

Schroeder, Donald

AGGRAVATION (RCW 51.32.160)

"Deemed granted" application to reopen claim

The Department may not deny an application to reopen a claim and then promptly enter an abeyance order, on its own motion pursuant to RCW 51.52.060, thereby attempting to give itself up to 180 additional days to act on the application. To allow such action would render the time limitations of RCW 51.32.160 completely illusory. Where the Department has entered such an abeyance order but has not made a final decision to deny the application within the time allowed by RCW 51.32.160, the application to reopen the claim is deemed granted. ...*In re John Aitchison*, BIIA Dec., 90 4447 (1990); *In re Donald Schroeder*, BIIA Dec., 90 3177 (1990); *In re Virginia Watts*, BIIA Dec., 90 3816 (1990) [*Editor's Note*: Rule reversed by *Tollycraft Yachts v. McCoy*, 122 Wn.2d 426 (1993).]

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

IN RE: DONALD D. SCHROEDER) DOCKET NO. 90 3177
CLAIM NO. K-601811) ORDER GRANTING RELIEF ON THE RECORD

An appeal was filed by the claimant, on June 15, 1990, from an order of the Department of Labor and Industries dated June 5, 1990. The order denied an application to reopen the claim received on January 16, 1990.

From a review of the Department record in this matter it appears that by an order issued on June 6, 1990 the Department held the order of June 5, 1990 in abeyance. It is clear that the purpose of the orders of June 5, 1990 and June 6, 1990 was to artificially extend the time within which the Department must act on the application to reopen the claim. The deadline otherwise imposed by operation of RCW 51.32.160 was June 18, 1990 but the Department apparently felt it could use the abeyance provisions of RCW 51.52.060 to circumvent the time limits imposed by the legislature for taking action on applications to reopen claims.

We believe that RCW 51.52.060 would allow the Department to hold an order denying an application to reopen a claim in abeyance if such action was taken in response to a request for reconsideration or notice of appeal filed by an aggrieved party. However, the Department cannot utilize RCW 51.52.060 to deny the application to reopen the claim and then promptly enter an abeyance order, on its own motion, thereby attempting to give itself up to 180 additional days to act on the application. To allow that type of action would render the time limitations of RCW 51.32.160 completely illusory. If the Department feels the time allowed by RCW 51.32.160 is not sufficient to act on applications to reopen claims it should address its concerns to the legislature.

The Department of Labor and Industries did not enter a final order, on or before June 18, 1990, which denied the application to reopen the claim. In our view the application to reopen the claim is therefore deemed granted. The orders of June 5, 1990 and June 6, 1990 are reversed and the Department is directed to reopen the claim and take such further action as may be indicated by the law and the facts.

It is so ORDERED.

Dated this 16th day of July, 1990.

BOARD OF INDUSTRIAL INSURANCE APPEALS	
<u>/s/</u>	
SARA T. HARMON	CHAIRPERSON
<u>/s/</u>	
FRANK E. FENNERTY, JR.	MEMBER
<u>/s/</u>	
PHILLIP T. BORK	MEMBER