

## Thomas, Caitlin

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### CRIME VICTIMS COMPENSATION

#### Temporary total disability benefits

The victim of a criminal act who is not employed at the time of the criminal act is not entitled to temporary total disability benefits. RCW 7.68.070(3). The date the criminal act occurred that gave rise to benefits is the date used to determine eligibility for temporary total disability benefits, not the date the crime is reported to law enforcement officials or the date that the memory of the criminal act is recovered. ...*In re Caitlin Thomas*, BIIA Dec., 94 C096 (1995) [dissent]

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

1	<b>IN RE: CAITLIN THOMAS</b>	)	<b>DOCKET NO. 94 C096</b>
2		)	
3	<b><u>CLAIM NO. VC-25114</u></b>	)	<b>DECISION AND ORDER</b>
4			

5 **APPEARANCES:**

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7 Claimant, Caitlin Thomas, by  
8 Aaby, Putnam, Albo & Causey, per  
9 Judith Proller

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11 Department of Labor and Industries, by  
12 The Office of the Attorney General, per  
13 Penny L. Allen, Assistant  
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17 The claimant, Caitlin Thomas, filed an appeal with the Board of Industrial Insurance Appeals  
18 on October 17, 1994, from an order of the Department of Labor and Industries dated August 22,  
19 1994. The order found that Ms. Thomas was not eligible for time loss compensation pursuant to  
20 1994. The order found that Ms. Thomas was not eligible for time loss compensation pursuant to  
21 RCW 7.68.070(7) for the reason that she was not employed when the criminal act occurred.  
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25 **AFFIRMED.**

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27 **PROCEDURAL AND EVIDENTIARY MATTERS**

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29 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
30 and decision on a timely Petition for Review filed by the Department of Labor and Industries to a  
31 Proposed Decision and Order issued on May 15, 1995, in which the order of the Department dated  
32 August 22, 1994, was reversed and remanded to the Department with direction to determine Caitlin  
33 Thomas's eligibility for time loss compensation based on her employment status on March 2, 1992.  
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39 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no  
40 prejudicial error was committed and the rulings are affirmed.  
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**DECISION**

12/27/95

1 This appeal presents the question of determining the appropriate date to use in evaluating a  
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3 crime victim's entitlement to time loss compensation under the provisions of RCW 7.68.070(7). We  
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5 have previously dealt with this specific issue on several occasions. After further consideration of  
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7 the provisions of RCW 7.68.060(3), "Application of benefits - Accrual of rights," and RCW  
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9 7.68.070(7), "Benefits - Right to and amount - Limitations," we are convinced that our previous  
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11 interpretation of these statutes relating to temporary total disability benefits was incorrect.

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13 It is absolutely clear that Caitlin Thomas has done everything necessary to have a valid  
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15 claim for benefits and that this claim has been properly allowed. Our only inquiry in this appeal  
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17 concerns her entitlement to temporary total disability benefits or time loss compensation under the  
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19 specific provisions of RCW 7.68.070(7), and in particular the proviso at the end of the paragraph of  
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21 that subsection. The proviso states, "[t]hat no person is eligible for temporary total disability  
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23 benefits under this chapter if such person **was not gainfully employed at the time of the**  
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25 **criminal act**, and was not so employed for at least three consecutive months of the twelve months  
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27 immediately preceding the criminal act." (Emphasis added) This statute is clear and  
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29 unambiguous. The significant date for determining a crime victim's entitlement to time loss  
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31 compensation is the date that the criminal act giving rise to benefits occurred, and not the date on  
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33 which memory of the criminal act is recovered.

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35 The departure we make from our earlier decisions is the distinction between the term,  
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37 "criminal act," found in RCW 7.68.070(7), and the phrase, "when a report could reasonably have  
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39 been made," found in RCW 7.68.060(1)(b). The former statute specifically deals with the  
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41 prerequisite that an innocent victim of crime be employed as of the date of the "criminal act" in  
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43 order to receive benefits for temporary total disability (time loss compensation) caused by the  
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45 crime. This term, criminal act, is considerably more specific and limited than the general  
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47 requirements establishing the right to apply for benefits under the Crime Victims Act.

