

Bolin, Bjorn Viking (II)

TIME-LOSS COMPENSATION (RCW 51.32.090)

Wages (RCW 51.08.178) - Compensation

The daily service fee paid to a juror is included as "wages" for purposes of computing time-loss compensation, but mileage fees are not since they are no more than an incidental travel reimbursement. ...*In re Bjorn Viking Bolin (II)*, BIIA Dec., 91 0873 (1992) [*Editor's Note*: The Board's underlying determination that a juror was not a covered worker under the Act was reversed in *Bolin v. Kitsap County*, 114 Wn.2d 70 (1990).]

Scroll down for order.

1 appeal and the evidence presented by the parties are adequately summarized in the Proposed
2 Decision and Order.
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4 We have granted review in order to resolve the issue of Mr. Bolin's daily and monthly earnings
5 as a juror for the Kitsap County Superior Court. We believe that the Proposed Decision and Order
6 issued by our industrial appeals judge appropriately resolved the issues of whether Mr. Bolin is entitled
7 to interest on past paid medical bills, whether he is entitled to a Board order setting interest payable on
8 past due time loss compensation, and whether he is entitled to payment of attorney fees and costs for
9 past litigation before the Board of Industrial Insurance Appeals and the Superior Court. While
10 testimony concerning the provision of home health care services was presented, the parties did not
11 present any probative testimony as to an appropriate rate of pay for Ms. Bolin's home health care
12 services. Accordingly, the Department's determination that Ms. Bolin should be paid the rate of \$4.50
13 an hour for 4 hours per day for home health care commencing upon Mr. Bolin's release from hospital
14 through July 24, 1990, shall not be disturbed.
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16 Bjorn V. Bolin was seriously injured in an automobile accident while in the course of
17 employment as a juror with Kitsap County Superior Court on April 14, 1984. Mr. Bolin suffered an
18 incomplete quadriplegia as a result of the accident. Mr. Bolin was paid a fee for jury service of \$10.00
19 a day, per RCW 2.36.150. He additionally received the sum of \$14.35 for mileage costs.
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21 The term wages has been defined by RCW 51.05.178(1) as follows:
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23 The term "wages" shall include the reasonable value of board, housing,
24 fuel, or other consideration of like nature received from the employer as
25 part of the contract of hire, but shall not include overtime pay except in
26 cases under subsection (2) of this section. However, tips shall also be
27 considered wages only to the extent such tips are reported to the
28 employer for federal income tax purposes.
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30 Our Court of Appeals has interpreted RCW 51.08.178(1) as including any and all forms of
31 consideration received by the employee from the employer in exchange for work performed. Rose v.
32 Dep't of Labor & Indus., 57 Wn. App. 751, 758 (1990).
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34 In this particular case, mileage reimbursement was designed to offset the cost of commuting to
35 the job site. The mileage fee is no more than an incidental travel reimbursement which was not being
36 tendered in exchange for the performance of Mr. Bolin's jury duties. Thus, Mr. Bolin's daily rate of pay
37 was \$10.00.
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1 The employer desires to continue the payment of wages to Mr. Bolin in accordance with RCW
2 51.32.090(6). This provision can obviously be legally utilized. It specifically states:
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4 Should a worker suffer a temporary total disability and should his or her
5 employer at the time of the injury continue to pay him or her the wages
6 which he or she was earning at the time of such injury, such injured worker
7 shall not receive any payment provided in subsection (1) of this section
8 during the period his or her employer shall so pay such wages.
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10 The employer maintains that Mr. Bolin's monthly salary should be calculated at \$10.00 per day,
11 seven days a month. We disagree.
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13 The above-quoted exception to receipt of temporary total disability benefits provides a
14 reasonable and rational device to determine a worker's wage where that worker is injured during a
15 brief and irregular encounter with a particular employer. In re Pauline Sandstrom, BIIA Dec., 85 2110
16 at 4 (1987). Likewise, we noted in Sandstrom that the Industrial Insurance Act was not designed to
17 pay injured workers an income for not working far in excess of their wages earned at the time of injury.
18 Id. at 5.
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20 It is not unreasonable to expect Mr. Bolin to have been available for his jury duties every court
21 day of the month. So long as Mr. Bolin was impaneled as a juror, he was expected to attend court
22 daily. His jury duty could only be shortened by permission of the court itself. Short of such leave, Mr.
23 Bolin was legally bound to serve his jury tour. It is not unusual for jury cases to extend for more than
24 30 days depending on the complexity of the case and the deliberation process unique to each
25 impaneled jury. In this instance, it is appropriate to establish Mr. Bolin's salary at \$50.00 per week. (5
26 court days per week x \$10.00 daily jury fee).
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28 After consideration of the Proposed Decision and Order and the petitions for review filed
29 hereto, and a careful review of the entire record before us, we are persuaded that the Proposed
30 Decision and Order should be modified to reflect Mr. Bolin's accurate monthly wage.
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32 We adopt the proposed Findings of Fact Nos. 1, 2, 3, 4, 5, and 6. We further adopt
33 Conclusions of Law Nos. 1, 2, 3, and 5 (renumbered to 4). In addition, we make the following Findings
34 of Fact and Conclusions of Law:
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36 **FINDINGS OF FACT**
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- 38 7. Bjorn Bolin's daily salary at the time of his industrial injury on April 18,
39 1984 was ten dollars (\$10.00) per day. He was injured on his first day of
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1 employment. He would have worked as a juror five days per week, every
2 week of his jury tour, had his services been required.

