Bruner, Gary, D.C.

PROVIDERS

Audits

Legislative provisions granting authority to the Department to conduct audits and investigations of providers to determine whether the services were appropriate and to enforce sanctions, if appropriate, must be in effect during the audit of the provider's treatment practices. Otherwise, legislative changes which created new obligations and imposed new duties on providers could operate prospectively only. ***….In re Gary Bruner, D.C.*, BIIA Dec., 91 P045 (1992)** [*Editor's Note: Reversed by implication, Department of Labor & Indus. v. Kantor*, 94 Wn. App. 764 (1999*), review denied*, 139 Wn.2d 1002 (1999).]

Peer review

Where the Department based its determination that a provider received payments to which he was not entitled, upon peer review of the services provided, the Board concluded that after-the-fact review, conducted considerably after the services were provided, for the purpose of recovering monies which the Department had previously determined were properly payable, seems an unwarranted extension of the intent of RCW 51.48.260. ***….In re Gary Bruner, D.C.*, BIIA Dec., 91 P045 (1992)** [*Editor's Note: Reversed by implication, Department of Labor & Indus. v. Kantor*, 94 Wn. App. 764 (1999*), review denied*, 139 Wn.2d 1002 (1999).]

Provider appeals

The Department, in a provider appeal involving recoupment of treatment costs paid, must support its order based on the statutory and administrative provisions in effect during the time of the audit. ***….In re Gary Bruner, D.C.*, BIIA Dec., 91 P045 (1992)** [*Editor's Note*: The decision refers to specific effective dates of certain regulations (WAC 296-20-01002, effective January 1, 1988) which are incorrect. *Reversed by implication, Department of Labor & Indus. v. Kantor*, 94 Wn. App. 764 (1999*), review denied*, 139 Wn.2d 1002 (1999).]

Treatment

The standard by which treatment services are judged is whether they were "proper and necessary" within the meaning of RCW 51.36.010. Where the Department modified its regulations to add a definition of the term "medically necessary", the modified definition applies only to the extent the audit period followed the effective date. ***….In re Gary Bruner, D.C.*, BIIA Dec., 91 P045 (1992)** [*Editor's Note*: The decision refers to specific effective dates of certain regulations (WAC 296-20-01002, effective January 1, 1988) which are incorrect. *Reversed by implication, Department of Labor & Indus. v. Kantor*, 94 Wn. App. 764 (1999*), review denied*, 139 Wn.2d 1002 (1999).]

STAYS ON APPEAL

Effect of appeal to Board on Department's order

Where a provider appeals the Department's suspension of authorization to be paid for services to injured workers, the appeal necessarily stays further action and suspends the order pending a decision by the Board. **….*In re Gary Bruner, D.C.*, BIIA Dec., 91 P045 (1992)** [*Editor's Note: Reversed by implication, Department of Labor & Indus. v. Kantor,* 94 Wn. App. 764 (1999*), review denied,* 139 Wn.2d 1002 (1999).]

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: GARY G.C. BRUNER, D.C.	)	**DOCKET NO. 91 P045**
	)	
	)	**ORDER VACATING PROPOSED**
	)	**DECISION AND ORDER, GRANTING**
	)	**PARTIAL SUMMARY JUDGMENT, STAYING**
	)	**DEPARTMENT ACTION, AND REMANDING**
PROVIDER NO. 17318	)	**APPEAL FOR FURTHER PROCEEDINGS**

APPEARANCES:

Provider, Gary G.C. Bruner, D.C., by
Trujillo & Peick, P.S., per
John C. Peick

Department of Labor and Industries, by
Office of the Attorney General, per
Penny L. Allen, Assistant

This is an appeal filed by the provider, Gary G.C. Bruner, D.C., on April 3, 1991 from an order of the Department of Labor and Industries dated February 2, 1991 affirming a Department order dated January 4, 1991 which affirmed a Department order dated June 8, 1990. The June 8, 1990 order ordered that Gary G.C. Bruner, D.C.'s provider number be suspended for a period of one year, during which time Dr. Bruner shall not bill the Department, self-insurers, or workers, for treatment of industrial injuries or occupational diseases under Title 51. It was further ordered that reinstatement of Dr. Bruner's provider number was contingent upon Dr. Bruner: (1) successfully completing continuing education courses specified and approved by the Department; (2) refunding the Department of Labor and Industries: (a) the amount of $64,036.32 for medically unnecessary care; (b) the amount of $382.49 for medically unnecessary x-rays; (c) the amount of $192.56 for undiagnostic x-rays; and (d) the amount of $744.07 for services billed in violation of the Washington Administrative Code; and (3) paying interest of $11,686.68 plus an additional $21.65 of interest for each day after May 31, 1990 until the excess payments, plus interest, are refunded. **REMANDED FOR FURTHER PROCEEDINGS**.

