

Uerling, Robert

APPEALABLE ORDERS

Interlocutory orders

SCOPE OF REVIEW

Interlocutory time-loss orders

A worker is aggrieved by an order paying time-loss compensation benefits, even if the Department has designated the decision as temporary, if the worker is disputing the rate of time-loss compensation.*In re Robert Uerling*, BIIA Dec., 99 17854 (1999)

Scroll down for order.

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

1 **IN RE: ROBERT C. UERLING)** **DOCKET NO. 99 17854 & 99 17944**
2)
3 **CLAIM NO. X-009721)** **ORDER DENYING APPEALS**
4

5 The claimant filed an appeal on July 26, 1999, from three orders of the Department of Labor
6 and Industries. The appeal assigned Docket No. 99 17853 relates to a June 15, 1999 order
7 establishing the worker's time loss compensation rate \$539.39 per month based on a status of
8 married with 1 dependents and wages of \$781.73 per month, and paying time-loss compensation
9 for the period May 11, 1999 through June 10, 1999. The appeal assigned Docket No. 99 17854
10 relates to a June 16, 1999 order that allowed the claim and paid time-loss compensation for the
11 period May 4, 1999 through May 6, 1999. The June 16, 1999 order restated the basis for
12 calculating the rate of time-loss compensation benefits at \$539.39 per month based on a status of
13 married with 2 dependents and wages of \$781.73 per month. The appeal assigned Docket No. 99
14 17944 relates to a June 28, 1999 order that paid time-loss compensation benefits for the period
15 June 11, 1999 through June 24, 1999.

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17 With respect to the appeals assigned Docket Nos. 99 17854 and 99 17944, our review of the
18 Department record reveals that Mr. Uerling filed a general protest "to any orders, notices, etc., that
19 are adverse to the claimant" with the Department on June 15, 1999. The orders of June 16, 1999
20 and June 28, 1999 each provided that if a protest and request for reconsideration was filed in
21 response to the order, a further appealable order would follow the request. Because the claimant
22 filed a protest to the Department orders of June 16, 1999 and June 28, 1999 , they are not final
23 orders of the Department. *In re Santos Alonzo*, BIIA Dec., 56,833 (1981). The Department is
24 obliged to enter a further appealable order.¹

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26 With respect to the appeal assigned Docket No. 99 17853, a review of the Department
27 record reveals that the June 15, 199 order was characterized as an "interlocutory" determination.
28 An interlocutory determination is not a final order of the Department generally subject to appeal. *In*
29 *re Ruth Logan*, BIIA Dec. 89 1089 (1989) [an employer's appeal from an interlocutory order paying
30 time-loss compensation benefits will not be granted since no final determination regarding
31 allowance has been made]. There are instances where this Board will consider an appeal from an
32 interlocutory determination, however. *In re Louise Favaloro*, BIIA Dec., 90 5892 (1990). In
33 *Favaloro*, we noted that the claimant's appeal of an interlocutory order terminating time-loss
34 compensation benefits had been granted and stated:

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36 In our view the claimant has a right to contest the Department's decision to terminate.
37 time loss. The Department cannot characterize its decision as "interlocutory" and
38 thereby attempt to prevent Board review of its decision. If the claimant desires to
39 appeal the decision to terminate time loss at this time, instead of at a later time, it is
40 her right to do so.

41 *Favaloro*, at 1.

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45 ¹ On July 21, 1999 the Department issued an order that modified the orders of June 21, 1999 and June
46 28, 1999 from final to interlocutory. We note that the Department cannot characterize its decision as
47 "interlocutory" and thereby attempt to prevent Board review of its decision. *In re Louise Favaloro*, BIIA
Dec., 90 5892 (1990). As it stands, the Department is still obligated to issue a further appealable order
in response to the July 15, 1999 protest.

1 In this instance, Mr. Uerling has appealed a determination setting the rate of time-loss
2 compensation benefits. The appeal asserts that the Department has incorrectly calculated that
3 rate. The reason we granted Ms. Favaloro's appeal was founded in the concept that she was
4 aggrieved, in a strict economic sense, by the termination of her benefits. A worker is entitled to
5 litigate a decision that, although designated as "interlocutory", creates an immediate detrimental
6 economic impact. A worker is not required to endure the potentially economically harmful effect of
7 a Department decision without the benefit of having the ability to challenge that decision.
8 Consistent with this approach, Mr. Uerling can appeal the decision to calculate his time-loss
9 compensation benefits at a rate other than the rate he believes that he is entitled. As was Ms.
10 Favaloro upon an interlocutory termination of benefits, Mr. Uerling is similarly aggrieved by the
11 calculation of his benefits at a lower level than he asserts is due. For that reason, by separate
12 order, we will grant the appeal assigned Docket No. 99 17853.

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14 The orders from which the appeals assigned Docket Nos. 99 17854 and 99 17944 were
15 taken are not final orders of the Department. It is therefore ORDERED that the appeals be denied.
16 This is without prejudice to the right of any party to appeal from any further order of the Department
17 or to pursue the remedies available in the appeal assigned Docket No. 99 17853.

18 Dated this 31st day of August, 1999.

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20 BOARD OF INDUSTRIAL INSURANCE APPEALS

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26 THOMAS E. EGAN Chairperson

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31 FRANK E. FENNERTY, JR. Member