

## **Norris, Leroy**

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### **APPLICATION FOR BENEFITS**

#### **Reasonable notification**

A worker's letter to the Department explaining that he had injured his back the day before he suffered from an accepted injury described as "heat" coupled with a letter from a physician's assistant indicating that the worker was seen for heat exhaustion and back pain constitute an application for benefits within the meaning of RCW 51.28.020. ...*In re Leroy Norris, BIIA Dec., 92 1471 (1993)*

### **SCOPE OF REVIEW**

#### **Allowance of claim**

Where the Department received letters that the Board determined were an application for benefits and had conducted an investigation, the Board has jurisdiction to direct Department to allow the claim since the Department had the opportunity to adjudicate the alleged back injury. ...*In re Leroy Norris, BIIA Dec., 92 1471 (1993)*

Scroll down for order.

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

1     **IN RE: LEROY W. NORRIS**                     )     **DOCKET NOS. 92 1471 & 92 1472**  
2   )   )  
3     **CLAIM NOS. N-139932 & M-305524**             )     **DECISION AND ORDER**  
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5 APPEARANCES:

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7             Claimant, Leroy W. Norris, by  
8             Law Office of Dana C. Madsen, per  
9             Dana C. Madsen, Attorney at Law

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11            Employer, Haskins Company, by  
12            Associated Industries of the Inland Northwest, per  
13            James W. Gurnea, Loss Control Officer

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15            Department of Labor and Industries, by  
16            The Office of the Attorney General, per  
17            Steven J. Nash, Assistant

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19            Docket No. 92 1471 is an appeal by the claimant, Leroy W. Norris, filed on March 23, 1992,  
20 from an order of the Department of Labor and Industries dated February 10, 1992 affirming a January  
21 6, 1992 order allowing Claim No. N-139932 for heat exhaustion only and denying responsibility for the  
22 condition diagnosed as lumbar disc displacement.     **REVERSED AND REMANDED.**  
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25            Docket No. 92 1472 is an appeal by the claimant filed on March 23, 1992, from an order of the  
26 Department of Labor and Industries dated February 10, 1992 denying Mr. Norris's application to  
27 reopen Claim No. M-305524.     **AFFIRMED.**  
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29   **DECISION**