1 The right to file for benefits is contingent upon the innocent victim first reporting the "criminal  
2 act" to local law enforcement within twelve months of its occurrence. RCW 7.68.060(1)(b). This  
3 twelve-month requirement is not hard and fast as the statute also provides that if the "report" (of  
4 the criminal act) could not reasonably have been made within twelve months of the occurrence,  
5 then the victim has twelve months from the time when such a report to law enforcement "could  
6 reasonably have been made." The Department of Labor and Industries (Department), in  
7 administering these benefits, is directed to give the "greatest weight to the needs of the victim"  
8 when determining what is reasonable. Thus, the initial reporting of a criminal act can be delayed  
9 for a considerable period of time if it could not have been "reasonably" been made within the first  
10 twelve months after the actual occurrence.  
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21 The benefits of the Crime Victims Act accrue to the innocent victim once the report of a  
22 criminal act is made. The innocent victim then has one year to make an application for benefits to  
23 the Department. RCW 7.68.060(1)(a). The distinction we now make is that the entitlement to  
24 temporary total disability benefits seems to be based on a far narrower threshold requirement than  
25 the entitlement to benefits generally. That is, the innocent victim of crime must actually be  
26 employed as of the date of the criminal act. We view the date of the criminal act and the date  
27 when the report of a criminal act could reasonably have been made as potentially two distinct and  
28 different dates.  
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37 It could be argued that the criminal act only occurs when the innocent victim could have  
38 reported it. This approach, we now conclude, would stretch the specific language of RCW  
39 7.68.070(7) far too broadly. We will not try to define further what "could reasonably have been  
40 made" means within the context of RCW 7.68.060(1)(b), but suffice it to say, that irrespective of the  
41 ability to report a criminal act, the criminal act itself has already been committed before the report  
42 of that event could ever be made. We must surmise from this specific language that the  
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1 Legislature intended to greatly restrict the entitlement to temporary total disability benefits available  
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3 to victims of crime. Only those employed at the time the criminal act is perpetrated are eligible for  
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5 these benefits.

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7 The legislation providing for assistance to innocent victims of crime incorporates several  
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9 sections of the Industrial Insurance Act in Title 51. The benefit structure available to crime victims  
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11 is therefore borrowed from the industrial insurance scheme. The incorporation of the Industrial  
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13 Insurance Act is not wholesale, however, and several key sections are noticeable by their absence.  
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15 Among these is RCW 51.28.055 relating to Occupational Disease. The absence of this section  
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17 prevents the analogous use of the concept of "date of manifestation" which determines the start of  
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19 entitlement to benefits for industrially related diseases. It could also be argued that a victim of a  
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21 criminal act who experiences a repressed memory of the crime only truly suffers from the crime  
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23 when it is later fully remembered. The date of the criminal act might be construed, under this  
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25 analogy, to be the date the crime was recalled or "manifested." We decline to use this analogy  
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27 when determining benefits for temporary total disability because the occupational disease section  
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29 of Title 51 is not referenced or incorporated in the Crime Victims Act.

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31 Although we restrict the entitlement to temporary disability benefits in accordance with our  
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33 understanding of RCW 7.68.070(7), we do not change our previous decisions with regard to the  
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35 filing of an application for benefits, or the entitlement to any other benefit, available under the  
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37 Crime Victims Act. We, again, acknowledge that the result in this appeal is a change from earlier  
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39 decisions.