DECISION

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 provider to a Proposed Decision and Order issued on March 20, 1992 in which the order of the Department dated February 2, 1991 was reversed and the matter remanded to the Department with directions: (1) to immediately communicate with Dr.

Bruner's patients and the community of self-insured employers and representatives that its letter of April 1, 1991 is rescinded and that if otherwise eligible for continuation of his services, the claimant-patients may continue to receive care by Dr. Bruner, and that the Department will pay for such services; and (2) to further consider this matter solely within the parameters of those provisions of the Washington Administrative Code which were in effect between January 28, 1986 and October 29, 1989, and to take such further action as may be authorized and required by law.

The Proposed Decision and Order was issued in response to Dr. Bruner's motion for summary judgment. We have reviewed Dr. Bruner's motion for summary judgment, together with supporting memoranda, affidavits, and exhibits, as well as the argument presented on the summary judgment, in the transcript dated January 7, 1992. Additionally, we have reviewed the memoranda supplied by the Department, together with its supporting affidavits, exhibits, and the oral argument in the transcript dated January 7, 1992.

Dr. Bruner raises a number of issues in his motion for summary judgment. Since we believe several of these issues can be resolved by summary judgment, we are granting a partial summary judgment and remanding this matter to the hearing process with instructions to conduct further proceedings in accordance with this decision.

Initially, we are confronted with the issue regarding the timeliness of the appeal filed by Dr. Bruner. The appeal was filed on April 3, 1991 from a Department order dated February 2, 1991. The Department order of February 2, 1991 contains language indicating that any appeal to the order must be filed in writing with the Board of Industrial Insurance Appeals within sixty days of the receipt of the order. The appeal was filed on the sixtieth day following the date of the Department order. While the facts associated with the filing of this appeal are not in dispute, the law is. RCW 51.52.050 provides:

> That a Department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker, shall state that such order or decision shall become final within twenty days from the date the order or decision is communicated to the parties unless a written request for reconsideration is filed with the Department of Labor and Industries, Olympia, or an appeal is filed with the Board of Industrial Insurance Appeals, Olympia. (Emphasis added)

Since the Department order dated February 2, 1991 is an order making demand for repayment of sums paid to a "provider", it should have indicated that an appeal must be filed within twenty days of its receipt. RCW 51.52.060. As the Industrial Insurance Act requires that an appeal by a provider

must be filed within twenty days of the date of communication of an order making a demand for repayment, there is a jurisdictional question as to whether the appeal filed by Dr. Bruner on April 3, 1991 is timely and, consequently, whether this Board has jurisdiction to hear the merits of this appeal.

The Board has the inherent authority to determine whether we have jurisdiction over the issues raised in the appeal. Callahan v. Dep't of Labor & Indus., 10 Wn. App. 153, 516 P.2d 1073 (1973). The Board has the authority to correct clerical errors in Department orders and determine the Board's jurisdiction. Callahan v. Dep't of Labor & Indus., supra at 157.

In our opinion, RCW 51.52.050 mandates the use of specific language on Department orders, advising the parties of certain appeal rights. We view the incorrect language on the Department order of February 2, 1991, which sets forth a sixty day appeal period, as a clerical error. We can find no other rational explanation for such an error, since a clear reading of the statute requires the inclusion of notice of the twenty day appeal period on Department orders such as the one issued to Dr. Bruner.

Since the Department order involving Dr. Bruner contains a clerical error which incorrectly advises Dr. Bruner regarding the time period for filing an appeal, we exercise our inherent authority to correct the error and determine our jurisdiction.

