Rodriguez, Rafael

APPEALABLE ORDERS

Department agreed exam

Where a worker agreed to be bound by the results of a Department medical examination, the worker is not foreclosed from appealing the Department's determination since there is no statutory authority to bind parties to a final disposition of the claim. Only the Board has such authority pursuant to RCW 51.52.095, WAC 263-12-093. **….*In re Rafael Rodriguez*, BIIA Dec., 90 3308 (1991)**

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: RAFAEL RODRIGUEZ	)	**DOCKET NO. 90 3308**
	)	
	)	**ORDER VACATING PROPOSED DECISION**
	)	**AND ORDER AND REMANDING APPEAL FOR**
CLAIM NO. G-760229	)	**FURTHER PROCEEDINGS**

APPEARANCES:

Claimant, Rafael Rodriguez, Pro se

Employer, Skone & Connors Produce, Inc.,
None (Account Finaled)

Department of Labor and Industries, by
The Attorney General, per
Robert S. Young, III, Assistant, and Steve LaVergne, Paralegal

This is an appeal by claimant, Rafael Rodriguez, on June 22, 1990, from an order of the Department of Labor and Industries dated April 20, 1990 which closed the claim with time loss compensation as paid, and with a permanent partial disability award equal to 50% of the amputation value of the left leg at or above the knee joint with functional stump, and for unspecified disabilities equal to 10% as compared to total bodily impairment for cervical impairment. **REMANDED FOR FURTHER PROCEEDINGS.**

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the pro se claimant, Rafael Rodriguez, to a Proposed Decision and Order issued on January 8, 1991 which affirmed the Department order of April 20, 1990 and dismissed the appeal.

We have granted review in order to remand this matter to the hearings process for a hearing and decision on the merits of Mr. Rodriguez's appeal. The Industrial Appeals Judge dismissed Mr. Rodriguez's appeal after a summary judgment motion was brought by counsel for the Department. Department pleadings show that while the Department was administering Mr. Rodriguez's claim, Mr. Rodriguez agreed to be bound by the results of a medical examination conducted by Dr. Burrell on March 15, 1990. The Department order closing the claim is purportedly in compliance with the results of that medical examination. The industrial appeals judge granted the Department's motion for summary judgment, dismissing Mr. Rodriguez's appeal by concluding that Mr. Rodriguez must be held to his "agreement" to be bound by the results of that medical examination. We have granted review

because we do not agree with the conclusions and the discussion of the industrial appeals judge with respect to this issue.

We do not question the Department's wisdom in attempting to utilize "binding examinations" during the administration of claims. In most cases, such an agreement is to the advantage of all, including the Department. However, in those instances where a claimant may be dissatisfied with the results, the Department does not have the statutory authority to assert that the claimant is legally bound by the results of an examination and that the claimant cannot appeal the final order to the Board. During the administration of individual cases, the statute does not provide the Department any authority to settle cases as is provided to the Board in RCW 51.52.095. The Board, on the other hand, has statutory authority to enter final orders based upon the parties' agreement. This is the Board's basis for binding the parties to the results of a medical or vocational examination. Without such a statutory authority as is granted to the Board, the Department cannot legally bind claimants at the administrative level to the results of any one medical or vocational examination.

We recognize that when administering claims, the Department may hesitate to continue the use of "agreed exams" without the authority to legally bind claimants. However, our decision is not meant to imply that the Department may not use this tool in hopes of securing final results in a claim. But in using "binding exams", the Department must assume the risk that such a medical examination may not prove to be the final adjudicative result in a claim. We would hope that the Department realizes that although there is the risk that such an examination may not conclusively decide the claim, the Department does achieve one additional opinion in those rare instances where a claimant appeals from the Department order after a "binding examination".

This decision should have no effect whatsoever upon the Department's willingness to enter into agreements to be bound by the results of medical/vocational examinations during proceedings before the Board of Industrial Insurance Appeals, since the Board does have the statutory authority to bind the parties to final disposition of an appeal. See RCW 51.52.095 and WAC 263-12-093.

We also note that in Mr. Rodriguez's case, the "agreement" reached at the Department level was set forth by a statement signed only by the claimant, both in Spanish and English, stating he would be bound by the results, but not indicating whether the Department representative was also bound. Contrast this "binding" agreement with an agreement reached before the Board where all participating parties must stipulate to be bound by the results of an examination to resolve an appeal. At the Board, both claimant and the Department representative must clearly state the agreement to be bound by the results of an examination. In fact, in the present case, the results of Dr. Burrell's examination included a rating for permanent partial disability for the low back, as well as for cervical impairment. When the claims consultant explained thereafter to Dr. Burrell that the low back had previously been segregated and asked Dr. Burrell if there was any thoracic permanent disability, Dr. Burrell gave an opinion that there was no thoracic permanent disability. Thus, the Department did not feel so bound by the "agreement" with Mr. Rodriguez that Mr. Rodriguez was given a low back disability in accordance with Dr. Burrell's original examination. While there were correct legal reasons for the Department's failure to award a Category 2 low back disability based upon Dr. Burrell's examination, we could no more hold the Department to such a "binding" agreement than we would a claimant.

We are troubled in this case by the summary judgment proceedings with a pro se claimant who obviously had no inkling of what was occurring in the proceedings. Despite the industrial appeals judge having sent a legally exhaustive explanation as to what might occur during the summary judgment proceedings and an explanation as to the legal authorities involved, and went to the extra step of translating this explanation into Spanish, upon review of the transcript we do not believe that Mr. Rodriguez had any understanding of what occurred or what was required of him during the telephone proceedings.

We hereby remand this matter to the hearing judge for further proceedings, specifically to take evidence regarding the timeliness of the claimant's appeal, as well as any and all evidence concerning whether Mr. Rodriguez is in need of any further treatment due to the industrial injury, and if not, then a consideration of the extent of Mr. Rodriguez's permanent disability causally related to the industrial injury.

This matter is remanded to the hearings process pursuant to WAC 263-12-145(3), for further proceedings as indicated in this order. The parties are advised that this order is not a final Decision and Order of the Board within the meaning of RCW 51.52.110. At the conclusion of the proceedings,

the industrial appeals judge shall, unless the matter is dismissed or resolved by an Order on Agreement of parties, enter a Proposed Decision and Order containing findings and conclusions as to each contested issue of fact and law, based upon the entire record, and consistent with this order. Any party aggrieved by such Proposed Decision and Order may petition the Board for review of such further Proposed Decision and Order, pursuant to RCW 51.52.104.

It is so ORDERED.

Dated this 22nd day of July, 1991.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
S. FREDERICK FELLER Chairperson

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