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IN RE: DAVID O. GHEORGHITA ) DOCKET NO. 24 12743  
 )  
CLAIM NO. BK-38664 ) DECISION AND ORDER

In 2022, David O. Gheorghita suffered a left knee injury while working as a roofing estimator for Asset Roofing Company, LLC. The Department of Labor and Industries allowed the claim and provided treatment and time-loss compensation. On August 31, 2022, the Department issued a wage/time-loss compensation order. Over the next 6 months, the Department issued 12 time-loss compensation orders. On July 19, 2023, the Department issued a second wage order. Also, on July 19, 2023, the employer, through a retro group, filed 14 protests. These protests listed the date of the first wage/time-loss compensation order (August 31, 2022) and the dates of the ensuing 12 time-loss compensation orders, including a duplicate of the February 13, 2023 order, but not the date of the July 19, 2023 wage order. On January 4, 2024, Mr. Gheorghita filed a letter with the Department inquiring about the July 19, 2023 wage order, based upon the employer-filed protests. On February 23, 2024, the Department issued an order in which it stated that it could not reconsider the July 19, 2023 order because the protest was not received within the 60-day time limitation. Mr. Gheorghita appealed the February 23, 2024 order. Mr. Gheorghita, the employer, and the Department filed cross-motions for summary judgment. Our industrial appeals judge held that the employer's July 19, 2023 time-loss compensation order protests were a protest to the July 19, 2023 wage order. The judge granted Mr. Gheorghita's motion for summary judgment, and denied the Department's and employer's motions for summary judgment. The Department and the employer each filed Petitions for Review in which they maintained that a party must protest an order or decision in their own right, that the employer was not aggrieved by the July 19, 2023 wage order, and that the content and context of the employer's 14 protests, submitted on July 19, 2023, did not put the Department on notice that the employer was requesting action inconsistent with the July 19, 2023 wage order. Mr. Gheorghita filed a response to the Petitions for Review and argued that he may utilize communications from another party as a basis for his protest, that both he and the employer are aggrieved by the July 19, 2023 wage order, and that the employer's 14 protests should be considered a valid protest to the July 19, 2023 wage order by the claimant. We find nothing in the employer's protests indicating that the wage order was incorrect, so there was no timely protest to the July 19, 2023 wage order. Mr. Gheorghita's motion for summary judgment is denied. We grant

1 the Department's and employer's motions for summary judgment. The Department order dated  
2 February 23, 2024, is correct, and is **AFFIRMED**.

### 3 **DISCUSSION**

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5 The parties agreed that this appeal should be decided on summary judgment and stipulated  
6 to the factual record. After consideration of the parties' cross-motions for summary judgment, the  
7 judge granted Mr. Gheorghita's motion for summary judgment and denied the employer's and  
8 Department's motions. We granted review of the Proposed Decision and Order as we find that  
9 awarding summary judgment in favor of Mr. Gheorgita was incorrect. We grant the motions for  
10 summary judgment filed by the employer and the Department.

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12 David O. Gheorghita was injured on August 19, 2022, while working for Asset Roofing  
13 Company. The Department allowed the claim, paid time-loss compensation, and issued its first  
14 wage/time-loss compensation order on August 31, 2022, just a few days after the injury, setting  
15 Mr. Gheorghita's wages at \$10,000 a month. This first order resulted in payments of \$6,700 a month  
16 in time-loss compensation. The Department then paid time-loss compensation based upon this wage  
17 rate through a series of 12 time-loss compensation orders spanning from September 16, 2022,  
18 through March 14, 2023.

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20 On July 19, 2023, the Department issued a second wage order, in which it recalculated  
21 Mr. Gheorghita's wages at \$8,850.05 a month plus a \$1000 bonus, for a total wage calculation of  
22 \$9850.05 a month. Also, on July 19, 2023, the employer, through Michelle Shirley of the Stop Claims  
23 Corp Retro Group, filed 14 protests. The actual mechanism by which the employer filed these  
24 protests is a single page, fill-in-the-blank form with various fields into which information is entered.  
25 Each form includes Department letterhead and is titled "Protest a Claim Decision." The fields include  
26 designated areas to enter the claim number, the injury date, and the names of the worker, claim  
27 manager, and attending provider, and so forth. One field is titled "Date L&I mailed decision that you  
28 disagree with." Another is titled "Decision protested." The last field, which is large enough for a  
29 narrative, is titled "Please explain why you disagree with the decision."