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41 After consideration of the Proposed Decision and Order, the Petition for Review filed thereto  
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43 by the Department, and a careful review of the entire record before us, we are persuaded that the  
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45 Department order dated August 22, 1994, which, pursuant to RCW 7.68.070(7), found Caitlin  
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1 Thomas ineligible for time loss compensation because she was not employed during the period when  
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3 the criminal act occurred is correct and must be affirmed.  
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5 **FINDINGS OF FACT**  
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- 7 1. On June 30, 1992, the claimant, Caitlin Thomas, filed an application for  
8 benefits as a crime victim alleging repressed memory of abuse by her  
9 father on January 1, 1956, resulting in stress and depression. On  
10 June 10, 1993 the Department entered an order allowing the claim.  
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12 On August 22, 1994, the Department issued an order finding that  
13 pursuant to RCW 7.68.070(7) the claimant was not eligible for time loss  
14 compensation because she was not employed when the criminal act  
15 occurred.  
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17 On October 17, 1994, the claimant filed a Notice of Appeal with the Board  
18 of Industrial Insurance Appeals from the Department order dated August  
19 22, 1994. On November 8, 1994, the Board issued an order granting the  
20 appeal, assigning Docket No. 94 C096, and authorizing further  
21 proceedings to be held.  
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- 23 2. The claimant was sexually assaulted by her father on several occasions  
24 from 1956 through 1958, when she was under the age of 18. She  
25 became conscious of her repressed memories of the sexual abuse during  
26 psychological counseling beginning March 2, 1992. Claimant began  
27 counseling on July 6, 1983, for treatment associated with depression,  
28 suicidal ideation, low self-esteem, and bulimia. The claimant reported the  
29 incidents to the police on April 16, 1992. The Crime Victims'  
30 Compensation section of the Department of Labor and Industries allowed  
31 the claim on June 10, 1993.  
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- 33 3. Caitlin Thomas was under the age of eighteen and not gainfully  
34 employed at the time she was the victim of the criminal act for which this  
35 claim was allowed.  
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37 **CONCLUSIONS OF LAW**  
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- 39 1. The Board of Industrial Insurance Appeals has jurisdiction over the  
40 parties and the subject matter to this appeal.  
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42 2. Pursuant to RCW 7.68.070(7), the claimant, Caitlin Thomas, is not  
43 entitled to time loss compensation as she was not gainfully employed at  
44 the time of the criminal act, January 1, 1956, or at the time of any other  
45 criminal act covered by this claim.  
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47 3. The Department order dated August 22, 1994, finding that pursuant to  
RCW 7.68.070(7) the claimant is not eligible for time loss compensation  
because she was not employed when the criminal act occurred is correct,  
and is affirmed.

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2 It is so ORDERED.

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4 Dated this 27th day of December, 1995.

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7 BOARD OF INDUSTRIAL INSURANCE APPEALS

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

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15 /S/ \_\_\_\_\_  
16 ROBERT L. McCALLISTER Member

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18 **DISSENT**

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20 I disagree with the majority and, therefore, dissent.

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22 RCW 7.68.060(3) specifically provides that the victim's rights shall accrue at the time the  
23 claimant remembers the criminal act. In other words, Ms. Thomas's right to receive any and all  
24 benefits did not begin until she regained her recollection of the crime. I see no logical reason why  
25 the term "rights" should not be understood to include Ms. Thomas's right to receive time loss  
26 compensation benefits. This interpretation of the statute also allows for a liberal construction in  
27 favor of the victim. RCW 7.68.060(3) indicates, "In making determinations as to reasonable time  
28 limits [for discovering the crime], the department shall give greatest weight to the needs of the  
29 victim." (Emphasis added.) The majority's decision in this case is inconsistent with the  
30 Legislature's comment on the construction of the Act.  
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40 I would reverse the August 22, 1994 Department order and remand with instructions to  
41 determine Ms. Thomas's entitlement for time loss compensation benefits based on her  
42 employment status on March 2, 1992, the time when Ms. Thomas became aware of repressed  
43 memories of childhood sexual abuse.  
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Dated this 27th day of December, 1995.

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

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