In his affidavit in support of summary judgment, Dr. Bruner asserts his reliance on the sixty day appeal language set forth in the Department order of February 2, 1991. We believe the affidavit of Dr. Bruner is sufficient to establish that he was misled to his prejudice in the preparation of his appeal. We believe that the incorrect language regarding the time period for filing an appeal with this Board, which is included in the Department order of February 2, 1991, may not operate as a bar to Dr. Bruner's appeal. We have previously held that when the Department fails to invoke the statutory language concerning appeal rights, that it may not use its failure to do so as a defense. In re Maid-For-You, BIIA Dec., 88 4843 (1990). Thus, because Dr. Bruner relied on the incorrect language in the Department order and complied with the terms thereof, the appeal filed by him on April 3, 1991 is timely.

The substantive issues raised in this appeal all stem from the Department order of February 2, 1991, which suspended Dr. Bruner's eligibility to provide medical care for injured workers under the Industrial Insurance Act, and sought to recover monies previously paid to Dr. Bruner for medical care. The Department conducted an audit of Dr. Bruner's treatment of injured workers. The audit encompassed review of his treatment during the period of January 28, 1986 through October 29, 1989, and resulted in the Department's operative order of June 8, 1990. We note that the affirmance

of that order by the Department order of February 2, 1991 does not specifically cite to any authority for the audit or the authority to seek reimbursement.

Dr. Bruner, in his memorandum and motion for summary judgment, raises several issues regarding the applicability of various statutes and sections of the Washington Administrative Code used by the Department in conducting the audit. It appears that the Department has relied on the authority set forth in RCW 51.36.100 and RCW 51.36.110, as well as RCW 51.48.260 and WAC 296-20-015, 296-20-02005, and 296-20-02010.

RCW 51.36.100, 51.36.110, and 51.48.260 were enacted by Laws of 1986, ch. 200, and were effective April 1, 1986.

WAC 296-20-015 was amended effective November 1, 1986, and was again amended effective March 5, 1990, when, for the first time, specific language was included providing for recoupment of payments to a provider and assessment of penalties.

WAC 296-20-02005, which requires the provider to maintain records subject to audit, was effective November 1, 1986.

WAC 296-20-02010, which provides for Department review of providers' patient and billing records, was originally promulgated and effective on November 1, 1986. This regulation was amended by order dated February 2, 1990, effective March 5, 1990.

The 1990 modification to WAC 296-20-02010 included a change in Section 1. The 1986 provision recited that "in order to ensure that the industrially injured worker receives the services paid for by the state of Washington, the Department of Labor and Industries conducts audits, . . ." The 1990 provision states that "the Department may review providers' patient and billing records to ensure workers are receiving proper and necessary medical care and to ensure providers' compliance with the Department's medical aid rules, fee schedules, and policies."

Since the audit period involving Dr. Bruner spans a time period from the effective date of RCW 51.36.100, RCW 51.36.110, and RCW 51.48.260, through and beyond the effective date of the latest revisions of WAC 296-20-015 and WAC 296-20-02010, the issue is raised regarding the application of the appropriate law to the audit period. We believe the Department is required to apply the law in effect during the time of the audit period.

Retrospective application of the statutes and administrative regulations is, as a general rule, not permissible. Statutory legislation and administrative rule making are presumed to operate prospectively, and not retrospectively. Bodine v. Dep't of Labor & Indus., 29 Wn.2d 879, 190 P.2d 89

(1948); Pape v. Dep't of Labor & Indus., 43 Wn.2d 736, 264 P.2d 241 (1953). In Pape, the court stated that:

> Laws may operate either prospectively or retrospectively, or both. A prospective law is one which is to operate in the future -- that is, is applicable only to cases arising after its enactment. A retrospective law is one which is made to operate upon some contract, or crime which existed before the passage of the law. [citation omitted] A retrospective law, in the legal sense, is one which takes away or impairs vested rights acquired in the existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past. [citation omitted]
>
> The question whether a statute operates retrospectively, or prospectively only, is one of legislative intent. In determining such intent, the courts have evolved a strict rule of construction against a retrospective operation, and indulge in the presumption that the legislature intended statutes or amendments thereto to operate prospectively only. [citation omitted] It is not necessary, however, that the statute expressly state that it shall operate retrospectively, if such intention can be obtained from the purpose and method of its enactment.

Pape, at 740-741.

We concur with Dr. Bruner that the provisions of RCW 51.36.100, 51.36.110, and 51.48.260, as well as the administrative regulations based on these statutes, create new obligations and impose new duties on providers under the Industrial Insurance Act, and as such, they may operate prospectively only.