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31            Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
32 and decision on timely Petitions for Review filed by the claimant, Leroy W. Norris, and by the  
33 Department of Labor and Industries, to a Proposed Decision and Order issued on November 30, 1992  
34 in which the order of the Department dated February 10, 1992 involving Claim No. N-139932 was  
35 reversed and remanded to the Department with directions to issue an order allowing the claimant's  
36 July 2, 1991 low back injury as a separate and distinct claim, and to assign a claim number thereto,  
37 and to take such further action as may be indicated.  
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39            The Proposed Decision and Order affirmed the February 10, 1992 Department order in Claim  
40 No. M-305524 denying the claimant's application to reopen that claim.  
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1 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no  
2 prejudicial error was committed and all rulings are hereby affirmed. The record reflects that the parties  
3 were in agreement that these two appeals be consolidated for hearings and decision.  
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5 The sole issue in Docket No. 92 1472 is whether or not Mr. Norris's condition causally related  
6 to his industrial injury of July 10, 1990 objectively worsened between September 17, 1990 and  
7 February 10, 1992. We agree with our industrial appeals judge's resolution of this issue and it will not  
8 be changed.  
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10 We also agree with our industrial appeals judge's resolution of all issues in Docket No. 92  
11 1471. We have granted review in order to resolve a jurisdictional issue raised by the Department in its  
12 Petition for Review, and to add findings of fact and conclusions of law necessary for the resolution of  
13 the jurisdictional issue.  
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15 The evidence supports our industrial appeals judge's finding that on July 2, 1991 Mr. Norris  
16 injured his low back while working as an iron worker for Haskins Company. The next day, July 3,  
17 1991, while working in close quarters and under extreme heat conditions, Mr. Norris suffered from  
18 heat exhaustion for which he sought treatment at Rockwood Clinic. He filled out his portion of an  
19 accident report, then saw a physician's assistant, Mr. Rotell. At the time, the heat exhaustion was the  
20 primary complaint, although Mr. Norris testified, and Mr. Rotell later verified, that Mr. Norris did  
21 mention back pain. Mr. Rotell examined Mr. Norris for heat exhaustion and recommended that if his  
22 back was not better, Mr. Norris should see an orthopedic doctor. Three days later, on July 11, 1991,  
23 Mr. Norris saw Carl Brunjes, M.D., an orthopedic physician, about his back condition.  
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25 Sometime in late July, Mr. Norris received a billing statement from the Rockwood Clinic and  
26 was surprised that the billing had not been submitted to the Department. He returned to the clinic and  
27 found out the claim form was still on Mr. Rotell's desk and that Mr. Rotell had been on vacation. The  
28 doctor's portion of the application for benefits was not filled out, so the nurse had a Dr. Bradley, the  
29 supervising physician at Rockwood Clinic, fill out the doctor's portion, according to the nurse's notes.  
30 The completed accident report was then placed in an envelope which Mr. Norris hand-delivered to the  
31 Department of Labor and Industries' Spokane office without reviewing.  
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33 The application for benefits (admitted as Board Exhibit No. 1) lists the date of injury as July 3,  
34 1991 and describes the injury simply as "heat". The application form does not mention back problems  
35 or the July 2, 1991 incident.  
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1 The parties stipulated to the accuracy of the historical/jurisdictional fact summaries for both  
2 appeals. Our review of these documents indicates that the application for benefits for heat exhaustion  
3 was received at the Department on July 31, 1991. Following an interlocutory order paying time loss  
4 compensation benefits, the employer, by a protest received on August 20, 1991, protested the  
5 Department's acceptance of the claim for "ruptured disc problem". Further review discloses a January  
6 24, 1992 Department letter in response to Dr. Brunjes' protest, indicating that "due to conclusion of  
7 investigation, there is no clear evidence claimant sustained back injury at same time of the [allowed]  
8 injury of heat exhaustion." The February 10, 1992 order under appeal affirmed a January 6, 1992  
9 Department order denying responsibility for the low back condition under the heat exhaustion claim.  
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12 In its Petition for Review, the Department contends that the Board has no jurisdiction to order  
13 the Department to open a new claim and assign a new claim number under circumstances in which  
14 the claimant did not timely file an application for benefits for the low back injury within one year of the  
15 date of the alleged injury. Because the Department has challenged the Board's jurisdiction in this  
16 respect, it is proper for the Board to review the Department file to determine if we have jurisdiction.  
17 We have done so in this case. See In re Mildred Holzerland, BIIA Dec., 15,729 (1965).  
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20 Our review of the Department's file reveals the following documents: a letter from Mr. Norris  
21 received by the Department on August 9, 1991 explicitly detailing the low back injury of July 2, 1991; a  
22 letter from physician's assistant Rotell received by the Department on August 26, 1991 relating that  
23 Mr. Norris was seen on July 8, 1991 for heat exhaustion and back pain; and a copy of an extensive  
24 report detailing an investigation undertaken by the Department regarding the July 2, 1991 incident! In  
25 our opinion, the claimant's August 9, 1991 letter, along with the August 26, 1991 letter from Mr. Rotell,  
26 clearly put the Department on notice that Mr. Norris was applying for benefits in connection with a July  
27 2, 1991 back injury. Further, these two documents constituted an application for benefits within the  
28 meaning of RCW 51.28.020. The documents were filed with the Department within one year of the  
29 alleged industrial injury of July 2, 1991 and are therefore timely filed, pursuant to RCW 51.28.050. For  
30 authority construing such kinds of documents as constituting an application for benefits, see Nelson v.  
31 Dep't of Labor & Indus., 9 Wn.2d 621 (1941) and Beels v. Dep't of Labor & Indus., 178 Wash. 301  
32 (1934).  
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35 Similarly, this Board has previously held that an application to reopen may be properly  
36 considered as a claim for a new injury where sufficient information concerning the new incident has  
37 been supplied to the Department. In re Stanley Lee, BIIA Dec., 09,425 (1959). The Board also has  
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1 held that an accident report may constitute an application to reopen. In re John Svicarovich, BIIA  
2 Dec., 08,205 (1957). These cases reinforce the concept that in the workers' compensation law arena,  
3 substance should prevail over technicalities and over a particular kind of form or document. In re  
4 Charles Pierce, Dckt. No. 91 4625, (January 6, 1993).  
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7 The Department's argument that it did not have the opportunity to adjudicate whether Mr.  
8 Norris's alleged incident of July 2, 1991 was an industrial injury is unconvincing, in light of the  
9 investigative report regarding such incident in the Department's own file. Based on its own file, the  
10 Department knew or should have known that Mr. Norris was not claiming a back injury related to his  
11 heat exhaustion of July 3, 1991. Rather, he was claiming benefits for a separate and distinct incident  
12 regarding his back which occurred in the course of his employment on July 2, 1991.  
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16 After consideration of the Proposed Decision and Order, the Department's Petition for Review,  
17 the claimant's Petition for Review, and a thorough review of the entire record before us, we hereby  
18 enter the following:  
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#### 21 **FINDINGS OF FACT**

