

Lajcin, Anthony

DEPARTMENT

Authority to recoup overpayment of benefits

The Department attempted to recoup the worker's medical expenses that were incurred before the Board determined that he was permanently and totally disabled, but after the effective date of the pension. The bills for medical treatment were properly payable by the Department and, accordingly, are not subject to recoupment. RCW 51.32.240 does not give authority to the Department to recoup from the worker payments made to medical providers, since the recoupment statute only authorizes recoupment from the recipients of the payments. *Distinguishing In re Esther Rodriguez*, BIIA Dec., 91 5594 (1993) ...*In re Anthony Lajcin*, BIIA Dec., 99 12440 (2000)

Scroll down for order.

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

1 **IN RE: ANTHONY LAJGIN**) **DOCKET NO. 99 12440**
2)
3 **CLAIM NO. M-671006**) **DECISION AND ORDER**
4

5 **APPEARANCES:**

6
7 Claimant, Anthony Lajcin, by
8 Small, Snell, Weiss & Comfort, P.S., per
9 Richard E. Weiss and David W. Lauman

10
11 Employer, Burnham Service Co., Corp.,
12 None

13
14 Department of Labor and Industries, by
15 The Office of the Attorney General, per
16 Kay A. Germiot, Assistant
17

18
19 The claimant, Anthony Lajcin, filed an appeal with the Board of Industrial Insurance Appeals
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21 on March 5, 1999, from an order of the Department of Labor and Industries dated February 11,
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23 1999. That order corrected and superseded the Department's January 4, 1999 order, which in turn
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25 corrected and superseded an earlier order of the Department dated December 28, 1998. The
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27 February 11, 1999 Department order directed that Mr. Lajcin be paid an award for permanent total
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29 disability benefits effective December 23, 1993, pursuant to an order of the Board of Industrial
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31 Insurance Appeals dated December 2, 1998. The Board order declared Mr. Lajcin a permanently
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33 and totally disabled worker effective December 23, 1993. The February 11, 1999 Department order
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35 also stated that medical bills on behalf of Mr. Lajcin had been paid after the effective date of the
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37 award for permanent total disability benefits, December 23, 1993, and are now not payable. The
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39 Department directed the recoupment of all disbursements paid on behalf of Mr. Lajcin for medical
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41 treatment rendered after December 23, 1993, in the amount of \$2,469.55. The Department
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43 determined this amount to be deducted from Mr. Lajcin's award for permanent total disability
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45 benefits until recovered. The Department further found that any payment for medical treatment
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47 after December 23, 1993, was the responsibility of the worker. The order also stated that the

1 amount of money recouped for medical payments pursuant to the Department order of January 4,
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3 1999, in the amount of \$2,770.57 had already been deducted from the worker's permanent total
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5 disability benefit and the additional award for total permanent disability benefit in the amount of
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7 \$301.02 would be repaid the worker. **REVERSED.**

8
9 **DECISION**

10 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
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12 and decision on a timely Petition for Review filed by Mr. Lajcin to a Proposed Decision and Order
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14 issued on October 21, 1999, in which the order of the Department of Labor and Industries dated
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16 February 11, 1999, was affirmed.

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18 As noted by the industrial appeals judge, this matter is before the Board based on stipulated
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20 facts as provided by the parties on August 10, 1999. We have reviewed that stipulation as well as
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22 all of the briefs and authorities cited by the parties in this matter. We concur with the Proposed
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24 Decision and Order that the issue is whether the Department of Labor and Industries is authorized
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26 to recoup payments for proper and necessary medical treatment during a period for which
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28 Mr. Lajcin later received payments as a permanently totally disabled worker.

29
30 A clear understanding of the events and the order in which they occurred in this case is
31
32 essential to a resolution of this appeal. We offer the following summary of the key dates and events
33
34 as extracted from the parties' stipulation.

