

## **Allen, Carol**

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### **AGGRAVATION (RCW 51.32.160)**

#### **Over seven years after initial closure (RCW 51.32.160)**

Where a worker files an application to reopen more than seven years after the first closing order became final, such application is not timely within the meaning of RCW 51.32.160 but the worker is entitled to a determination of worsening and entitlement to proper and necessary treatment as authorized by RCW 51.36.010. ....*In re Carol Allen, BIIA Dec., 91 1837 (1992)*

### **PETITIONS FOR REVIEW (RCW 51.52.104; RCW 51.52.106)**

#### **Issue first raised in petition for review**

Where the Department order denied an application to reopen only on timeliness grounds and failed to address the issue of worsening or the need for further treatment, the Board reversed the Department order even though the worker's treatment request was raised for the first time in a petition for review. ....*In re Carol Allen, BIIA Dec., 91 1837 (1992)*

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON**

1     **IN RE: CAROL ALLEN**                             )     **DOCKET NO. 91 1837**  
2   )   )  
3     **CLAIM NO. H-261463**                             )     **DECISION AND ORDER**  
4 \_\_\_\_\_)

5 APPEARANCES:

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7             Claimant, Carol Allen, by  
8             Schroeter, Goldmark & Bender, P.S., per  
9             Sidney S. Royer, Attorney and Lisa Peterson, Legal Assistant

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11            Employer, Dexon Systems International, Inc.,  
12            None

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14            Department of Labor and Industries, by  
15            The Office of the Attorney General, per  
16            Linda Williams and Jeffrey Bean, Assistants, and Linda Meller, Paralegal  
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18            This is an appeal filed by the claimant, Carol Allen, on April 10, 1991 from an order of the  
19 Department of Labor and Industries dated March 4, 1991 which affirmed a Department order dated  
20 November 3, 1988, which denied the claimant's application to reopen her claim for alleged aggravation  
21 of condition filed on August 5, 1988, because it was not filed within the statutory time limit of seven  
22 years from the date compensation was terminated on April 3, 1980. **REVERSED AND REMANDED.**  
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26   **PROCEDURAL MATTERS**  
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28            Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
29 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order  
30 issued on September 25, 1991 in which the order of the Department dated March 4, 1991 was  
31 affirmed.  
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33            A review of the historical and jurisdictional facts in this claim raises a question concerning our  
34 jurisdiction to hear this appeal. The Department issued the order on November 3, 1988 denying the  
35 claimant's application to reopen her claim. The notice of appeal from that order was not received until  
36 February 6, 1989.  
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38            We have reviewed the Department file pursuant to In re Mildred Holzerland, BIIA Dec., 15,729  
39 (1965), and that review leads us to conclude that the Department order dated November 3, 1988 was  
40 timely appealed. The order was not initially received by Ms. Allen. It was returned by the Postal  
41 Service to the Department, and then re-mailed to her on January 11, 1989. Thus, the notice of appeal  
42 received on February 6, 1989 was timely, and the Department had authority, pursuant to RCW  
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1 51.52.060, to hold the November 3, 1988 order in abeyance by its order of March 1, 1989, and to  
2 eventually affirm the order by its final order issued on March 4, 1991. Claimant's timely appeal from  
3 the latter order gives this Board jurisdiction to now determine this matter.  
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### 5 6 **DECISION** 7