- 22 1. Docket No. 92 1471: On July 31, 1991, the Department of Labor and  
23 Industries received from the claimant, Leroy W. Norris, a claim for  
24 benefits, alleging heat exhaustion on July 3, 1991, during the course of his  
25 employment with the Haskins Company, Spokane, Washington. The  
26 Department assigned the application Claim No. N-139932. On January 6,  
27 1992, the Department issued an order allowing the claim for heat  
28 exhaustion only, and denying responsibility for lumbar disc displacement.  
29 On January 13, 1992, the claimant, through his physician, filed a letter of  
30 protest and request for reconsideration of the Department's order dated  
31 January 6, 1992. On February 10, 1992, the Department issued an order  
32 affirming the provisions of its order dated January 6, 1992. On March 23,  
33 1992, the Board of Industrial Insurance Appeals received from the  
34 claimant a notice of appeal of the Department's order dated February 10,  
35 1992, and assigned the appeal Docket No. 92 1471. On March 30, 1992,  
36 the Board issued an order granting the appeal.  
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- 38 2. Docket No. 92 1472: On July 16, 1990, the Department of Labor and  
39 Industries received from the claimant, Leroy W. Norris, a claim for  
40 benefits, alleging a back injury on July 10, 1990, during the course of his  
41 employment with the Haskins Company, Spokane, Washington. The  
42 Department assigned the application Claim No. M-305524. On  
43 September 17, 1990, the Department issued an order allowing and closing  
44 the claim with medical treatment only. On January 31, 1992, the  
45 Department received from the claimant an application to reopen this claim  
46 based on aggravation of condition. On February 10, 1992, the  
47 Department issued an order denying the claimant's application to reopen

1 this claim. On March 23, 1992, the Board of Industrial Insurance Appeals  
2 received from the claimant a notice of appeal of the Department's order  
3 dated February 10, 1992, and assigned the appeal Docket No. 92 1472.  
4 On March 30, 1992, the Board issued an order granting the appeal.