- 35
36
37 December 27, 1993 Department of Labor and Industries terminated time loss compensation
38 effective 12/23/93. **The Department directed the claim to remain**
39 **open for further action.** (Emphasis added.)
40
41 January 5, 1994 Mr. Lajcin protested (timely) the 12/27/93 order.
42
43 April 11, 1994 The Department of Labor and Industries held the 12/27/93 order in
44 abeyance.
45
46 May 13, 1997 The Department affirmed the 12/27/93 order.
47

1 June 6, 1997 The Department closed Mr. Lajcin's claim with a Category 2 award for
2 lumbosacral impairments.
3
4 July 7, 1997 Mr. Lajcin appealed the Department orders of 5/13/97 and 6/6/97.
5
6 September 24, 1998 A Proposed Decision and Order concluded that the Department orders
7 of 5/13/97 and 6/6/97 were incorrect. The Proposed Decision and Order
8 concluded that Mr. Lajcin was permanently totally disabled effective
9 12/23/93, as a proximate result of his 8/1/91 industrial injury.
10
11 November 13, 1998 The Department submitted a Petition for Review from the 9/24/98
12 Proposed Decision and Order.
13
14 December 2, 1998 The Board denied the Department's Petition for Review and adopted the
15 Proposed Decision and Order as the Board's final order.
16
17 December 18, 1998 The Department issued an order awarding Mr. Lajcin permanent total
18 disability benefits effective 12/23/93 (pursuant to the order of the Board
19 of Industrial Insurance Appeals).
20
21 December 28, 1998 The Department issued an order confirming the award of permanent
22 total disability benefits and further attempting to recoup medical
23 payments paid on Mr. Lajcin's claim subsequent to the date of
24 permanent total disability benefits 12/23/93. The Department initially
25 attempted to recoup \$2,770. 57.
26
27 February 11, 1999 After intervening orders modifying and correcting the 12/28/98 order the
28 Department issued a revised recoupment order reducing the amount of
29 medical payments recouped to \$2,469.55 and directing that Mr. Lajcin
30 be reimbursed \$301.02.
31

32 It appears evident from the factual stipulation that the Department of Labor and Industries
33 was preparing to close Mr. Lajcin's claim by terminating time loss benefits in December of 1993.
34 Mr. Lajcin protested this order. After a lengthy delay, the Department issued a closing order in
35 June of 1997. That order was eventually appealed to this Board which resulted in a determination
36 that Mr. Lajcin was a permanently and totally disabled worker. Thus, Mr. Lajcin's claim was
37 administratively open at the Department from December 27, 1993 to the closing order in June 1997.
38 During this time some medical bills in connection with this claim were submitted by providers to the
39 Department. Exhibit No. 2 is a listing of these bills and payments. Apparently, the Department
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1 determined at the time that these bills were payable for necessary and proper medical treatment for
2
3 the allowable conditions of Mr. Lajcin's claim.
4

5 Later, as a result of an appeal to the Board, we determined that Mr. Lajcin was entitled to
6
7 benefits as a permanently totally disabled worker. Mr. Lajcin successfully demonstrated that he
8
9 was entitled to these benefits starting December 23, 1993. Pursuant to the order of the Board, the
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11 Department authorized benefits for permanent total disability as of December 23, 1993. This put
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13 the Department in an unusual situation as Mr. Lajcin ultimately received two kinds of mutually
14
15 exclusive payments during the time period after December 23, 1993. The Department had already
16
17 paid for proper and necessary medical treatment and the Department was required to pay
18
19 permanent total disability payments from December 23, 1993, forward.
20

21 RCW 51.36.010 defines the extent and duration of proper and necessary medical treatment
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23 under the Industrial Insurance Act. Once a worker is determined to be permanently totally disabled,
24
25 payment for proper and necessary medical treatment is terminated. In its February 11, 1999 order,
26
27 the Department determined that medical bills previously paid after December 23, 1993 "are now not
28
29 payable pursuant to RCW 51.36.010" and ordered \$2,469.55 to be recouped from Mr. Lajcin's
30
31 award for permanent total disability benefit.
32

33 Although we agree with the Department's contention that it has no authority under
34
35 RCW 51.36.010 to pay for medical bills incurred after an injured worker is found to be medically
36
37 fixed and stable, we disagree with the Department's interpretation of the operative date in this case.
38

39 First of all, the Department did not make a determination that Mr. Lajcin's medical condition
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41 was fixed and stable until June 6, 1997, when it issued its order closing the claim with a permanent
42
43 partial disability award equal to Category 2 for lumbosacral impairments. The Department
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45 appropriately paid no more medical bills after the closing order. This is in consonance with the
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47

1 clear unambiguous requirement of RCW 51.36.010 which provides that the duration and extent of
2
3 medical payments:

4
5 In the case of permanent partial disability, not to extend beyond
6 **the date when compensation shall be awarded . . .**

7
8 [I]n case of a permanent partial disability not to extend beyond
9 the date on which a lump sum settlement is made with him or her **or he**
10 **or she is placed upon the permanent pension roll . . .**

11
12 (Emphasis added.)

