

Dunn, Willie

SUSPENSION OF BENEFITS (RCW 51.32.110)

Failure to comply (WAC 296-14-410)

Suspension of benefits is improper where the Department has failed to comply with the requirements of WAC 296-14-410 that the Department request, in writing, from the worker the reasons for the non-cooperation or refusal to attend an examination and allow thirty days for response.*In re Willie Dunn, BIIA Dec., 91 0602 (1992)*

Refusal to attend medical examination

A worker has good cause for not attending a medical examination where the worker attempted to use travel arrangements scheduled by the Department the day before his travel but was unable to do so due to the lack of notice by the Department and the fact he was wheelchair-bound.*In re Willie Dunn, BIIA Dec., 91 0602 (1992)*

Scroll down for order.

1 Willie Dunn suffered an industrial injury in Washington on July 25, 1986. He moved to Texas in
2 October 1986. Between October 1986 and the December 4, 1990 suspension order, all benefits and
3 medical care were provided to Mr. Dunn in Texas. In 1990, Mr. Dunn began discussions with the
4 Department about settlement and closure of his claim. The medical information about Mr. Dunn from
5 a vocational assessment conflicted with the records he used to support a successful bid for social
6 security disability benefits. As a result of the discrepancies in medical information, the Department
7 required Mr. Dunn's attendance at a medical examination pursuant to RCW 51.32.110.
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11 Mr. Dunn did not have a telephone, so the Department initiated all communications to him by
12 mail. Mr. Dunn occasionally initiated telephone calls to the Department. Jonine Stewart was the
13 claims manager assigned to Mr. Dunn's case. On November 2, 1990, she sent Mr. Dunn a letter
14 informing him that an examination would be arranged in Seattle, with the Department making advance
15 arrangements for transportation and lodging. Shortly thereafter, the Department sent him a letter
16 informing him that the examination was scheduled for November 29, 1990. The letter instructed Mr.
17 Dunn to contact the Department's Seattle service location to make travel arrangements. On
18 November 13, 1990, Mr. Dunn contacted the service location and informed Jeannie Ramirez that he
19 was wheelchair-bound and would require special transportation arrangements. Ms. Ramirez referred
20 him back to Ms. Stewart regarding the special transportation needs. Ms. Ramirez did not make any
21 travel arrangements after speaking with Mr. Dunn.
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25 Ms. Stewart does not personally make transportation arrangements for out-of-state claimants,
26 but did undertake to get authorization for a wheelchair and transportation to an airport in Texas. She
27 relayed information concerning this authorization to Ms. Ramirez, and assumed that a reservation for
28 Mr. Dunn was arranged by November 16, 1990. In fact, Ms. Ramirez failed to make any reservations
29 at that time. Ms. Stewart sent Mr. Dunn an express mail letter on November 16, 1990 reminding him
30 that he must cooperate or his benefits would be suspended. The letter contained no information
31 regarding specific airline flight information and/or lodging arrangements.
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35 On November 26, 1990, Mr. Dunn called the Seattle service location, again speaking with Ms.
36 Ramirez. She had not yet made reservations for him. Mr. Dunn at that time requested that the
37 Department also pay for an attendant (his wife) to accompany him. Ms. Ramirez referred him back to
38 Ms. Stewart. Ms. Stewart requested medical confirmation that an attendant was necessary. Neither
39 Mr. Dunn nor his wife provided that information. Ms. Stewart sent another express mail letter on that
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1 day informing Mr. Dunn that his benefits would be suspended if he did not appear at the scheduled
2 examination. The letter contained no information about travel arrangements.
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4 On the morning of November 28, 1990, Mr. Dunn again called the service location about travel
5 arrangements. He spoke with Carol Goya. Ms. Goya informed him that no travel arrangements had
6 been made and she had no authority to make a reservation for an attendant. On the afternoon of
7 November 28, 1990, Ms. Stewart authorized travel arrangements for Mr. Dunn and an attendant. At
8 3:45 P.M. Ms. Ramirez made the necessary plane reservations for 6:55 A.M. the next morning.
9 Neither Ms. Ramirez nor Ms. Stewart made any attempt to communicate the travel arrangements to
10 Mr. Dunn, but "hoped" that he would call back later in the day so he could be told which airline to go to
11 by 6:55 A.M. the next morning.
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13 Ms. Ramirez testified that, although she knew earlier in the month that Mr. Dunn was to travel
14 from Houston to Seattle, she held off making the plane reservation because she knew he was
15 requesting "special" travel arrangements. She testified that she never made travel reservations until
16 claimants unequivocally agreed to appear because "[It] takes a lot of doing and a lot of time. If I did
