Pierce, Charles

APPLICATION FOR BENEFITS

Reasonable notification

When an application for benefits identified two dates within a week of each other that injuries had occurred, the reference to the earlier injury in medical notes attached to the application for benefits in the second injury constituted a filing of a request for benefits because it reasonably put the Department on notice of the earlier alleged industrial injury. ***….In re Charles Pierce*, BIIA Dec., 91 4625 (1993)** [*Editor's Note*: The Board's decision was appealed to superior court under Pierce County Cause No. 91-2-07862-4.]

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: CHARLES PIERCE	)	**DOCKET NO. 91 4625**
	)	
CLAIM NO. K-004656	)	**DECISION AND ORDER**

APPEARANCES:

Claimant, Charles Pierce, by
Boettcher, LaLonde Kleweno, Rutledge & Jahn, P.S., per
Todd M. Rutledge

Employer, Browning Timber, Inc., by
Wayne Browning, Owner, and John Woodruff, Sec.-Treasurer

Department of Labor and Industries, by
Office of the Attorney General, per
Jeffrey L. Adatto, Assistant, and Steve LaVergne, Paralegal

This is an appeal filed by the claimant, Charles Pierce, on August 26, 1991 from a Department of Labor and Industries order dated July 15, 1991, which denied responsibility for a condition diagnosed as gastrocnemius tear of the right calf muscle sustained in an injury of July 29, 1988, and affirmed a prior order dated January 7, 1991, which ended time-loss compensation as paid to November 12, 1988 and closed Mr. Pierce's claim related to an industrial injury of August 5, 1988 without any further award for time-loss compensation or any permanent partial disability. **REVERSED AND REMANDED.**

PROCEDURAL AND EVIDENTIARY MATTERS

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the claimant, Charles Pierce, to a Proposed Decision and Order issued on September 21, 1992 in which the order of the Department dated July 15, 1991 was affirmed.

The Board has reviewed the procedural and evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed. Said rulings are hereby affirmed.

The issue presented by this appeal is whether the claimant filed a timely application for benefits with the Department of Labor & Industries for his alleged industrial injury of July 29, 1988, when he submitted an application for benefits for an industrial injury on August 5, 1988 and referred to the earlier injury. We have granted review because we believe that the reference to the July 29, 1988 injury in the application for benefits for the August 5, 1988 industrial injury was sufficient to constitute a

filing for benefits as required by RCW 51.28.050 because it reasonably put the Department on notice that the earlier industrial injury had allegedly occurred.

The evidence presented by the parties, including a stipulation of facts, was adequately set forth in the Proposed Decision and Order. We will briefly reiterate the pertinent facts of this case as needed to explain our decision.

DECISION

Charles Pierce was a choke setter and a chaser for Browning Timber, Inc., when, while allegedly in the course of employment on July 29, 1988, he injured his right calf and knee. Mr. Pierce received conservative treatment for this injury and returned to work within a few days. On August 5, 1988 Charles Pierce was again working as a chaser for Browning Timber, Inc. On that date, he injured his left calf when he attempted to stop a rolling log.

On September 6, 1988 the Department of Labor and Industries received an application for benefits from Charles Pierce for injuries which occurred on both August 5, 1988 and July 29, 1988. The application specifically referred to the August 5, 1988 industrial injury and contained Dr. Hanley's chart notes of that same date. Dr. Hanley's notes stated that the claimant had a similar injury while running up some logs approximately one week prior to the August 5, 1988 injury. Additionally, those notes indicated that the earlier injury involved a gastrocnemius tear on the right side. The doctor's concluding written assessment on August 5, 1988 was that the claimant had sustained a "medial head of the gastrocnemius tear bilaterally, right being one week old, left being new."

In order to obtain benefits for an industrial injury, a claimant must file an application with the Department of Labor and Industries (or with the self-insured employer, if such be the case) within one year of the date of the incident. See Wheaton v. Dep't of Labor & Indus., 40 Wn.2d 56 (1952). The requirement that an application be filed is met by any form of writing submitted to the Department, so long as it states facts sufficient to give notice to the Department that an injury was allegedly suffered and that the claimant was seeking compensation. This has long been the law. Nelson v. Dep't of Labor & Indus., 9 Wn.2d 621 (1941).

In this case, the application filed on September 6, 1988 contained attached medical notes which reasonably placed the Department of Labor and Industries on notice that an additional alleged right leg injury occurred one week prior to the left gastrocnemius tear of August 5, 1988. The attached medical notes further placed the Department on notice that the right gastrocnemius tear on July 29, 1988 was industrial in nature. Specifically, the notes informed the Department that Mr. Pierce injured

himself while engaging in the same kind of logging activity as was noted in the August 5, 1988 incident. From the information contained in the September 1988 application for benefits, it was completely reasonable to understand that Mr. Pierce was making claim for compensation based on two separate industrial incidents, one on July 29, 1988 involving the right leg, and one on August 5, 1988 involving the left leg. We know of no legal rule requiring that a separate application for benefits form must be filed for each separate alleged injury. Mr. Pierce claimed on the application that he had injured "both legs."

After consideration of the Proposed Decision and Order, the claimant's Petition for Review filed thereto, and a careful review of the entire record before us, we are convinced that the Department had sufficient notice on September 6, 1988, that the claimant was seeking benefits for the alleged industrial injury that occurred on July 29, 1988, as well as the industrial injury that occurred on August 5, 1988.

We hereby make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On August 5, 1988, Charles Pierce sustained an injury to his left leg while working for Browning Timber, Inc. The Department of Labor and Industries received Mr. Pierce's application for benefits for his August 5, 1988 industrial injury on September 6, 1988. On October 13, 1988, the Department issued an order allowing Mr. Pierce's application for benefits for his August 5, 1988 industrial injury.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and over the subject matter of this appeal.

2. On July 29, 1988, Charles Pierce sustained an alleged industrial injury to his right leg as contemplated by RCW 51.08.100.

3. On September 6, 1988, Charles Pierce filed an application for benefits for the alleged July 29, 1988 injury within the time requirement of RCW 51.28.050.

4. The order of the Department of Labor and Industries dated July 15, 1991, which denied responsibility for a condition diagnosed as gastrocnemius tear of the right calf muscle for the reason that it was sustained in an injury of July 29, 1988, and which affirmed a prior order dated January 7, 1991, which ended time-loss compensation as paid to November 12, 1988 and closed Mr. Pierce's claim without further award for time-loss compensation or permanent partial disability, is incorrect. The order of July 15, 1991 is reversed and the matter is remanded to the Department of Labor and Industries to accept the September 6, 1988 application for benefits for a

gastrocnemius tear as a timely filing of an application for benefits for the July 29, 1988 incident to his right leg, and to take such further action on that application as is appropriate under the law and the facts.

It is so ORDERED.

Dated this 6th day of January, 1993.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/______________________________________
S. FREDERICK FELLER Chairperson

/s/______________________________________
FRANK E. FENNERTY, JR. Member

/s/______________________________________
PHILLIP T. BORK Member