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6 3. On July 2, 1991, the claimant, Leroy W. Norris, an ironworker, sustained a  
7 low back and left extremity injury during the course of his employment with  
8 the Haskins Company. The injury occurred when Mr. Norris, while on all  
9 fours, reached out with his right hand and picked up a metal plate. Mr.  
10 Norris felt a pop in his back, and rested momentarily before completing his  
11 shift. The next morning, upon arriving at the work site, Mr. Norris had  
12 difficulty getting out of his car. He commented to his supervisor that he  
13 thought he hurt his back the day before while working up on top of a grain  
14 elevator. Thereafter, on July 8, 1991, Mr. Norris reported to a physician's  
15 assistant that he had injured his back. On July 11, 1991, Mr. Norris  
16 reported to an orthopedic surgeon that his low back condition was "work  
17 related".
- 18 4. As a proximate result of the injury of July 2, 1991, Mr. Norris sustained a  
19 lumbar strain, with left-sided radiculopathy.
- 20 5. On July 10, 1990, Mr. Norris sustained a thoracic injury to the back while  
21 in the course of his employment with the Haskins Company. The injury  
22 occurred when Mr. Norris twisted his back while carrying a ladder.
- 23 6. As a proximate result of the injury of July 10, 1990, Mr. Norris sustained a  
24 thoracic strain.
- 25 7. Between September 17, 1990 and February 10, 1992, the claimant's  
26 condition causally related to the industrial injury of July 10, 1990, did not  
27 objectively worsen from a medical standpoint.
- 28 8. In Mr. Norris's claim for benefits under Claim No. N-139932, he stated that  
29 the claim was for "heat exhaustion" occurring July 3, 1991. In adjudicating  
30 that claim, the Department also investigated and evaluated whether Mr.  
31 Norris sustained an injury to his back on July 2, 1991. The Department  
32 ultimately denied responsibility for the back condition. The low back injury  
33 of July 2, 1991 was a separate and distinct injury from the "heat  
34 exhaustion" injury which occurred on July 3, 1991.
- 35 9. On August 9, 1991, Leroy W. Norris filed a letter with the Department of  
36 Labor and Industries, which reasonably put it on notice that Mr. Norris was  
37 alleging an industrial injury to his back in the course of his employment  
38 with Haskins Company on July 2, 1991 and that Mr. Norris was claiming  
39 compensation for that injury.
- 40 10. On August 26, 1991, the Department received a letter from Physician's  
41 Assistant Rotell, indicating that Mr. Norris was seen on July 8, 1991 for  
42 heat exhaustion and back pain.
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**CONCLUSIONS OF LAW**

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and the subject matter of these appeals.
2. Docket No. 92 1471: On July 2, 1991, the claimant, Leroy W. Norris, sustained an industrial injury to his back during the course of his employment with the Haskins Company within the meaning of RCW 51.08.100.
3. Docket No. 92 1472: The claimant's condition causally related to the industrial injury of July 10, 1990, did not worsen or become aggravated between September 17, 1990 and February 10, 1992, within the meaning of RCW 51.28.040 and RCW 51.32.160.
4. The August 9, 1991 letter from the claimant to the Department in conjunction with the August 26, 1991 letter from Physician's Assistant Rotell, constitutes an application for benefits for the July 2, 1991 industrial injury, within the meaning of RCW 51.28.020, and was filed within the time requirements of RCW 51.28.050, and the Department is directed to accept the August 9, 1991 letter as an application for benefits for a low back injury with left side radiculopathy and to take such further action as is appropriate under the law and the facts.
5. Docket No. 92 1471: The Department order dated February 10, 1992, which affirmed the provisions of an order dated January 6, 1992, which allowed Claim No. N-139932 for "heat exhaustion", but denied responsibility for "lumbar disc displacement", is incorrect in part, and is reversed and this matter remanded to the Department with directions to issue an order allowing the claimant's July 2, 1991 low back injury as a separate and distinct claim, and to assign a claim number thereto, and to take such further action in such claim as may be indicated under the facts and the law.
6. Docket No. 92 1472: The Department order dated February 10, 1992, which denied the claimant's application to reopen Claim No. M-305524, is correct and is hereby affirmed.

It is so ORDERED.

Dated this 22nd day of March, 1993.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/ \_\_\_\_\_  
S. FREDERICK FELLER                                      Chairperson

/s/ \_\_\_\_\_  
FRANK E. FENNERTY, JR.                                      Member

/s/ \_\_\_\_\_  
PHILLIP T. BORK    Member