

## **Cruz, Hipolito**

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### **INTERPRETERS**

#### **Qualification (RCW 2.43.040)**

When inquiring as to an interpreter's qualifications the interpreter should be specifically asked whether (s)he is certified by the Office of the Administrator for the Courts in the state of Washington. The industrial appeals judge should be specific in satisfying the requirements of RCW 2.43.040. ...*In re Hipolito Cruz, BIIA Dec., 94 7234 (1996)*  
[*Editor's Note:* The decision and order incorrectly refers to RCW 2.42.040.]

Scroll down for order.



1 We, nonetheless, have granted review in order to properly qualify the interpreter used in the  
2 proceedings in this matter. In addition, we have corrected the first finding of fact that was  
3 contained in the February 29, 1996 Proposed Decision and Order. Moreover, we have granted  
4 review in order to correct a misstatement in the "Procedural Matters" section of the Proposed  
5 Decision and Order since reliance on those assertions may adversely impact the parties' future  
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11 action.

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13 It is our duty to guarantee that the Spanish interpreter used in these proceedings was  
14 qualified in accordance with the guidelines established in RCW 2.42.040. At the first hearing on  
15 June 22, 1995, the interpreter was not properly examined to determine whether she was qualified  
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18 to interpret for the record. At an earlier conference, prior to being placed under oath, the  
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21 interpreter was asked if, "she was certified." We do not feel that this limited examination is  
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24 adequate to qualify an interpreter in proceedings before the Board. In order to guarantee the  
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27 integrity of the interpreter's responses concerning her qualifications, the interpreter should be  
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30 placed under oath, subject to the penalty of perjury. When inquiring as to the interpreter's  
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33 certifications, the interpreter should be specifically asked whether he/she is certified by the Office  
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36 of the Administrator for the Courts in the state of Washington. We require our industrial appeals  
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39 judges to be specific in their line of questioning because there are other peer, state, and  
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42 international certifying bodies whose certification would not satisfy the requirements of RCW  
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45 2.42.040.  
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49 In a post proposed decision and order hearing we further inquired as to whether the  
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52 interpreter had any potential conflicts of interest if she acted as an interpreter in this matter. This  
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55 inquiry was prompted by Dr. Pittle's testimony where he acknowledged that he met Mr. Cruz when  
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58 his wife, a court certified Spanish interpreter, brought the claimant home to meet him. After  
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1 conducting our inquiry, we are satisfied that the interpreter was qualified and not otherwise  
2 prevented from acting as an interpreter in this appeal.  
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5 On page 1, line 44, the Proposed Decision and Order states, "This (the application to reopen  
6 the claim filed with the Department on March 10, 1986) acted as a protest, so the Department's  
7 first closure of the claim did not take effect until June 29, 1992." In actuality, the first closure in this  
8 case took place on June 2, 1987, the date the Department issued a closing order that was never  
9 appealed. The proper designation of the first closure does not affect the availability of benefits  
10 because the aggravation application filed on May 4, 1993, was within seven years from the date  
11 that the first closure order became final. We note this jurisdictional difference because Mr. Cruz  
12 had exhausted a substantial portion of his seven-year period at the time he filed his 1993  
13 application to reopen his claim as opposed to exhausting a few short years as described in the  
14 Proposed Decision and Order.  
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25 On page 2, lines 1-5, of the proposed decision and order, the procedural section designates  
26 the terminal dates as November 23, 1992 and July 29, 1994. We recognize that for purposes of  
27 this appeal, the second terminal date is the order under appeal that is July 28, 1994.  
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31 In Finding of Fact No. 1, we have added the first closing order dated June 2, 1987. This  
32 information shall replace the June 29, 1987 information contained in the Proposed Decision and  
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1 Order in Finding of Fact No.1. That order is in fact void because the January 3, 1986 order never  
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3 became a final order and no other closing order had become final as of the date of the issuance of  
4  
5 the June 29,1987 order.

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7 Accordingly, we find and conclude as follows:

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9 **FINDINGS OF FACT**

- 10  
11 1. On September 27, 1984, the Department received an application for  
12 benefits in which the claimant, Hipolito Cruz, alleged the occurrence of  
13 an industrial injury sustained on September 14, 1984, during the course  
14 of his employment with John N. Cuillier (Claim No. J-481606).

15  
16 On January 3, 1986, the Department issued an order closing the claim  
17 with time loss compensation as paid, and a permanent partial disability  
18 award of 5 percent amputation value of the left arm at or above the  
19 deltoid insertion or by disarticulation of the shoulder; the claimant  
20 received this order on January 10, 1986.

21  
22 On March 10, 1986, the Department received an application to reopen  
23 the claim for aggravation of condition.

24  
25 On June 2, 1987, the Department issued an order that adhered to the  
26 provision of a Department order dated January 13, 1986 (SIC January  
27 3, 1986), and maintained that the claim shall remain closed.

28  
29 On February 22, 1988, the Department received an application to  
30 reopen the claim for aggravation of condition.

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32 On February 26, 1988, the Department issued an order denying the  
33 application to reopen the claim.

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35 On April 25, 1988, the Department received a protest and request for  
36 reconsideration filed on behalf of the claimant, from the February 26,  
37 1988 order.