17 that for everyone that wasn't going to show up, we'd have a real mess." 9/18/91 Tr. at 9.
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19 On the morning of November 29, 1990, Mr. Dunn presented himself at the Houston airport and
20 went from counter to counter asking if there were reservations for any flight to Seattle in his name.
21 This effort was without success. On December 4, 1990, the Department issued the order suspending
22 Mr. Dunn's benefits for failure to attend the November 29, 1990 medical examination.
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24 RCW 51.32.110 and WAC 296-20-1103 provide that the Department will reimburse workers for
25 travel expenses associated with special examinations conducted at the Department's request. The
26 parties do not dispute that the Department told Mr. Dunn that travel arrangements would be made for
27 him in advance by the Department. In fact, however, the Department did not make any travel
28 arrangements until less than 24 hours remained before the scheduled examination. Such travel
29 arrangements were not communicated to Mr. Dunn.
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31 It is true that Mr. Dunn asked for special travel arrangements (wheelchair, and wife's
32 accompaniment as an "attendant") that the Department ordinarily would not pay without advance
33 investigation and authorization. Such authorization was finally approved on the afternoon of
34 November 28, 1990, and reservations were then made for a flight leaving Houston at 6:55 A.M. on the
35 day of the scheduled Seattle examination. But such arrangements could not be communicated to Mr.
36 Dunn. Inconvenience in dealing with travel arrangements that may have to be altered or cancelled
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1 does not justify placing Mr. Dunn in an impossible position and then using his alleged
2 "noncooperation" as the basis for suspension of benefits.
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4 A Departmentally promulgated regulation is also directly applicable here. WAC 296-14-410
5 provides in pertinent part that:
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7 Prior to the issuance of an order reducing, suspending or denying benefits,
8 the department or self-insurer must request in writing, from the worker . . .
9 the reasons for refusal, obstruction, delay or noncooperation.
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11 If the department determines no good cause exists, or if the worker fails to
12 respond to the department's request for the reason for the refusal . . . or
13 noncooperation within thirty days after the letter is issued, the department
14 will issue an order . . . suspending . . . benefits. (Emphasis added)
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16 The Department presented no evidence that it made an attempt to comply with WAC 296-14-
17 410. The order suspending benefits was issued on December 4, 1990 -- only five days after Mr. Dunn
18 did not appear at the special examination. There was obviously no opportunity for Mr. Dunn to timely
19 present his explanation for his failure to appear, as plainly required by WAC 296-14-410.
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21 We recognize that it was quite difficult for the Department's claims people to communicate with
22 Mr. Dunn, and that his requests for special travel arrangements complicated the matter further.
23 However, in the last analysis, the Department's delayed and circuitous actions culminating in truly "last
24 minute" arrangements, constituted good cause for his failure to appear as scheduled.
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26 We will remand the matter to the Department with instructions to rescind and set aside the
27 suspension order of December 4, 1990. In this regard, we note that there are apparently no
28 compensation benefits to be reinstated, at least not yet. This record shows that the claim was closed
29 by an order of June 8, 1990, with a permanent partial disability rating for low back impairment, and
30 with time loss compensation terminated as paid through February 22, 1988. However, Mr. Dunn
31 timely protested that order, and it was held in abeyance by Department order of August 8, 1990.
32 Thereafter followed the series of events heretofore recited, leading unfortunately to the failure to
33 accomplish the scheduled medical examination on November 29, 1990 -- an examination which may
34 have led to resolution of the claim issues still to be decided, i.e., need for further treatment, right to
35 further time loss compensation, if any, and/or extent of permanent disability.
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37 It is to be hoped that a new, special examination, providing updated information on Mr. Dunn's
38 condition related to the 1986 injury, can be expeditiously performed. In this regard, by letter dated
39 December 31, 1991, and by subsequent correspondence, Mr. Dunn advised this Board that he has
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1 now moved from Texas to California, and now resides at 326 I Street, #131, Eureka, California 95501.
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3 Perhaps his closer location will help the Department in making successful examination arrangements.

