

Stumbaugh, Nancy

AGGRAVATION (RCW 51.32.160)

Effect of abeyance order on "deemed granted" provisions (RCW 51.32.160)

DEPARTMENT

Reassumption of jurisdiction (RCW 51.52.060)

RCW 51.52.060(4) as amended in 1995 prohibits the Department from issuing an order that holds in abeyance the terms of an order issued under RCW 51.32.160 when more than 90 days have passed since an application to reopen has been filed. ...*In re Nancy Stumbaugh*, BIIA Dec., 95 7068 (1996)

Scroll down for order.

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

1 **IN RE: NANCY H. STUMBAUGH**) **DOCKET NO. 95 7068**
2)
3 **CLAIM NO. H-927523**) **ORDER VACATING ORDER RETURNING**
4) **CASE TO DEPARTMENT FOR FURTHER**
5) **ACTION**
6

7 The claimant, Nancy H. Stumbaugh, filed an appeal on November 17, 1995 from an order of the
8 Department of Labor and Industries dated October 20, 1995. The order affirmed the provisions of a
9 May 25, 1995 order indicating the claim had been reopened for medical benefits only effective October
10 23, 1994 and closing the claim. The October 20, 1995 order also denied responsibility for conditions
11 identified as psychiatric conditions, fibrositis, pre-existing lumbar spondylolithesis and pre-existing
12 degenerative cervical disc disease.

13
14 Then on December 6, 1995, the Department entered an order holding in abeyance the terms of
15 the October 20, 1995 order. In response to that order, we entered an Order Returning Case to
16 Department for Further Action on December 7, 1995. We should not have entered that order, because
17 the Department was without authority to enter the December 6, 1995 order.

18
19 The Department, in response to a notice of appeal, may elect to "modify, reverse or change" its
20 decision or hold its terms in abeyance. RCW 51.52.060. The Legislature, in 1995, modified RCW
21 51.52.060 to indicate that it may not hold in abeyance the terms of an order arising out of an application
22 to reopen where more than 90 days have passed since the date the application to reopen was filed. In
23 this instance, the application to reopen was filed on December 21, 1994. Therefore, the Department
24 was without authority to issue the abeyance order.

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26 Pursuant to CR 60(a) which permits us to correct orders which are based on clerical errors, we
27 hereby enter this Order Vacating Order Returning Case to Department for Further Action. By a
28 separate order, we will determine whether the appeal assigned Docket No. 95 7068 should be granted.
29 This clerical error was discovered upon the claimant's appeal of a December 1, 1995 order that closed
30 the claim, determined the worker was not entitled to disability benefits, and denied responsibility for
31 various conditions. That appeal, which has been assigned Docket No. 96 0169 will be addressed by a
32 separate order as well.

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34 It is so ORDERED.

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36 Dated this 5th day of February, 1996.

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38 BOARD OF INDUSTRIAL INSURANCE APPEALS

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41 /s/ _____
42 S. FREDERICK FELLER Chairperson

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45 /s/ _____
46 FRANK E. FENNERTY, JR. Member

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49 /s/ _____
50 ROBERT L. McCALLISTER Member
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