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39 On March 4, 1991, the Department issued an order affirming the  
40 provisions of the order dated February 26, 1988.

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42 On May 10, 1991, the Board of Industrial Insurance Appeals received a  
43 Notice of Appeal, filed on behalf of the claimant, from the March 4, 1991  
44 order (Docket No. 91 2437).

45  
46 On August 7, 1992, the Department received an application to reopen  
47 the claim for aggravation of condition.

1 On September 11, 1992, a Proposed Decision and Order was issued in  
2 which the Department order dated March 4, 1991 was affirmed. (Docket  
3 No. 91 2437).  
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5 On October 22, 1992, the Board of Industrial Insurance Appeals  
6 adopted the Proposed Decision and Order (Docket No. 91 2437).  
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8 On November 23, 1992, the Department issued an order denying the  
9 application to reopen the claim received on August 7, 1992.  
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11 On May 4, 1993, the Department received an application to reopen the  
12 claim.  
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14 On August 30, 1993, the Department issued an order denying the  
15 application to reopen the claim that had been received on May 4, 1993.  
16 Within 60 days, the claimant protested this order.  
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18 On July 28, 1994, the Department issued an order that affirmed the  
19 provisions of an order dated August 30, 1993, that had denied the  
20 application to reopen the claim for aggravation of condition.  
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22 On September 20, 1994, the Department received a Notice of Appeal,  
23 filed by the claimant, from the Department order dated July 28, 1994;  
24 the Board received the Notice of Appeal on December 8, 1994 (Docket  
25 No. 94 7234).  
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- 27 2. On September 14, 1984, Mr. Cruz was picking pears while employed by  
28 John N. Cuillier. As he descended a ladder with a full sack, the ladder  
29 slipped, causing him to fall from about eight feet, striking his left  
30 shoulder and head on the ground.  
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- 32 3. As a proximate result of the September 14, 1984 industrial injury, the  
33 claimant, Hipolito Cruz, sustained a Grade II acromioclavicular  
34 separation of the left shoulder that was treated conservatively and with  
35 surgery (resection of the lateral end of the clavicle on the left). As a  
36 consequence, he guarded movements of the area, in order to minimize  
37 the pain he experienced with motion. His altered posture and continual  
38 guarding resulted in continual contraction of the muscles surrounding  
39 the entire shoulder girdle, neck, and upper back, in turn, further limiting  
40 the area's range of motion. This limited range of motion then caused  
41 further pain when he attempted to move his shoulder, neck, and upper  
42 back beyond the stiffened position.  
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- 44 4. Between November 23, 1992 and July 28, 1994, the claimant's  
45 condition proximately caused by the September 14, 1984 industrial  
46 injury worsened, as demonstrated by objective findings of muscular  
47 atrophy and decreased range of motion of the left shoulder.

1 5. As of July 28, 1994, the claimant's conditions proximately caused by the  
2 September 14, 1984 industrial injury were in need of further necessary  
3 and proper medical treatment, in the form of a fairly long, intense (and  
4 very painful) program designed to strengthen the muscle groups and  
5 increase his range of motion. This medical treatment is reasonably  
6 designed to reduce the level of impairment resulting from the  
7 September 14, 1984 industrial injury.  
8

9 6. Between March 4, 1993 and July 28, 1994, the claimant was, due to  
10 conditions proximately caused by the September 14, 1984 industrial  
11 injury, temporarily totally disabled from engaging in continuous gainful  
12 employment.  
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### 14 **CONCLUSIONS OF LAW**

15  
16 1. The claimant's Notice of Appeal, filed with the Department of Labor and  
17 Industries on September 20, 1994, was timely filed within the meaning  
18 of the Industrial Insurance Act.  
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20 2. This Board has jurisdiction over the parties and the subject matter of  
21 this appeal.  
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23 3. Between November 23, 1992 and July 28, 1994, the claimant's  
24 conditions proximately caused by the September 14, 1984 industrial  
25 injury became aggravated within the meaning RCW 51.32.160.  
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27 4. Between March 4, 1993 and July 28, 1994, the claimant, Hipolito Cruz,  
28 was a temporarily and totally disabled worker within the meaning RCW  
29 51.32.090.  
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31 5. The Department order of July 28, 1994, which affirmed the provisions of  
32 an order dated August 30, 1993, that had denied the application to  
33 reopen the claim for aggravation of condition, is incorrect, and should be  
34 reversed, and this matter remanded to the Department of Labor and  
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1 Industries with direction to reopen the claim, to pay time loss  
2 compensation for the period of March 4, 1993 through July 28, 1994,  
3 and to take such further action as may be indicated or required by law.  
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5 It is so ORDERED.  
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7 Dated this 8th day of July, 1996.  
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9 BOARD OF INDUSTRIAL INSURANCE APPEALS

10 /s/ \_\_\_\_\_  
11 S. FREDERICK FELLER Chairperson  
12

13 /s/ \_\_\_\_\_  
14 FRANK E. FENNERTY, JR. Member  
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16 /s/ \_\_\_\_\_  
17 ROBERT L. McCALLISTER Member  
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