

Aitchison, John

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: JOHN F. AITCHISON) **DOCKET NO. 90 4447**
)
CLAIM NO. H-652377) **ORDER GRANTING RELIEF ON THE RECORD**

On October 2, 1990 we received a request from the Department of Labor and Industries to consider a request for reconsideration filed with the Department by the claimant on September 27, 1990 as an appeal of an order dated August 7, 1990. The order affirmed an order dated June 27, 1990 which denied an application to reopen the claim filed on February 9, 1990.

From a review of the Department record in this matter it does appear that an application to reopen the claim was filed on February 9, 1990. Thereafter, by an order dated April 24, 1990, the Department extended, to July 10, 1990, the time within which it could act on the application to reopen the claim. The reason stated for the extension of time was "We are in the process of scheduling your exam."

On June 27, 1990 the Department entered the aforementioned order denying the application to reopen the claim. The following day the Disability Adjudicator who had entered the order of June 27, 1990, entered another order holding the order of June 27, 1990 in abeyance pending further consideration and the entering of a further determinative order. This action was not taken in response to a protest by the claimant but on the Disability Adjudicator's own motion. She explained her actions in a letter to the claimant also dated June 28, 1990:

We have denied the request to reopen your claim but placed the denial in abeyance until the Department receives a copy of your exam that will be done soon. Once the Department receives that exam, we will make a determination on the possible reopening of this claim. We hope this isn't too confusing. Thank you.

Thereafter, the Department received the aforementioned report of examination and entered the order of August 7, 1990 which is the subject of this appeal.

We assume for present purposes that the Department had "good cause" to enter the extension order of April 24, 1990. We note only in passing that the Department could only extend the time for acting on the application to reopen the claim an additional sixty (60) days beyond the initial ninety (90) days allowed by RCW 51.32.160. That would mean that it could only extend the decision period to July 9, 1990--not July 10, 1990. Our real concern is that the Department, in an attempt to use the abeyance provisions of RCW 51.52.060, is making a mockery of the time limitations imposed upon it by the Legislature for acting on applications to reopen claims.

1 RCW 51.52.160 requires the Department to act on an application to reopen the claim within
2 ninety (90) days of receipt. It may, for good cause stated in writing, extend that period for an additional
3 sixty (60) days. If it does not act within the time allowed the application to reopen the claim is "deemed
4 granted."
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7 It is clear that the Disability Adjudicator's purposes in issuing the orders of June 27, 1990 and
8 June 28, 1990 was to artificially extend the time within which she could act on Mr. Aitchison's
9 application to reopen the claim. While we don't believe she was acting out of malice to delay acting on
10 the claim, we will not permit the Department to use the abeyance provisions of RCW 51.52.060 to
11 circumvent the specific time limits imposed by the Legislature under RCW 51.32.160.
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13 As we stated in In re Donald D. Schroeder, Dckt. No. 90 1377 (July 16, 1990):
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15 We believe that RCW 51.52.060 would allow the Department to hold an
16 order denying an application to reopen a claim in abeyance if such action
17 was taken in response to a request for reconsideration or notice of appeal
18 filed by an aggrieved party. However, the Department cannot utilize RCW
19 51.52.060 to deny the application to reopen the claim and then promptly
20 enter an abeyance order, on its own motion, thereby attempting to give
21 itself up to 180 additional days to act on the application. To allow that type
22 of action would render the time limitations of RCW 51.32.160 completely
23 illusory. If the Department feels the time allowed by RCW 51.32.160 is not
24 sufficient to act on applications to reopen claims it should address its
25 concerns to the legislature.
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28 The Department failed to enter a final order on or before July 9, 1990, which denied Mr.
29 Aitchison's application to reopen his claim. We therefore conclude that the application to reopen the
30 claim is deemed granted. We further conclude, under RCW 51.52.080, that the evidence in the record
31 supports the further diagnostic plan as recommended by the attending physician, Dr. George L.
32 Bohmfalk.
33

34 The order of August 7, 1990 is therefore reversed and the claim is remanded to the Department
35 with direction to the Department to reopen the claim for treatment and such other and further action as
36 may be indicated by the facts and the law.
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38 It is so ORDERED.
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40 Dated this 7th day of November, 1990.

41 BOARD OF INDUSTRIAL INSURANCE APPEALS

42 /s/ _____
43 SARA T. HARMON Chairperson

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

46 /s/ _____
47 PHILLIP T. BORK Member