

## Watts, Virginia

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### 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).]

Scroll down for order.



1 was approaching and the disability adjudicator wished to obtain further correspondence from the  
2 attending physician. Thereafter, on May 22, 1990, the disability adjudicator issued the order which is  
3 the subject of this appeal.  
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5 As previously indicated we proceed from a determination that the protest of the order of June 4,  
6 1986 was not timely and that order became final. For, if the protest was timely then the application to  
7 reopen the claim filed on April 28, 1986 is still before the Department and the Department would have  
8 no reason or obligation to consider the later application received on June 15, 1989. Accord Reid v.  
9 Dep't of Labor & Indus., 1 Wn.2d 430, 437 (1939).  
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11 The application to reopen the claim filed on June 15, 1989 was subject to the 1988  
12 amendments to RCW 51.32.160. Laws of 1988, ch. 161, § 11. Under those amendments an  
13 application to reopen the claim which is not denied within ninety (90) days of receipt is "deemed  
14 granted." That time limit can be extended an additional sixty (60) days for good cause. The extension  
15 decision must be made within the initial ninety (90) day period. In re Edwin E. Fiedler, Dckt. No. 90  
16 1680 (April 30, 1990).  
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18 In this case the disability adjudicator was fully aware that the maximum time allowed to act on  
19 the application to reopen would expire on November 13, 1989. In an attempt to circumvent the  
20 legislative directive to act promptly on applications to reopen claims, the disability adjudicator  
21 purported to deny the application to reopen on November 6, 1989, only to immediately hold that order  
22 in abeyance for another six months. We recently held that the Department may not utilize the  
23 "abeyance" provisions of RCW 51.52.060, on its own motion, to avoid the time limitations of RCW  
24 51.32.160. In re Donald D. Schroeder, Dckt. No. 90 3177 (July 16, 1990). To allow the Department to  
25 do so would render the time limitations of RCW 51.32.160 "completely illusory." Id.  
26

27 We find that the application to reopen the claim was "deemed granted: on November 13, 1989.  
28 The order of May 22, 1990 is therefore reversed and this claim is remanded to the Department with  
29 direction to reopen the claim and provide benefits as authorized by the law and the facts.  
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31 It is so ORDERED.  
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33 Dated this 4<sup>th</sup> day of September, 1990.  
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35 BOARD OF INDUSTRIAL INSURANCE APPEALS  
36

37 /s/ \_\_\_\_\_  
38 SARA T. HARMON CHAIRPERSON  
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43 /s/ \_\_\_\_\_  
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