Our review of the legislative history indicates that the Department considered the enactment of RCW 51.36.100, 51.36.110, and 51.48.260 as necessary to provide the statutory authority to conduct audits of health care providers. See testimony of Taylor Dennen of the Department of Labor and Industries before the House Commerce and Labor Committee concerning Draft Bill Z 1167, January 15, 1986. This concern is also expressed in a Senate bill report for Senate Bill 4927 dated January 28, 1986.

By seeking the new authority to conduct the audits and recognizing the limitations to conduct such audits under the then existing law, it seems clear to us that the audit authority acquired through the enactment of Laws of 1986, ch. 200, was intended to give the Department the authority to affect the general rights afforded the providers under previous law. Thus, we believe RCW 51.36.100, RCW 51.36.110 and RCW 51.48.260, as well as the administrative provisions based on these legislative

enactments, are to apply prospectively only. We can find no indication of legislative intent that these provisions should apply retroactively. We are convinced the legislature actually intended that RCW 51.36.100, RCW 51.36.110, and RCW 51.48.260, were to operate prospectively only. Therefore, the Department may not apply these statutory provisions, or any administrative regulations based on these statutes, retroactively.

When this matter proceeds to hearings, the Department must support its order, based on the audit of Dr. Bruner, on statutory or administrative provisions in effect during the time of the audit. To the extent that the Department establishes that its actions in conducting the audit and gathering evidence were in accord with statutory and administrative provisions in effect during the time of the audit, the Department may, of course, proceed to present such evidence. In this regard, we specifically point out that RCW 51.36.100 and RCW 51.36.110, which provide the Department with specific authority to conduct audits and investigations of health care providers to determine whether their services were appropriate, and to enforce sanctions accordingly, were operative and in effect during the audit and review of Dr. Bruner's treatment practices. Furthermore, we note, the statutory standard, or test by which the adequacy and quality of treatment services are to be evaluated was also in effect during the audit and review, namely, that the treatment services must be "proper and necessary." RCW 51.36.010. This standard for health care services has been in effect ever since provisions for medical aid coverage were first added to the Act in 1917! Laws of 1917, ch. 28, § 5.

Dr. Bruner also argues that the Department's authority to recovery monies from a provider is limited to seeking repayment for services which were not provided or authorized.

RCW 51.48.260, enacted by Laws of 1986, ch. 200, § 3, and effective on April 1, 1986, provides:

> Any person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an industrial injured recipient of health services, that, without intent to violate this chapter, obtains payments under Title 51 RCW to which such person or entity is not entitled, shall be liable for: (1) any excess payments received; and (2) interest on the amount of excess payments at the rate of one percent each month for the period from the date upon which payment was made to the date upon which repayment is made to the state.

In conducting the audit of Dr. Bruner's care of injured workers, the Department conducted a "peer review" to determine which of the services provided by Dr. Bruner to injured workers were, or

were not, medically proper and necessary. The peer review consisted of a group or team of other chiropractors who would review selected records of Dr. Bruner's patients.

The Department modified WAC 296-20-01002 by order dated June 25, 1990, effective August 1, 1990, by adding a definition of the term "medically necessary" as:

> Those health services are medically necessary which, in the opinion of the director or his or her designee, are:
>
> (a) Proper and necessary for the diagnosis and curative or rehabilitative treatment of an accepted condition
>
> (b) Reflective of accepted standards of good practice within the scope of the provider's license or certification
>
> (c) Not delivered primarily for the convenience of the claimant, the claimant's attending doctor, or any other provider and
>
> (d) Provided at the least cost and at the least intensive setting of care consistent with the other provisions of this definition.
>
> In no case shall services which are inappropriate to the accepted condition or which present hazards in excess of the expected medical benefits be considered medically necessary. Services which are controversial, obsolete, experimental, or investigational, are presumed not to be medically necessary, and shall be authorized only as provided in WAC 296-20-03002(6).

Since this regulatory definition was not effective until August 1, 1990, it does not apply to the audit of Dr. Bruner's treatment services, which covered the period from January 1986 through October 1989, and based on which the Department's operative order was entered on June 8, 1990.

