

1 letter. The vocational dispute summary and analysis section states: "Ms. Looker currently lives in a
2 stronger labor market area in the Vancouver, Washington/Portland, Oregon area."
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4 In addition to noting that the vocational determination could not be upheld, the March 18,
5 2014 Department letter stated that the claim manager would "take further action as appropriate."
6 Finally, the March 18, 2014 Department letter contained the following question and answer: "What
7 about time-loss compensation benefits? The claim manager will reinstate time-loss compensation if
8 appropriate."
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11 On April 3, 2014, Ms. Looker-Noble requested the Department to order Southwest to pay
12 back and ongoing time-loss compensation benefits. On April 16, 2014, the Department directed
13 Southwest to pay time-loss compensation benefits from October 11, 2013, through April 16, 2014.
14 On April 16, 2014 (the date of the time-loss order), Southwest paid the back time-loss
15 compensation benefits as ordered. Ms. Looker-Noble then requested that the Department assess a
16 penalty against Southwest for unreasonable delay in payment of the time-loss compensation
17 benefits. On June 20, 2014, the Department issued the order before us in which it denied
18 Ms. Looker-Noble's request for a penalty.
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21 Resolution of this appeal involves the interplay between RCW 51.48.017, the penalty statute
22 for unreasonable delay, and WAC 296-15-4304, the regulation related to rejection of a vocational
23 assessment report. Whether there has been an unreasonable delay in benefits under
24 RCW 51.48.017 depends on whether there is a demonstrated "genuine doubt from a medical or
25 legal standpoint as to the liability for benefits."¹ Whether the self-insured employer had a genuine
26 doubt if benefits were payable in Ms. Looker-Noble's case depends on the determinations made by
27 the Department in the March 18, 2014 letter and WAC 296-15-4304(4).
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30 Our industrial appeals judge determined that once the Department rejects a vocational
31 report, reinstating time-loss compensation benefits is essentially automatic. However, WAC 296-
32 15-4304(4) provides:
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- 34
35 (4) If the self-insurer terminated time-loss based on the assessment report's
36 recommendation but the **department concludes the assessment**
37 **report failed to demonstrate the worker is able to work**, the
38 self-insurer must reinstate time-loss effective the day after the last date
39 paid. (Emphasis ours.)
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¹ See, *Taylor v. Nalley's Fine Foods*, 119 Wn. App. 919 (2004); *In re Frank Madrid*, BIIA Dec., 86 0224-A (1987).

1 We disagree with our industrial appeals judge's interpretation of WAC 296-15-4304 when
2 read in conjunction with the March 18, 2014 letter.

3 Southwest argues that the March 18, 2014 letter did not require the self-insured employer to
4 reinstitute payment of time-loss compensation benefits. We agree.

5 We note that nowhere in the vocational dispute report/analysis or in the March 18, 2014
6 letter did the Department state that the employer had failed to demonstrate that the worker is able
7 to work. A fair reading of the March 18, 2014 Department letter reveals that at that time the
8 Department had made no decision on whether time-loss compensation benefits were appropriate.
9 In fact, the letter states that if payment of time-loss compensation benefits is appropriate, the claims
10 manager will reinstate them.

11 The Southwest's claims manager, Cindy Torsey, interpreted the March 18, 2014 Department
12 letter essentially for what it said: time-loss compensation benefits would be reinstated only if
13 appropriate. The letter did not order Southwest to pay time-loss compensation benefits. This is
14 because the VDRO, although rejecting the vocational assessment, was acknowledging that the
15 Vancouver/Portland area was actually a better labor market area than the Kelso/Longview area.

16 The March 18, 2014 letter did not indicate there had been a determination made that
17 Ms. Looker-Noble was unable to work. The letter simply was informing both parties that a decision
18 on this issue was pending. Under these circumstances, the self-insured employer has
19 demonstrated genuine doubt from a medical and legal standpoint as to the liability for benefits.

20 **DECISION**

21 In Docket No. 14 17483, the claimant, Chelsie Looker-Noble, filed an appeal with the Board
22 of Industrial Insurance Appeals on June 26, 2014, from an order/letter of the Department of Labor
23 and Industries dated June 20, 2014, in which it denied the claimant's request for a penalty. The
24 appeal before us is from this order. The Department's June 20, 2014 letter/order order is affirmed.

25 **FINDINGS OF FACT**

- 26 1. On October 1, 2014, an industrial appeals judge certified that the parties
27 agreed to include the Jurisdictional History in the Board record solely for
28 jurisdictional purposes.
- 29 2. Chelsie Looker-Noble sustained an industrial injury on October 1, 2011,
30 when she injured her low back while working as a certified nursing
31 assistant for self-insured employer, Southwest Washington Health
32 System.

- 1 3. On March 18, 2014, the Department issued a determination in which it
2 rejected the self-insured employer's vocational assessment.
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4 4. The March 18, 2014 determination from Chris Peerboom, vocational
5 services specialist at the Department, indicated that the claims manager
6 would take further action as appropriate and that time-loss
7 compensation benefits would be reinstated if appropriate. The
8 Department did not conclude that the assessment report failed to
9 demonstrate the worker is able to work.
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11 5. As of March 18, 2014, the self-insured employer did not pay time-loss
12 compensation benefits.
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14 6. As of March 18, 2014, the self-insured employer had a genuine doubt
15 that Ms. Looker-Noble was entitled to time-loss compensation benefits.

16 **CONCLUSIONS OF LAW**

- 17 1. The Board of Industrial Insurance Appeals has jurisdiction over the
18 parties and subject matter in this appeal.
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20 2. The self-insured employer did not unreasonably delay payment of
21 time-loss compensation benefits to Ms. Looker-Noble within the
22 meaning of RCW 51.48.017.
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24 3. The June 20, 2014 Department order is affirmed.

25 Dated: March 3, 2016.

26 BOARD OF INDUSTRIAL INSURANCE APPEALS

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29 /s/
30 DAVID E. THREEEDY Chairperson

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34 /s/
35 JACK S. ENG Member
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**Addendum to Decision and Order
In re Chelsie Looker-Noble
Docket No. 14 17483
Claim No. SE-29600**

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Appearances

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Claimant, Chelsie Looker-Noble, by Busick Hamrick Palmer, PLLC, per Douglas M. Palmer
Self-Insured Employer, Southwest WA Health System, by Law Office of Gress & Clark, LLC, per
James L. Gress
Department of Labor and Industries, by The Office of the Attorney General, per James S.
Johnson

Petition for Review

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
and decision. The employer filed a timely Petition for Review of Proposed Decision and Order
issued on November 20, 2015, in which the industrial appeals judge reversed and remanded the
Department order dated June 20, 2014.

Evidentiary Rulings

This matter has been decided on agreed facts and documents admitted by stipulation of the
parties. See, Exhibits 1 through 13.