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4 **CONCLUSIONS OF LAW**

5 5. The order of the Department of Labor and Industries dated January 15,
6 1991 which instructed self-insured employer to pay all medical vendors; to
7 pay Ms. Bolin at the rate of \$4.50 per hour for four hours per day to begin
8 on the initial date Mr. Bolin was released to home health care from the
9 hospital through July 24, 1990; required the self-insured employer to
10 provide any necessary home and vehicle modifications in accordance with
11 Washington Administrative Code 296-23-50015; and ordered that Mr.
12 Bolin be kept on salary in accordance with RCW 51.32.090(6) is incorrect.

13 The Department order is reversed and this matter is remanded to the
14 Department of Labor and Industries to issue an order which requires the
15 self-insured employer to pay all medical vendors for services provided in
16 relation to Mr. Bolin's claim in accordance with the medical aid rules;
17 requires the self-insured employer to pay Ms. Bolin at the rate of \$4.50 per
18 hour for four hours per day to begin on the initial date Mr. Bolin was
19 released to home health care from the hospital through July 24, 1990;
20 requires the self-insured employer to provide any necessary home and
21 vehicle modifications in accordance with Washington Administrative Code
22 296-23-50015; and to order the self-insured employer to keep Mr. Bolin on
23 salary in accordance with RCW 51.32.090(6) at the rate of \$10.00 per day,
24 five days a week from the day that time loss compensation was last paid,
25 less previous salary payments, and to take all further necessary and
26 proper action as is required by law.
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28 It is so **ORDERED**.

29 Dated this 30th day of November, 1992.

30 BOARD OF INDUSTRIAL INSURANCE APPEALS

31
32 /s/
33 _____
34 S. FREDERICK FELLER Chairperson

35
36 /s/
37 _____
38 FRANK E. FENNERTY, JR. Member

39 **DISSENT**

40 I disagree with the Board majority's determination that, in keeping Mr. Bolin on salary in lieu of
41 temporary total disability compensation pursuant to RCW 51.32.090(6), such salary should be
42 calculated at the rate of \$10.00 per day, five days per week. I believe his salary should be calculated
43 at the rate of \$10.00 per day for seven days per month, for a total of \$70.00 per month.
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1 My reasons for so concluding are completely set forth in employer's counsel's Petition for
2 Review, which accurately summarizes the pertinent evidence leading to the reasonableness of the
3 \$70.00 per month wage amount. I adopt the rationale therein as my own. To that extent, I dissent
4 from the majority's Finding No. 7 and Conclusion No. 5.
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7 Dated this 30th day of November, 1992.
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11 /s/
12 PHILLIP T. BORK Member
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