The peer review conducted by the Department consisted of a review of the medical records and billings on selected cases involving injured workers as opposed to all of Dr. Bruner's patients generally. These peer reviews in essence consisted of an after-the-fact review of the care rendered by Dr. Bruner. The peer reviews were not conducted on cases involving ongoing care by Dr. Bruner. Rather, they were conducted to determine the status of care given in the past with the advantage of hindsight. Those services which were provided but not considered "medically necessary" by the peer review group and for which Dr. Bruner had already been paid, form the basis for the decision that Dr. Bruner repay certain monies demanded by the order of June 8, 1990; specifically, the amount of $64,036.32 for "medically unnecessary" care, and the amount of $382.49 for "medically unnecessary" x-rays. In other words, the Department contends that, under RCW 51.48.260, Dr. Bruner was liable for these "excess payments received" with interest.

Dr. Bruner questions the Department's authority to use this form of retroactive peer review to determine his entitlement to payments which had already been approved and paid by the Department.

Crucial to a determination of the extent to which the Department had the authority to seek recoupment for alleged overpayment for past services is the scope of the term "is not entitled" contained in RCW 51.48.260. If Dr. Bruner was "not entitled" to the monies received for medical care previously rendered and paid for by the Department, then he is liable under RCW 51.48.260 for the excess payments received together with interest.

Peer review of medical services provided to injured workers is a logical part of the Department's authority in ongoing management of claims of injured workers. However, we do not believe that "not entitled", as it is used in RCW 51.48.260, is intended to apply to services which were provided to the injured worker and had been correctly billed, which were reviewed and approved by the Department, and for which payment was made to the provider. RCW 51.04.030. Such after-the-fact review, conducted considerably after the services were provided, for the purpose of recovering monies which the Department had previously determined were properly payable, seems to us an unwarranted extension of the intent of RCW 51.48.260. We believe the Department's utilization of this after-the-fact peer review in order to recover money already paid for previously authorized medical care may only encourage the Department to shirk its responsibility to properly manage the claims of injured workers and monitor the health care provider at the time the services are provided! An injured worker can take little solace in the fact that, several years after the treatment was provided, the Department may determine that the care was not "medically proper or necessary" after all! The fact that the Department may later try to recover the monies from the provider does little to alleviate the potential suffering of the worker resulting from past treatment that may have been medically unnecessary or improper.

Additionally, we note that performance of after-the-fact peer reviews, with the primary purpose appearing to be to recover monies for past services which had already been approved and paid, may discourage many health care providers from delivering care to injured workers, since the provider could never rely on the past payments as being final. The provider would realize that all treatment decisions could be second-guessed at a time far in the future, and recoupment then demanded.

The Department has a prime responsibility under our Industrial Insurance Act to properly administer the claims of injured workers, including supervision of prompt, efficient, and quality care and treatment. RCW 51.04.020(4), and RCW 51.04.030. Under the latter statute, once the

Department receives billings for care and treatment of injured workers, determines that the charges for the listed services were correctly submitted by the health care provider, and approves and pays for the services as being in conformity with the medical aid rules and fee schedules, the Department has thereby effectively determined that the provider was "entitled to" the payments. The Department may not then seek recoupment of such payments at any time it so decides in the future, absent clear authority from the legislature. We do not think RCW 51.48.260 provides such authority.

We have no doubt that the Department has the authority to conduct audits and investigations of health care providers in order to accomplish the purposes specifically set forth in RCW 51.36.100 and RCW 51.36.110, including the kind of evaluation and peer review as was done here. RCW 51.36.110 gives such specific authority to the Department, and furthermore provides for specific sanctions of approval or denial of applications to participate as a provider, or termination or suspension of the eligibility of a provider to continue to provide services to injured workers. Audit and investigation of a provider's past practices, including utilization of a peer review group as was done here, can certainly give probative evidence as to whether or not a provider was giving proper and necessary treatment, and if not, whether he should be terminated or suspended from giving any further care to injured workers. In other words, if, based on past practices, a "bad apple" is found, get it out of the barrel of good apples. But peer review, for purposes of insuring quality of care for injured workers, is not primarily for obtaining reimbursement of monies previously paid out to improve the State Fund's financial bottom line, nor should it be perceived as such.