13
14 The statute is clear and subject to little, if any, interpretation as applied to the facts of this
15 case. The Department, in the absence of a prior determination that Mr. Lajcin's medical condition
16 was medically fixed and stable, was authorized to pay for medical treatment until the date when
17 permanent partial disability compensation was awarded (Order and Notice of June 6, 1997) or, until
18 Mr. Lajcin's status was changed to permanently totally disabled worker and he was placed on the
19 "pension rolls" (Order and Notice of December 18, 1998).

20
21 Thus, Mr. Lajcin was entitled to medical benefits until his claim was closed with a permanent
22 partial disability award June 6, 1997. The fact that Mr. Lajcin ultimately was found to be
23 permanently totally disabled effective December 23, 1993, is not determinative of the Department's
24 authority to pay for or the claimant's entitlement to medical benefits, the extent and duration of
25 which are determined by the date that Mr. Lajcin's status was changed and he was placed on the
26 "pension rolls" administratively (by Order and Notice of February 11, 1999). The bills for medical
27 treatment were properly payable by the Department and, accordingly, are not subject to be
28 recouped.

29
30 We disagree, also, that RCW 51.32.240(3) authorizes the Department to recoup medical
31 benefit payments under the facts of this case. The statute provides, in relevant part:

32
33 Whenever any payment of benefits under this title has been made . . .
34 pursuant to an erroneous adjudication, **the recipient thereof** shall repay
35 it and recoupment may be made from any future payments due to the

1 recipient on any claim with the state fund or self-insurer, as the case
2 may be.

3
4 (Emphasis added.) The Department concluded that since Mr. Lajcin was permanently totally
5 disabled as of December 23, 1993, he could not have been in need of further proper and necessary
6 medical treatment from that date forward. Thus it was "erroneous" within the meaning of
7
8 RCW 51.32.240(3) to pay medical benefits when Mr. Lajcin was permanently totally disabled (and
9
10 therefore presumptively medically fixed and stable).
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13
14 We understand the Department's position but we disagree with its result. First of all, if
15 RCW 51.32.240(3) is applicable, it directs that in the event of an "erroneous adjudication" that
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17 recoupment shall be made against the "recipient thereof." Exhibit No. 2. The payments for medical
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19 treatment were made to the medical care providers and not to Mr. Lajcin. Mr. Lajcin may have
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21 received the benefit of these payments, but he is certainly not "the recipient" of the money for
22
23 purposes of recoupment. The statute is clear that recoupment may be had against the recipient
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25 from any future payments due, however, if the Department recovers the monies paid for medical
26
27 treatment it would be collecting money that Mr. Lajcin has never had in his possession.
28
29

30 This situation is distinguishable from other situations where the Board majority has applied
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32 RCW 51.32.240(3). In *in re Esther Rodriguez*, BIIA Dec., 91 5594 (1993), the Board majority
33
34 concluded that a non-final award for permanent partial disability was an erroneous adjudication
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36 within the meaning of RCW 51.32.240(3). In that case Ms. Rodriguez was paid \$2,250 for a
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38 permanent partial disability award. She protested that award and the Department later determined
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40 she was permanently totally disabled. The Board majority agreed the Department could recoup the
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42 \$2,250 overpayment as erroneous adjudication. However, unlike Mr. Lajcin, Ms. Rodriguez had
43
44 actually received the money for the permanent partial disability award.
45

46 RCW 51.32.240(3) provides for several mechanisms for the Department and the self-insured
47
employers to recoup overpayments and incorrectly paid sums of money. This is not a blanket