4 Proposed Findings of Fact Nos. 1, 2, and 3, and proposed Conclusions of Law Nos. 1 and 2
5 are correct and are hereby adopted as this Board's final findings and conclusions. In addition, we
6 enter the following Findings of Fact and Conclusions of Law:
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9 **FINDINGS OF FACT**

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11 4. At all times relevant to the issue in this appeal, claimant Willie Dunn did
12 not have a telephone and the Department's representatives were aware
13 that they could only contact him by mail.
- 14 5. On November 2, 1990, claims manager Jonine Stewart informed claimant
15 Willie Dunn by mail that a special examination was scheduled for him in
16 Seattle, Washington on November 29, 1990; that failure to attend the
17 examination could result in suspension of his benefits; and that the
18 Department would make advance arrangements for Mr. Dunn's travel to
19 Seattle after he contacted the assigned service location.
- 20 6. On November 13 and November 16, 1990, Willie Dunn contacted Jonine
21 Stewart by telephone regarding a request that travel arrangements
22 accommodate his alleged need for a wheelchair.
- 23 7. On November 16, 1990, Willie Dunn contacted Jeannie Ramirez at the
24 Seattle service location with his request that travel arrangements include
25 wheelchair accommodations.
- 26 8. On November 16, 1990, Jonine Stewart sent an express mail letter to
27 Willie Dunn again informing him that he must attend the special
28 examination on November 29, 1990. The letter contained no information
29 regarding the promised advance travel arrangements.
- 30 9. On November 26, 1990 Willie Dunn again contacted the Seattle service
31 location as well as Jonine Stewart regarding travel arrangements. The
32 Department had made no travel arrangements of any kind as of that date.
33 Mr. Dunn requested permission to travel with his wife as an attendant. No
34 permission was granted at that time.
- 35 10. On the morning of November 28, 1990, Willie Dunn again contacted the
36 Seattle service location regarding travel arrangements and was informed
37 that none had been made.
- 38 11. On the afternoon of November 28, 1990, at 3:45 P.M., Jeannie Ramirez at
39 that assigned service location made reservations for Mr. Dunn and his wife
40 to travel to Seattle on a flight leaving Houston, Texas at 6:55 A.M. on
41 November 29, 1990. Neither Ms. Ramirez nor any other Department
42 employee communicated the travel arrangements to Mr. Dunn, although
43 they hoped he would call back later that day to find out the flight and its
44 time of departure the next morning.
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- 1 12. Willie Dunn did not attend the special medical examination scheduled in
2 Seattle, Washington on November 29, 1990.
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4 13. Following Willie Dunn's failure to appear at the special examination
5 scheduled on November 29, 1990, the Department did not request in
6 writing that Mr. Dunn provide his reasons for failing to appear at the
7 scheduled examination before issuing the December 4, 1990 order
8 suspending benefits in his claim.

9 **CONCLUSIONS OF LAW**

- 10 3. The Department of Labor and Industries did not comply with the provisions
11 of WAC 296-14-410 before suspending claimant Willie Dunn's benefits for
12 failure to appear at a scheduled special examination on November 29,
13 1990.
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15 4. Willie Dunn had good cause, within the contemplation of RCW 51.32.110,
16 for failure to appear at the special examination scheduled on November
17 29, 1990, in that the Department failed to make travel arrangements until
18 November 28, 1990 and failed to communicate those arrangements to the
19 claimant before November 29, 1990.
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21 5. The Department order of December 4, 1990 which suspended the
22 claimant's benefits under the Industrial Insurance Act for failure to submit
23 to a medical examination on November 29, 1990, is incorrect and is
24 reversed and the claim remanded to the Department with direction to
25 rescind and set aside the order of December 4, 1990, and to reschedule
26 the special examination which was not accomplished on November 29,
27 1990, and thereafter take such further action in the claim as may be
28 indicated by the facts and authorized by law.

29 It is so **ORDERED**.

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31 Dated this 16th day of July, 1992.

32 BOARD OF INDUSTRIAL INSURANCE APPEALS

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36 /s/
37 S. FREDERICK FELLER Chairperson

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40 /s/
41 FRANK E. FENNERTY, JR. Member

42
43
44 /s/
45 PHILLIP T. BORK Member
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