

Bustos, Antonia

DEPARTMENT

Reassumption of jurisdiction (RCW 51.52.060)

Pursuant to holding in *In re Russell Randall*, BIIA Dec., 90 3634 (1990), the Department may reassume jurisdiction once in response to a notice of appeal, not twice; the inability to reassume jurisdiction a second time prohibits the Department from reconsidering the same issue twice. If the second notice of appeal raises an issue not raised when the Department first reassumed jurisdiction, the Department is not precluded from reconsidering the new issue. ...*In re Antonia Bustos*, BIIA Dec., 96 5971 (1996)

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

IN RE: ANTONIA BUSTOS) **DOCKET NOS. 96 5971 & 96 5972**
)
CLAIM NO. N-747993) **ORDER DENYING APPEALS**

An appeal was filed by the claimant, Antonia Bustos, on September 3, 1996, from orders of the Department of Labor and Industries dated August 20, 1996, and August 22, 1996. The August 20, 1996 order held in abeyance the terms of an order dated May 31, 1996, which closed the claim with permanent partial disability awards equal to: 32% of the amputation value of the left index finger at the metacarpophalangeal joint or with resection of the metacarpal bone; 28% of the amputation value of the left middle finger at the metacarpophalangeal joint or with resection of the metacarpal bone; 48% of the amputation value of the left ring finger at the metacarpophalangeal joint or with resection of the metacarpal bone; and 5% of the amputation value of the left middle finger at the metacarpophalangeal joint or with resection of the metacarpal bone. The August 22, 1996 order held for naught the order dated May 31, 1996, and indicated that the claim is to remain open for treatment and action as indicated.

Docket No. 96 5971 has been assigned to the appeal from the August 20, 1996 order. Docket No. 96 5972 has been assigned to the appeal from the Department order of August 22, 1996.

Our review of the Department record in this matter reveals that on July 26, 1995, the Department issued an order that closed the claim with permanent partial disability awards equal to: 32% of the amputation value of the left index finger at the metacarpophalangeal joint or with resection of the metacarpal bone; 28% of the amputation value of the left middle finger at the metacarpophalangeal joint or with resection of the metacarpal bone; 48% of the amputation value of the left ring finger at the metacarpophalangeal joint or with resection of the metacarpal bone; and 5% of the amputation value of the left middle finger at the metacarpophalangeal joint or with resection of the metacarpal bone. In response to this order, the claimant filed an appeal on September 20, 1995, which was assigned Docket No. 95 5699. On October 2, 1995, the Department issued an order that held the July 26, 1995 order in abeyance pending further review by the Department. The October 2, 1995 order was issued within the time limits permitted by RCW 51.52.060 and prompted the Board to issue an order on October 3, 1995, returning the case to the Department for further action.

On October 9, 1995, the Department issued an order which set aside the order of July 26, 1995, held the claim open for treatment and action, and indicated that the permanent partial disability awards will be considered as an advance from future accident fund benefits. On May 31, 1996, the Department once again closed the claim with the permanent partial disability awards described above. On August 2, 1996, the claimant filed an appeal from the May 31, 1996 order which we assigned Docket No. 96 5092. In response to the notice of appeal, the Department issued an order on August 20, 1996, that held the terms of the May 31, 1996 order in abeyance. Recognizing that the Department had timely reassumed jurisdiction of the claim, we issued an order on August 21, 1996, returning the case to the Department for further action. The Department then issued the August 22, 1996 order which set aside the order of May 31, 1996, and held the claim open for further treatment and action.

1 The notice of appeal contends that we should not have allowed the Department to reassume
2 jurisdiction in response to the claimant's appeal from the Department order of May 31, 1996. We
3 disagree.
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5 We have held that RCW 51.52.060 allows the Department to reassume jurisdiction once, not
6 twice. *In re Russell L. Randall*, BIIA Dec., 90 3634 (1990). What we meant by this statement is
7 that the Department may not reassume jurisdiction to reconsider the same issue or issues that it
8 previously reconsidered in reassuming jurisdiction of the claim. As we stated in *Randall*, "we will not
9 permit the Department, on its own motion, to artificially extend the time allowed by the
10 legislature to reconsider its decisions once an appeal is filed with the Board." We do not believe,
11 however, that the Department is precluded from reconsidering its decision in response to a notice
12 of appeal if the appeal raises an issue that was not raised when the Department first reassumed
13 jurisdiction of the claim.
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15 Here, the notice of appeal filed on August 2, 1996, raises a number of issues which,
16 admittedly, were raised in the notice of appeal filed on September 20, 1995. However, it also
17 contends that the claimant should be provided treatment for "chronic major depression and PTSD"
18 (post-traumatic stress disorder). The September 20, 1995 notice of appeal does not refer to these
19 conditions. Therefore, we believe that the Department had the legal authority to issue the
20 Department orders of August 20, 1996, and August 22, 1996.
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23 We now turn to the question of whether we should grant the appeals filed by the claimant.
24 Our jurisdiction is limited to appeals from final orders, awards or decisions of the Department. The
25 order of August 20, 1996, merely held the May 31, 1996 order in abeyance for the stated purpose
26 of review of the matter by the Department. It did not take any final action. Therefore, the August
27 20, 1996 order is not a final order of the Department from which an appeal can be taken.
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29 Nor can we grant an appeal from the Department order of August 22, 1996. In the notice of
30 appeal, the claimant asserts that her conditions were not fixed and stable on May 31, 1996. As
31 such, she requests, among other things, further medical treatment. The relief sought by the
32 claimant in this appeal is not inconsistent with the decision to keep the claim open for treatment
33 and action as indicated. RCW 51.52.060 permits a party to appeal from an order, decision or
34 award of the Department by which the party is aggrieved. The claimant is not aggrieved by the
35 Department order of August 22, 1996.
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1 It is therefore ORDERED that the appeals be denied. Denial of these appeals is without
2 prejudice to the right of any party to appeal from any further order of the Department.
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4 Dated this 30th day of October, 1996.
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6 BOARD OF INDUSTRIAL INSURANCE APPEALS
7

8 /s/ _____
9 S. FREDERICK FELLER Chairperson
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11 /s/ _____
12 FRANK E. FENNERTY, JR. Member
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14 /s/ _____
15 JUDITH E. SCHURKE Member
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