

Jundul, Randy

DEPARTMENT

Authority to adjudicate claim after closure

After its order closing a claim with time-loss compensation as paid becomes final, the Department lacks subject matter jurisdiction to respond to protests regarding time-loss compensation payment orders issued prior to the date of closing. ...*In re Randy Jundul*, **BIIA Dec., 98 21118 (1999)** [*Editor's Note*: The Board's decision was appealed to superior court under King County Cause No. 00-2830-0KNT.]

Scroll down for order.

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

1 **IN RE: RANDY M. JUNDUL)** **DOCKET NO. 98 21118**
2)
3 **CLAIM NO. P-163462)** **DECISION AND ORDER**
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5 APPEARANCES:

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7 Claimant, Randy M. Jundul, by
8 Law Office of Richard Kelleher, per
9 Richard Kelleher

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11 Employer, JD Plumbing & Fire Protection, Inc., by
12 Vandeberg, Johnson & Gandara, per
13 Charles R. Bush

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15 Department of Labor and Industries, by
16 The Office of the Attorney General, per
17 W. Stuart Hirschfeld, Assistant

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20 The claimant, Randy M. Jundul, mailed an appeal on November 25, 1998, to the Board of
21 Industrial Insurance Appeals. The Board received the claimant's appeal on November 30, 1998.
22 The appeal was from an order of the Department of Labor and Industries dated September 28,
23 1998. That order affirmed Department orders dated November 5 and 19, 1996 and December 3
24 and 17, 1996 which, in the aggregate, paid the claimant time loss compensation for the period of
25 October 19, 1996 through December 13, 1996, inclusive. **DISMISSED.**
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32 **DECISION**
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34 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
35 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order
36 issued on July 27, 1999, in which the claimant's appeal was dismissed.
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40 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
41 no prejudicial error was committed and the rulings are affirmed. We have granted review in order to
42 identify and discuss the jurisdictional problem that requires us to dismiss the claimant's appeal.
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1 The relevant facts regarding our jurisdiction are not in dispute. After he sustained an
2 industrial injury on August 9, 1995, Mr. Jundul filed a timely claim for industrial insurance benefits.
3 The Department allowed the claim and provided medical benefits and time loss compensation. In
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5 November and December 1996, the Department issued a series of five orders paying the claimant
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7 short periods of time loss compensation. These five orders were timely protested by the employer.
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11 On June 16, 1997, five months after the protests were filed, the Department issued an order
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13 closing the claim without further award for time loss compensation or permanent partial disability.
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15 The letter was mailed to the claimant at his residence, 14124 SE 193rd St., Renton, Washington,
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17 98058, which was his last known address in the Department's records. Although Mr. Jundul could
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19 not remember that order, he did not deny receiving it and acknowledged that he had received
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21 documents with the "same heading" at that address.
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23 At the time the closing order was issued, the Department had hired Albert Johnson, Jr.,
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25 pursuant to RCW 51.24.110, as a Special Assistant Attorney General to handle a third-party action,
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27 inasmuch as the claimant had not elected to proceed with the action on his own. Mr. Jundul
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29 believed that this attorney was handling all matters related to the Department of Labor and
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31 Industries. One month after the closing order was issued Mr. Jundul hired Mr. Kelleher, his current
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33 attorney, to handle the third-party action. (Eventually the Department allowed the claimant to "re-
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35 elect" to pursue the third-party action on his own.) The June 16, 1997 closing order was not sent to
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37 either attorney. Neither the claimant nor either attorney filed a protest or Notice of Appeal from the
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39 closing order. The Department did not attempt to modify, place in abeyance, or reverse that order.
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41 Thirteen months after the closing order was issued, Mr. Jundul filed an application to reopen
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43 the claim. The Department denied the application to reopen, which was timely protested by the
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45 claimant. On September 28, 1998, the Department issued an order that purported to affirm four of
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47 the five time loss compensation orders issued in November and December 1996. The next day,

1 September 29, 1998, the Department issued another order, which affirmed the order denying the
2 application to reopen the claim. The claimant filed a timely Notice of Appeal from the
3 September 28, 1998 order. During proceedings in front of our industrial appeals judge, including
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5 the June 17, 1999 hearing, the focus of the claimant's appeal shifted toward an attack on the
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7 June 16, 1997 closing order and the circumstances surrounding its issuance by the Department.
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9 Mr. Jundul never amended his Notice of Appeal to include that order as being the subject matter of
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11 his appeal.
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15 The Board is a quasi-judicial agency whose jurisdiction is appellate only. *Karniss v.*
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17 *Department of Labor & Indus.*, 39 Wn.2d 898 (1952); *Callihan v. Department of Labor & Indus.*,
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19 10 Wn. App. 153 (1973). Our subject matter jurisdiction is limited to the Department order under
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21 appeal, as further limited by the Notice of Appeal. *Woodard v. Department of Labor & Indus.*,
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23 188 Wash. 93 (1936); *Brakus v. Department of Labor & Indus.*, 48 Wn.2d 218 (1956); *Lenk v.*
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25 *Department of Labor & Indus.*, 3 Wn. App. 977 (1970). In addition, we also have the inherent
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27 power to determine if we have jurisdiction to entertain an appeal. *Callihan*, at 157.
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29 The existence of a valid Department order is a prerequisite for the Board to obtain subject
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31 matter jurisdiction over an appeal. By issuing the September 28, 1998 order, the Department was
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33 attempting to readjudicate the claimant's entitlement to time loss compensation for periods of time
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35 prior to the closing date of the claim. The June 16, 1997 closing order determined, explicitly or by
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37 necessary implication, the totality of the claimant's entitlement to all benefits of whatever form, as of
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39 the date of claim closure. That order became final. The Department is without authority to affirm,
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41 modify or reverse an order once 60 days pass following its communication. RCW 51.52.060; *In re*
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43 *Kenneth Osborne*, BIIA Dec., 69,846 (1986). Therefore, we hold as a matter of law that the
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45 September 28, 1998 Department order was void ab initio because the Department lacked the
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1 subject matter jurisdiction necessary to issue it. *Marley v. Department of Labor & Indus.*,
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3 125 Wn.2d 533 (1994).

