down for order.

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

1     **IN RE: RALPH J. JACKSON**                     )     **DOCKET NO. 90 1095**  
2   )  
3   )     **ORDER SETTING ASIDE PROPOSED DECISION**  
4   )     **AND ORDER AND REMANDING APPEAL TO**  
5     **CLAIM NO. J-482253**                             )     **THE HEARING PROCESS**  
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7 APPEARANCES:

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9         Claimant, Ralph J. Jackson, Pro Se

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11         Employer, Hoh River Cedar Products, Inc.,  
12         None

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14         Department of Labor and Industries, by  
15         The Attorney General, per  
16         Linda Joy, Paralegal;  
17         Donna Brown and Tim L. Wakenshaw, Assistants  
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20         This is an appeal filed by the claimant on February 22, 1990 with the Department of Labor and  
21 Industries which was transmitted to the Board of Industrial Insurance Appeals on March 8, 1990.  
22 Claimant appeals from an order of the Department of Labor and Industries dated February 2, 1990  
23 which provided that time loss compensation benefits were paid on the basis of certificates of disability  
24 signed by the claimant certifying that the claimant was not working, and that an investigation reveals  
25 that during the period from September 25, 1984 to October 20, 1988, inclusive, the claimant was  
26 gainfully employed or capable of being gainfully employed, thereby resulting in an overpayment of  
27 benefits in the amount of \$59,292.50 which was obtained fraudulently by misrepresentation and  
28 concealment of employment capability from the Department. The February 2, 1990 order demanded  
29 that the claimant refund to the Department the overpayment of \$59,292.50, plus a penalty of 50% of  
30 that amount pursuant to the provisions of RCW 51.32.240, resulting in a total payment demand in the  
31 amount of \$88,938.75. **REMANDED TO THE HEARING PROCESS.**

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40   )     **DECISION**

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42         Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
43 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order  
44 issued on October 26, 1990 in which claimant's appeal from the Department's order was dismissed.  
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1 Our Industrial Appeals Judge predicated the dismissal of the appeal filed by the claimant, Ralph  
2 J. Jackson, on Mr. Jackson's failure to appear, either personally or by a representative, at the hearing  
3 of October 12, 1990.  
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5 In a letter dated October 7, 1990, the claimant sets forth reasons for requesting a ninety day  
6 continuance of the hearing of his appeal. This letter was addressed to the Assistant Attorney General  
7 assigned to represent the Department. It was received by the Assistant Attorney General on October  
8 12, 1990 and transmitted to the Industrial Appeals Judge on October 16, 1990. Mr. Jackson's letter  
9 requested the Board's "Rules of Practice and Procedure" and noted the claimant's efforts to obtain the  
10 microfiche of the Department's file on his claim, which had yet to be received. Claimant expressed his  
11 frustration with the use of telephone conferencing, and his difficulty understanding the process and  
12 preparing and defending his position due to his out-of-state incarceration.  
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14 The Proposed Decision and Order bases the dismissal of claimant's appeal upon RCW  
15 51.52.102 and WAC 263-12-115(8), which allow a dismissal, under certain circumstances, when the  
16 party with the burden of going forward with evidence fails to present evidence at the time and place set  
17 therefor. In this instance, however, since the Department's order on appeal alleges fraud by the  
18 claimant, RCW 51.52.050 requires the Department to initially introduce all evidence in it s case in chief  
19 to establish the correctness of its February 2, 1990 order. Mr. Jackson would then be given an  
20 opportunity to rebut the Department's evidence. The Industrial Appeals Judge did not require the  
21 Department to meet its initial burden of proof and introduce evidence in accordance with RCW  
22 51.52.050. Therefore, the Proposed Decision and Order was without a proper legal basis in  
23 dismissing claimant's appeal.  
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25 Furthermore, the claimant misunderstood to whom to address his October 7, 1990 written  
26 request for a continuance, which sets forth circumstances establishing good cause for a continuance,  
27 as contemplated by the first proviso in RCW 51.52.102.  
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29 Because the Proposed Decision and Order dismissed the appeal without statutory authority  
30 under RCW 51.52.050 and RCW 51.52.102, we are setting aside the proposed Decision and Order  
31 and remanding the matter for hearing.  
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33 Pursuant to WAC 263-12-145(3) and RCW 51.52.102, this matter is remanded for hearing, with  
34 further proceedings to be scheduled by the Industrial Appeals Judge in accordance with the provisions  
35 of this order. The parties are advised that this order is not a final decision and order of the Board  
36 within the meaning of RCW 51.52.110. At the conclusion of the further proceedings the Industrial  
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1 Appeal Judge shall, unless the matter is dismissed or resolved by an Order on Agreement of Parties,  
2 enter a Proposed Decision and Order containing findings and conclusions as to each contested issue  
3 of fact and law, based upon the entire record, and consistent with this order. Any party aggrieved by  
4 such Proposed Decision and Order may petition the Board for review of such further Proposed  
5 Decision and Order, pursuant to RCW 51.52.104  
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8 It is so ORDERED.  
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10 Dated this 25th day of March, 1991.  
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12 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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15 /s/ \_\_\_\_\_  
16 SARA T. HARMON Chairperson  
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18 /s/ \_\_\_\_\_  
19 FRANK E. FENNERTY, JR. Member  
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22 /s/ \_\_\_\_\_  
23 PHILLIP T. BORK Member  
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