1 authorization. We believe that RCW 51.32.240(3) does not alter the underlying principle of the
2 Industrial Insurance Act to provide "sure and certain relief for workers" and to reduce to a minimum
3 the economic loss of workers. RCW 51.04.010 and RCW 51.12.010. It has long been held that
4 absent **express statutory directive** authorizing recovery, that money paid to **recipients may not**
5 **be recouped**. *Deal v. Department of Labor & Indus., 78 Wn.2d 537 (1970)* citing *State Ex Rel.*
6 *Dunbar v. Olson, 172 Wash., 424 (1933)*. We believe this principle controls in this case. There is
7 no express authority to recoup money from someone who **merely benefited** from a payment.
8 Statutory construction requires that we give words their usual and ordinary meaning. *Stute v. Von*
9 *Thiele, 47 Wn. App. 888 (1987)*. Webster's II New Riverside University Dictionary, Houghton Mifflin
10 Company, (1994) defines recipient as one who receives. Mr. Lajcin is not a "recipient" of the
11 payment since he never had the money in his possession.
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23 We hold that neither RCW 51.36.010, nor RCW 51.32.240, authorize the Department to
24 recoup medical benefits paid on behalf of Mr. Lajcin while his claim was open.
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26

27 **FINDING OF FACTS**

- 28
29 1. On August 9, 1991, the claimant, Anthony Lajcin, filed an application for
30 benefits with the Department of Labor and Industries alleging that he
31 was injured on August 1, 1991, while in the course of his employment
32 with Burnham Service Co., Corp. The claim was allowed.
33

34 On December 27, 1993, the Department issued an order providing that
35 time loss compensation benefits were terminated effective
36 December 23, 1993, that vocational services had ended, that time loss
37 compensation had terminated with payment for the period of
38 December 16, 1993 through December 22, 1993, and that the claim
39 remained open for further action.
40

41 On January 5, 1994, the claimant filed a protest to the Department's
42 December 27, 1993 order.
43

44 On April 11, 1994, the Department issued an order holding its
45 December 27, 1993 order in abeyance.
46

47 On May 13, 1997, the Department issued an order affirming its
December 27, 1993 order.

1
2 On June 6, 1997, the Department issued an order providing that the
3 worker's permanent partial disability was best described by Category 2
4 of the categories of permanent dorso-lumbar and/or lumbosacral
5 impairments, that an award be paid for the permanent partial disability,
6 less deduction for social security offset overpayment, and that the claim
7 be closed.
8

9 On July 7, 1997, the claimant filed a Notice of Appeal with the Board of
10 Industrial Insurance Appeals from Department orders dated May 13,
11 1997 and June 6, 1997. On August 6, 1997, the Board issued orders
12 granting the appeals under Docket No. 97 5348 (for Department order of
13 May 13, 1997) and Docket No. 97 5349 (for Department order of June 6,
14 1997).
15

16 On September 24, 1998, following litigation of the appeals, the Board
17 issued a Proposed Decision and Order providing that the Department
18 orders of May 13, 1997 and June 6, 1997 are incorrect and are reversed
19 and these matters remanded to the Department with directions to issue
20 an order that determines that as of December 23, 1993, the claimant
21 was permanently and totally disabled within the meaning of the
22 Industrial Insurance Act as a proximate result of his industrial injury of
23 August 1, 1991, and to take such other and further action as is
24 consistent with that determination of the law and the facts.
25

26 On November 13, 1998, the Department filed a Petition for Review of
27 the Board's September 24, 1998 Proposed Decision and Order.
28

29 On December 2, 1998, the Board issued an order denying the
30 Department's petition.
31

32 On December 18, 1998, the Department issued an order providing that
33 time loss compensation is terminated as paid to December 22, 1993;
34 that the worker is totally and permanently disabled and placed on a
35 pension effective December 23, 1993; that \$4,500.00, including interest
36 if applicable, previously paid to the worker for permanent partial
37 disability by a non-final order, is being deducted from the pension
38 reserve; that this will result in a permanent reduction of the monthly
39 pension benefits; that medical treatment will not be covered after the
40 effective pension date; and that this notice complies with the Board of
41 Industrial Insurance Appeals order of December 2, 1998.
42

43 On January 4, 1999, the Department issued an order superseding an
44 earlier order of December 28, 1998, and further providing that the
45 worker was determined by the December 2, 1998 Board decision to be
46 totally and permanently disabled and ordered placed on a pension
47 effective December 23, 1993; that the Department entered an order
adhering to the decision of the Board on December 18, 1998; that

1 medical bills were previously paid after December 23, 1993, and are not
2 payable; that the Department will recoup all disbursements paid on
3 behalf of the worker for medical treatment rendered after December 23,
4 1993, in the amount of \$2,770.57; that the amount will be deducted from
5 the worker's pension benefits until recovered; that payment for medical
6 treatment received after December 23, 1993, will be the responsibility of
7 the worker.
8

