

Renton Concrete Recyclers

SAFETY AND HEALTH

Reassumption of jurisdiction by Department

Where an employer appeals, in a timely manner, a citation and notice and the Department reassumes jurisdiction pursuant to RCW 49.17.140, the Department's failure to issue a corrective notice of redetermination within 30 working days from the date it reassumed jurisdiction, the Board must consider the appeal as having been taken from the citation and notice, not the corrective notice of redetermination. *Citing Erection Co. v. Department of Labor and Industries*, 65 Wn. App. 461 (1992) [which reversed *In re Erection Co. (I)*, BIIA Dec., 88 W134 (1990). ...***In re Renton Concrete Recyclers*, BIIA Dec., 91 W085 (1992)** [*Editor's Note*: The Board's decision was appealed to superior court under King County Cause No. 9402012509-5.]

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

1 **IN RE: RENTON CONCRETE)** **DOCKET NO. 91 W085**
2 **RECYCLERS)**
3 **)** **ORDER VACATING PROPOSED DECISION AND**
4 **)** **ORDER, AND REMANDING APPEAL FOR**
5 **CITATION & NOTICE NO. 111593133)** **FURTHER PROCEEDINGS**
6

7 APPEARANCES:

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9 Employer, Renton Concrete Recyclers, by
10 Cody, Hatch & Blanchard, Inc., P.S., per
11 Peter E. Sutherland and George W. Cody, and by
12 James Burnett, General Manager
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14 Employees of Renton Concrete Recyclers, by
15 None
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17 Department of Labor and Industries, by
18 Office of the Attorney General, per
19 James M. Hawk, Assistant, and
20 Nancy Bell and Shawn Ruth, Paralegals
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22 This is an appeal filed by the employer, Renton Concrete Recyclers, on June 19, 1991 from a
23 Corrective Notice of Redetermination dated April 26, 1991. The Corrective Notice of Redetermination
24 affirmed Citation & Notice No. 111593133 dated May 9, 1990 and alleged one serious violation of
25 WAC 296-61-190(11), for which a penalty of \$240.00 was assessed, and 21 general violations of
26 WAC 296-24-20509; WAC 296-155-610(2)(o); WAC 296-24-65001; WAC 296-24-78009(2)(h); WAC
27 296-24-68203(4)(c); WAC 296-24-68507(9)(c); WAC 296-24-68201(3); WAC 296-24-81011(1); WAC
28 296-155-610(2)(d); WAC 296-61-050(10); WAC 296-24-073(2); WAC 296-24-81009(2)(a); WAC 296-
29 61-050(16); WAC 296-24-15001(1); WAC 296-24-24007; WAC 296-24-24013(1); WAC 296-61-
30 310(16); WAC 296-62-05409(1); WAC 296-24-040; WAC 296-24-045; and WAC 296-24-810131), for
31 which no penalties were assessed, with a total penalty of \$240.00. **REMANDED FOR FURTHER**
32 **PROCEEDINGS.**
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DECISION

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40 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
41 and decision on a timely Petition for Review filed by the employer to a Proposed Decision and Order
42 issued on June 1, 1992 in which the Notice of Appeal of Renton Concrete Recyclers filed on June 17,
43 1991 was dismissed because it was not timely filed pursuant to RCW 49.17.140, and therefore this
44 Board had no jurisdiction over the appeal.
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1 On initial consideration it appeared that the Petition for Review filed on behalf of Renton
2 Concrete Recyclers was not timely. However, a review of our file reveals that the original attempt to
3 communicate the Proposed Decision and Order to the employer's attorney failed, necessitating
4 remailing of the order, and communication was not effected until July 9, 1992. The postmark on the
5 envelope containing the Petition for Review and a declaration of filing accompanying the Petition for
6 Review establish that filing was accomplished by mailing on July 29, 1992. The Petition for Review
7 was filed in a timely manner as it was filed within twenty days of the date the Proposed Decision and
8 Order was communicated to the employer through its attorney.

9 The employer's Petition for Review makes a simple request to which we must accede. Renton
10 Concrete Recyclers asks us to follow the determination made by the Court of Appeals in The Erection
11 Company v. Dep't of Labor & Indus., 65 Wn. App. 461 (May 4, 1992) which reversed our decision in In
12 re The Erection Company (I), BIIA Dec., 88 W134 (1990). In brief, the Court of Appeals determined
13 that RCW 49.17.140 deprives the Department of Labor and Industries of jurisdiction to issue a
14 Corrective Notice of Redetermination if the Notice is not issued within 30 working days of the
15 Department's reassumption of jurisdiction. This interpretation of RCW 49.17.140 led the Court of
16 Appeals to determine that the employer in that case, The Erection Company, did not have to appeal
17 from a Corrective Notice of Redetermination issued more than 30 working days after reassumption of
18 jurisdiction by the Department and that this Board had jurisdiction to consider the employer's timely
19 appeal from the original Citation and Notice. As the facts presented in this appeal, at least regarding
20 jurisdiction, are essentially identical to those presented in The Erection Company, supra, we are
21 constrained to follow the Court of Appeals decision and to remand this appeal for further proceedings.

22 The record here establishes that the employer's initial appeal from the Citation and Notice
23 issued on May 9, 1990 was filed on May 21, 1990, clearly within the 15 working day period provided
24 by statute. The Department reassumed jurisdiction over the Citation on May 30, 1990, but did not
25 issue its Corrective Notice of Redetermination until April 26, 1991, clearly long after 30 working days
26 from the date on which it reassumed jurisdiction. Thus, we are now faced with a timely Notice of
27 Appeal filed on behalf of the employer from the Citation and Notice dated May 9, 1990. Accordingly,
28 we must remand this matter to our hearings process for proceedings to resolve the issues presented
29 by the appeal from the Citation and Notice dated May 9, 1990.

30 Pursuant to WAC 263-12-145(4), we hereby set aside the Proposed Decision and Order
31 entered on June 1, 1992 and remand this appeal to the mediation and hearings process for the
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1 scheduling of further proceedings to resolve the timely Notice of Appeal filed on behalf of Renton
2 Concrete Recyclers on May 21, 1990 from Citation and Notice No. 111593133 dated May 9, 1990. If
3 the appeal cannot be disposed of based on an agreement of the parties pursuant to WAC 263-12-093,
4 a further Proposed Decision and Order shall be issued after the parties to these proceedings shall
5 have had an adequate opportunity to present such evidence as is appropriate. The Proposed
6 Decision and Order shall be based upon the entire record, and the parties shall have the right,
7 pursuant to RCW 51.52.104, to petition for review of such further Proposed Decision and Order.
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12 It is so **ORDERED**.

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14 Dated this 15th day of September, 1992.

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16 BOARD OF INDUSTRIAL INSURANCE APPEALS

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18
19 /s/
20 S. FREDERICK FELLER Chairperson

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23 /s/
24 FRANK E. FENNERTY, JR. Member

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27 /s/
28 PHILLIP T. BORK Member
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