

Fossati, Mark

APPEALABLE ORDERS

Protest divests Board of authority to hear appeal

PROTEST AND REQUEST FOR RECONSIDERATION (RCW 51.52.050)

Protest divests Board of jurisdiction over appeal

When a worker appealed an order containing a statement of “protest rights”, but later filed a protest and request for reconsideration of the same order within the time allowed for protest, the Board lost jurisdiction over the appeal. ...*In re Mark Fossati, BIA Dec., 95 1442 (1995)* [*Editor’s Note:* The Board encouraged parties to notify it when they have filed a protest after filing an appeal.]

Scroll down for order.

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

IN RE: MARK M. FOSSATI) DOCKET NO. 95 1442
CLAIM NO. N-142916) ORDER DISMISSING APPEAL

The claimant filed an appeal on March 15, 1995, from an order of the Department of Labor and Industries dated February 8, 1995. The order closing the claim with time-loss compensation as paid with no further award for time loss or permanent partial disability. We granted the appeal by an order dated April 25, 1995, and this matter has been scheduled for hearings.

On May 24, 1995, the claimant filed an appeal from an order of the Department of Labor and Industries dated May 18, 1995. That order affirmed the provisions of the February 8, 1995 order. We have assigned the later appeal Docket No. 95 3036. Our review of the Department record provided in the appeal assigned Docket No. 95 3036 reveals that the claimant filed a protest with the Department on April 12, 1995 from the Department order dated February 8, 1995. The order of February 8, 1995 provided that if a protest and request for consideration was filed in response to the order, a further appealable order would follow the request. Since the claimant has filed a protest to the Department, it was not a final order of the Department. In re Santos Alonzo, BIIA Dec., 56, 833 (1981). The Department recognized the effect of the protest and issued an order dated April 27, 1995 which held in abeyance the terms of the order dated February 8, 1995. Unfortunately, neither the protest nor the abeyance order were provided to the Board until this appeal. Similarly, claimant's counsel did not advise this Board of the protest or abeyance order.

The February 8, 1995 order from which this appeal was taken is not a final order of the Department. It is therefore ORDERED that the appeal be dismissed. This is without prejudice to the right of any party to appeal from any further order of the Department or the right of the claimant to pursue the remedies available in the appeal assigned Docket No. 95 3036.¹

Dated this 14th day of July, 1995.

BOARD OF INDUSTRIAL INSURANCE APPEALS

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ROBERT L. McCALLISTER MEMBER

¹ We would encourage the parties to use the dates scheduled for hearing the appeal assigned Docket No. 95 1442 for the appeal assigned Docket No. 95 3036 since the issues are the same.