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5 Since no timely appeal was filed from the June 16, 1997 closing order, it cannot be set aside
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7 unless it is vacated for fraud or something of like nature. *Abraham v. Department of Labor &*
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9 *Indus.*, 178 Wash. 160 (1934); *LeBire v. Department of Labor & Indus.*, 14 Wn.2d 407 (1942); and
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11 *Marley*. Mr. Jundul asks the Board to set aside the June 16, 1997 closing order because its
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13 issuance and the lack of appeal therefrom were the result of "fraud or something of like nature."
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15 However, the Board cannot examine the claimant's contentions because he is asking us to take
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17 original jurisdiction of this matter. There is no indication anywhere in the record that the
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19 Department ever considered, let alone adjudicated "fraud or something of a like nature" as a basis
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21 for setting aside the June 16, 1997 closing order. The Notice of Appeal never mentioned such a
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23 contention; it first appeared quite late in these proceedings. We suggest that the claimant request
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25 the Department to investigate his contentions and issue an appealable order once the investigation
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27 is complete. Assuming the claimant is aggrieved by the Department order that is issued, we will
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29 then have jurisdiction to consider and decide a timely appeal from that order.

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31 Mr. Jundul also asks for equitable and/or constitutional relief. However, we lack authority to
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33 provide those forms of relief to him. The Board has no inherent equitable powers. *In re Seth*
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35 *Jackson*, BIIA Dec., 61,088 (1982); *In re Ben Ramahlo*, BIIA Dec., 85 C025 (1987). The Board also
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37 does not have any power to invalidate Departmental action on constitutional grounds (including the
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39 alleged "due process" violations cited by the claimant) except in very limited circumstances that do
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41 not apply to this case. *Bare v. Gorton*, 84 Wn.2d 380 (1974); and see *In re Danny Thomas*, BIIA
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43 Dec., 40, 665 (1973).

44 **FINDINGS OF FACT**

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47 1. On August 11, 1995, the Department received an application for benefits alleging that Randy M. Jundul, the claimant, sustained an industrial

1 injury to his head on August 9, 1995, in the course of his employment
2 with JD Plumbing & Fire Protection, Inc. The claim was allowed. On
3 November 5, 1996, November 19, 1996, December 3, 1996,
4 December 17, 1996, and December 31, 1996, the Department issued
5 orders which, in the aggregate, paid the claimant time loss
6 compensation for the period of October 19, 1996 through December 27,
7 1996, inclusive. The employer filed a timely protest with the Department
8 from these time loss compensation orders.
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- 10 2. On June 16, 1997, the Department issued an order that closed the claim
11 effective June 16, 1997, with time loss compensation as paid to May 5,
12 1997; and without an award for permanent partial disability. This order
13 was received by the claimant through the mail at his residence located
14 at 14124 SE 193rd St., Renton, Washington, 98058.
15
- 16 3. The June 16, 1997 order was not protested or appealed by the claimant
17 or anyone on his behalf within 60 days after he received it. The
18 employer also did not protest or appeal this order. The Department did
19 not modify, hold in abeyance, or reverse this order within 60 days of its
20 receipt by the parties.
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- 22 4. On July 30, 1998, the claimant filed an application to reopen the claim.
23 On August 13, 1998, the Department issued an order that denied the
24 application to reopen the claim. On September 22, 1998, the claimant
25 filed a protest and request for reconsideration with the Department. On
26 September 29, 1998, the Department issued an order that affirmed its
27 August 13, 1998 order.
28
- 29 5. On September 28, 1998, the Department issued an order that affirmed
30 its orders dated November 5 and 19, 1996 and December 3 and 17,
31 1996 which, in the aggregate, paid the claimant time loss compensation
32 for the period of October 19, 1996 through December 13, 1996,
33 inclusive.
34
- 35 6. On November 25, 1998, the claimant mailed a Notice of Appeal from the
36 September 28, 1998 Department order to the Board of Industrial
37 Insurance Appeals, which received it on November 30, 1998. On
38 January 15, 1999, this Board issued an order granting the claimant's
39 appeal subject to proof of timeliness, assigning it Docket No. 98 21118,
40 and directing that further proceedings be held.
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- 42 7. The Department has never considered or adjudicated any question
43 regarding fraud or something of like nature in the issuance of and/or
44 circumstances surrounding the issuance of the June 16, 1997 order and
45 the lack of an appeal therefrom.
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CONCLUSIONS OF LAW

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1. The Board of Industrial Insurance Appeals has jurisdiction to determine the extent, if any, of its jurisdiction over the parties and subject matter to this appeal.
 2. The claimant's Notice of Appeal was timely filed with this Board.
 3. The June 16, 1997 Department order became res judicata and is final and binding on all parties, including the Department.
 4. The Department had no legal authority to issue its order dated September 28, 1998. That order was and is void ab initio.
 5. The claimant's appeal from the September 28, 1998 Department order is dismissed.

It is so **ORDERED**.

Dated this 28th day of December, 1999.

BOARD OF INDUSTRIAL INSURANCE APPEALS

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THOMAS E. EGAN Chairperson

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

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/s/_____
JUDITH E. SCHURKE Member