On remand to hearings, the evidence involving the issue of recoupment of past monies paid should first address whether the services in question were actually provided by Dr. Bruner. If they were provided, and were correctly billed, and the Department approved and paid for the services as being in conformity with the medical aid rules, per RCW 51.04.030, then the Department is precluded from recovering those monies. If, however, Dr. Bruner did not actually supply some billed treatment, or overcharged by improper procedure coding or description under the fee schedule, or double-billed, or submitted undiagnostic x-rays, or committed other violations of the medical aid billing or reporting requirements, he would be "not entitled" to those "excess payments received," and to that extent the Department has the authority to recover those funds under RCW 51.48.260, which of course was in effect during the audit period.

Dr. Bruner also seeks a stay of the Department order pending final resolution of the appeal before this Board. We previously addressed a similar request for an order staying the Department's

order in In re Steven J. Zwiener, D.C., Dckt. No. 91 P001 (September 16, 1992). In Zwiener, we delineated our position regarding such a stay. In Zwiener, we determined that this Board has jurisdiction over any appealed action or decision of the Department relating to any phase of the administration of Title 51 RCW. Dr. Bruner has appealed the February 2, 1991 Department order to this Board and therefore it is not a final order. RCW 51.52.050 and .060. Dr. Bruner's appeal itself "necessarily suspends the order appealed from and stays further action pending a decision" by the Board. That has long been the law. State ex rel. Crabb v. Olinger, 191 Wash. 534, 538, 71 P.2d 545 (1937).

The appeal provisions of Chapter 51.52 RCW, and specifically RCW51.52.050 and .060, are designed to prevent the kind of harm which would occur to Dr. Bruner if the Department proceeded as if its orders were final and binding. The Department order of February 2, 1991 is stayed pending further decision of this Board.

The Department letters to Dr. Bruner's claimant-patients exceed the Department's statutory authority. The Department is directed to communicate in writing to each of the previously contacted claimant-patients of Dr. Bruner, stating that the letters are rescinded, and also stating that, if otherwise eligible for continuation of his services, the claimants may continue to receive proper, necessary, and authorized care by Dr. Bruner and the Department will pay for such services.

We do not believe the balance of the issues raised in the motion for summary judgment are appropriate for resolution by way of summary judgment. Many of the other issues require further factual foundations or involve issues of contested fact, and therefore we decline to take any further action with respect to the remaining issues raised in the motion for summary judgment.

There are two other issues that we would like to address, which have not been raised in the motion for summary judgment, but which we believe are appropriate in order to give direction to the parties and to our industrial appeals judge.

When this matter proceeds to hearing, it is proper to require the appealing party, Dr. Bruner, to proceed first in the presentation of evidence in his case-in-chief. RCW 51.52.050; WAC 263-12-115(2). However, in any proceeding before the Board, the parties are free to present evidence out of turn or in any other manner, as long as this is agreeable to each of them, under the supervision and approval of the industrial appeals judge assigned to conduct the evidentiary hearings. In the absence of some stipulation to present evidence in a different order, however, the burden is always on the appealing party to go forward with the evidence necessary to support the appeal! In Dr. Bruner's case,

this means, insofar as attempting to show the incorrectness of the Department's suspension of his right to treat injured workers, he must produce evidence establishing a prima facie case that his treatment of injured workers was not improper or unnecessary.

We also note that this Board maintains offices and hearing rooms in several cities throughout the state of Washington. Any party to this proceeding is entitled to present witnesses before the Board, and is entitled to utilize the offices of the Board throughout the state. There shall be no requirement that all witnesses travel to Olympia or any other designated location in this state, where there are locations maintained by the Board or otherwise within the state which would more readily facilitate the taking of testimony of a particular witness or group of witnesses.

Pursuant to WAC 263-12-145(4) and RCW 51.52.102, we hereby set aside the Proposed Decision and Order entered on March 20, 1992 and remand this appeal to the conference and hearing process for the scheduling of further proceedings consistent with the instructions in this order. A further Proposed Decision and Order shall be issued after the parties to these proceedings shall have had an adequate opportunity to present such evidence as is appropriate. The further Proposed Decision and Order shall be based upon the entire record, and the parties shall have the right, pursuant to RCW 51.52.104, to petition for review of such further Proposed Decision and Order.

It is so **ORDERED**.

Dated this 11th day of September, 1992.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
S. FREDERICK FELLER Chairperson

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

/s/_____
PHILLIP T. BORK Member