9 On February 4, 1999, the claimant filed a Notice of Appeal with the
10 Board of Industrial Insurance appeals from the Department's January 4,
11 1999 order. On February 10, 1999, the Department issued an order
12 holding its January 4, 1999 order in abeyance. By order of February 12,
13 1999, the Board returned the case to the Department for further actions.
14

15 On February 11, 1999, the Department issued an order which corrected
16 and superseded the Department's January 4, 1999 order, as the worker
17 was totally and permanently disabled and placed on a pension effective
18 December 23, 1993, pursuant to the December 2, 1998 decision by the
19 Board of Industrial Insurance Appeals. The order further provided that
20 on December 18, 1998, the Department had entered an order adhering
21 to the Board's decision, that medical bills previously paid after
22 December 23, 1993, are not now payable, that the Department will
23 recoup all disbursements paid on behalf of the worker for medical
24 treatment rendered after December 23, 1993, in the amount of
25 \$2,469.55, that the amount will be deducted from the worker's pension
26 benefit until recovered, that payment for medical treatment received
27 after December 23, 1993, will be the responsibility of the worker, that the
28 amount of medical bills ordered recouped by the Department's
29 January 4, 1999 order in the amount of \$2,770.57 has already been
30 deducted from the worker's pension benefit, and that the additional
31 pension benefit in the amount of \$301.02 will be repaid by the worker.
32

33 On March 5, 1999, the claimant filed a Notice of Appeal with the Board
34 of Industrial Insurance Appeals of the Department's February 11, 1999
35 order. On April 1, 1999, the Board issued an order granting the appeal
36 under Docket No. 99 12440.
37

- 38 2. On June 6, 1997, Mr. Lajcin's conditions, proximately caused by the
39 industrial injury, were determined by the Department to be medically
40 fixed and stable.
41
- 42 3. From December 23, 1993 until June 6, 1997, Mr. Lajcin's claim was
43 open for all statutory benefits including proper and necessary medical
44 care for the conditions related to the industrial injury of August 1, 1991.
45
- 46 4. The Department of Labor and Industries paid money to medical care
47 providers on behalf of Mr. Lajcin after December 23, 1993, in the

1 amount \$2,469.55. These monies were paid directly to providers for
2 medical services allowed by the Department.

- 3
- 4 5. Mr. Lajcin did not personally receive any portion of the \$2,469.55 paid
5 by the Department for medical care after December 23, 1993.
- 6
- 7 6. The \$2,469.55 paid for medical services after December 23, 1993 was
8 not induced by clerical error, mistake of identity, innocent
9 misrepresentation, or fraud by Mr. Lajcin, the medical care providers, or
10 the Department of Labor and Industries.

11

12 **CONCLUSIONS OF LAW**

- 13
- 14 1. The Board of Industrial Insurance Appeals has jurisdiction over the
15 parties and subject matter of this appeal.
- 16
- 17 2. Mr. Lajcin is not a recipient within the meaning of RCW 51.32.240(3).
- 18
- 19 3. RCW 51.36.010, does not authorize the Department to recoup from the
20 claimant medical benefits payable while a claim is open.
- 21
- 22 4. The Department order of February 11, 1999, is reversed. This claim is
23 remanded to the Department to award Mr. Lajcin benefits as a totally
24 permanently disabled worker effective December 23, 1993, pursuant to
25 a Decision and Order of the Board of Industrial Insurance Appeals dated
26 December 2, 1998, and to reimburse Mr. Lajcin for all monies deducted
27 from his permanent total disability benefit payments for medical costs
28 paid after December 23, 1993. The original amount claimed by the
29 Department was \$2,770.57 and later modified to a reduced amount of
30 \$2,469.55. The entire amount of \$2,770.57 less prior amounts repaid
31 shall be reimbursed by the Department to Mr. Lajcin.

32 It is so ORDERED.

33

34

35 Dated this 25th day of April, 2000.

36

37 BOARD OF INDUSTRIAL INSURANCE APPEALS

38

39

40 /s/ _____
41 THOMAS E. EGAN Chairperson

42

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

45

46 /s/ _____
47 JUDITH E. SCHURKE Member