8 This appeal deals with the 1988 amendments to RCW 51.32.160, which substantially changed  
9 the time periods in which injured workers could apply to reopen their claims due to alleged aggravation  
10 of their conditions.  
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12 The parties apparently attempted to streamline and expedite this appeal so that certain legal  
13 issues raised by Ms. Allen pertaining to those statutory amendments could be directly reviewed in  
14 Superior Court. The record of proceedings is very skimpy and leads us to question the correctness of  
15 the action taken by the Industrial Appeals Judge.  
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18 The order now on appeal affirmed the prior Department order dated November 3, 1988, which  
19 denied the reopening application because it was not filed within seven years from finality of the original  
20 closing order. A review of the stipulated jurisdictional facts supports this position. Ms. Allen's claim  
21 was originally closed by a final order issued on April 3, 1980. The aggravation application which led to  
22 the Department order of November 3, 1988 was received by the Department on August 5, 1988.  
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25 We have previously held that the 1988 amendments to RCW 51.32.160 were remedial in  
26 nature and do apply to any application to reopen a claim filed subsequent to the effective date of the  
27 amendments, which was June 9, 1988. In re Marvin Sandven, BIIA Dec., 89 3338 (1990).  
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30 The legal arguments presented by Ms. Allen in her Petition for Review do not persuade us to  
31 change our prior decision. These arguments have been presented in prior appeals, and the Sandven  
32 decision continues to represent our view of the applicability of the 1988 amendments to all applications  
33 to reopen claims filed after the effective date of those amendments.  
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36 We have granted review because we are concerned by a further issue raised by the claimant in  
37 her Petition for Review. For the first time, Ms. Allen requests "in the alternative" that the Board  
38 remand the claim to the Department for consideration of the claimant's need for medical treatment.  
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41 Even though Ms. Allen's application to reopen was filed after the seven-year period allowed for  
42 seeking further disability compensation, she would still be able to obtain additional medical services if  
43 her condition causally related to the 1977 injury objectively worsened during the aggravation period,  
44 and if so, whether she was in need of further medical treatment for such worsened condition. The  
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1 seven-year time limitation does not apply to a reopening for that limited purpose. In re Marvin  
2 Sandven, id., In re Mike L. Streubel, BIIA Dec., 89 4867 (1990).  
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4 The Department order on appeal did not address the question of worsening and need for  
5 treatment. To that extent, it was incorrect since, under the 1988 amendments, there is no time  
6 limitation on applications for reopening to receive further treatment based on aggravation of condition.  
7 Under these circumstances, we see no other action for us to take except to reverse the Department  
8 order and remand the claim to the Department for consideration of the issues of worsening of Ms.  
9 Allen's causally related condition and whether or not she is in need of further treatment.  
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11 We realize that Ms. Allen may still want to take an appeal to Superior Court on her legal  
12 arguments, rather than deal further with the Department on this last-minute "alternative" issue. If she  
13 is really seeking benefits other than treatment, she can still appeal this order to Superior Court on the  
14 issue of timeliness of her 1988 aggravation application, based on the same legal arguments presented  
15 in her Petition for Review.  
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18 The claimant's Petition for Review also requests that we add a finding that Ms. Allen had no  
19 personal knowledge of the 1988 amendments to the aggravation statute. Since the parties did  
20 stipulate to this fact at the proceeding held on August 26, 1991, we will include it as a finding.  
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22 Based on all the foregoing, we hereby adopt Proposed Finding of Fact No. 1 and Proposed  
23 Conclusion of Law No. 1, and enter the following additional findings and conclusions:  
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29 **FINDINGS OF FACT**

- 30 2. The Department order dated April 3, 1980 was the first closing order in this  
31 claim and became final sixty days after it was communicated to the  
32 claimant.  
33 3. The application to reopen the claim on the basis of aggravation of  
34 condition filed on August 5, 1988, was filed more than seven years after  
35 the first closing order, issued on April 3, 1980, became final.  
36 4. The claimant, Carol Allen, had no personal knowledge of the 1988  
37 amendments to RCW 51.32.160 at the time she filed her reopening  
38 application on August 5, 1988.  
39 5. The Department order dated November 3, 1988, which was later affirmed  
40 on March 4, 1991, did not address the issue of worsening of the claimant's  
41 condition causally related to her industrial injury of December 28, 1977 nor  
42 her need for further treatment related to such worsened condition.  
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1 **CONCLUSIONS OF LAW**

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- 3 2. The claimant's application to reopen her claim on the basis of aggravation
- 4 of condition filed on August 5, 1988, was not timely filed within the
- 5 provisions of RCW 51.32.160, as it was filed more than seven years after
- 6 the first closing order dated April 3, 1980 became final. The claimant is
- 7 therefore not eligible to receive any disability compensation benefits based
- 8 on said application.
- 9
- 10 3. The claimant's aggravation application filed on August 5, 1988 entitled the
- 11 claimant to a determination under the provisions of RCW 51.32.160 of her
- 12 entitlement to proper and necessary medical and surgical services as
- 13 authorized under RCW 51.36.010. Neither the Department order of
- 14 November 3, 1988, nor the order affirming it on March 4, 1991, made any
- 15 such determination.
- 16 4. The Department order of March 4, 1991, which affirmed a Department
- 17 order dated November 3, 1988, which denied the claimant's application of
- 18 August 5, 1988 to reopen her claim for aggravation of condition because
- 19 the application was not filed within the statutory time limit of seven years
- 20 from the date compensation was terminated, is incorrect in part, and is
- 21 reversed, and the claim is remanded to the Department with instructions to
- 22 determine whether the claimant's condition, causally related to her
- 23 industrial injury of December 28, 1977, has objectively worsened since last
- 24 prior claim closure, and if it has, to determine based on said
- 25 determinations, whether the claimant is in need of treatment therefor, and
- 26 to take whatever further action is indicated.

27 It is **ORDERED**.

28 Dated this 2nd day of January, 1992.

29 BOARD OF INDUSTRIAL INSURANCE APPEALS

30 /s/

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32 S. FREDERICK FELLER Chairperson

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35 /s/

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37 PHILLIP T. BORK Member