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31 The 14 protests filed by the employer are identical except for one field. They all list the  
32 "Decision protested:" as "Payment Orders/Time Loss." They all have the same one-sentence  
33 narrative: "I am protesting TL payments because the [injured worker] was working and collecting  
34 commission checks the entire time this claim has been open while stating is [Worker Verification  
35 Form] that he was not and has not worked" [sic]. The only field that differs among the 14 protests is  
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1 the date of the decisions being protested. On the 14 forms, the employer listed the date of the original  
2 August 31, 2022 wage/time-loss compensation order and the dates of each of the subsequent 12  
3 time-loss compensation orders, including a duplicate reference to the February 13, 2023 order. The  
4 14 forms did not list July 19, 2023, as an order being protested. The Department did not reach out  
5 to the employer to clarify the protest with the duplicate date, or whether the employer wished to  
6 protest the July 19, 2023 wage order. Mr. Gheorghita also did not reach out to clarify the situation,  
7 nor did he file his own protest of the July 19, 2023 wage order at that time.

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9 On January 4, 2024, Mr. Gheorghita, through counsel, sent a seven-page letter to the  
10 Department. In that letter, Mr. Gheorghita asked the Department to "review and reevaluate the  
11 July 19, 2023 wage order,"<sup>1</sup> based upon "the employer filed protests of every time loss payment made  
12 by the Department to Mr. Gheorgita,"<sup>2</sup> because "the Department had constructive timely notice that  
13 the wage order was incorrect."<sup>3</sup> On February 23, 2024, the Department issued an order indicating  
14 that it could not reconsider the July 19, 2023 wage order because Mr. Gheorghita's protest was not  
15 timely filed. Mr. Gheorghita appealed the February 23, 2024 order.

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17 In *Boyd v. City of Olympia*,<sup>4</sup> the court determined that if the Department receives a written  
18 document from a party that reasonably puts the Department on notice that the party is requesting an  
19 action that is inconsistent with the Department's decision, then it is considered a protest. Under *Boyd*,  
20 the content and the context of the written communication must be considered, but not the intent of  
21 the filing party. In the present case, the employer filed 14 protests on July 19, 2023, which was the  
22 same date the Department issued the wage order.

23  
24 First, the content of the employer's written communications to the Department on  
25 July 19, 2023, involved various time-loss compensation orders. Although 14 time-loss compensation  
26 order dates were listed on the protests, one was a duplicate. The communications from the employer  
27 were not generic or blanket protests, but were very specific as to the dates of the time-loss  
28 compensation orders protested. None of the protests mentioned the date of the wage order,  
29 July 19, 2023. Also, the thrust of each of the protests was a specifically dated payment/time-loss  
30 compensation order. The fact that the protests mention payment orders does not make them protests  
31 to the wage order. A wage order is not an authorization of payment, but rather, it sets the worker's

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45 <sup>1</sup> Stipulation of the Parties, Ex. 1 (Claimant Representative Letter p. 188).

46 <sup>2</sup> Stipulation of the Parties, Ex. 1 (Claimant Representative Letter p. 189).

47 <sup>3</sup> Stipulation of the Parties, Ex. 1 (Claimant Representative Letter p. 189).

<sup>4</sup> 1 Wn. App. 2d 17, 30 (2017).

1 wage rate for time-loss calculation purposes at the time of injury under RCW 51.08.178. The mere  
2 mention of payment in the protests is not sufficient enough to challenge the wage rate, especially  
3 when the protests specifically question time-loss compensation orders, which are payment orders.  
4 All of the protests do reference commission checks, but the Department rightly points out that this  
5 language was not significant and the term commission is not included in RCW 51.08.178 for  
6 determination of a monthly wage. From the language of the protests, it appears that the employer  
7 was referring to commission checks being paid to the claimant for work the claimant was allegedly  
8 doing while collecting time-loss compensation, which is not a challenge to the wage order.  
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13 Next, we consider the context of the employer's time-loss compensation protests. The fact  
14 that the protests were filed on July 19, 2023, the same date that the Department issued the wage  
15 order, does not make it more probable that the protests should apply to the July 19, 2023 wage order.  
16 Due to mailing, the order would not be presumed communicated until a later date. The evidence  
17 does not reflect the date of actual communication of the July 19, 2023 order. While an order can be  
18 protested on the same date as the date of issuance, in this instance, it is unlikely that the employer's  
19 protests to the time-loss compensation orders would have been filed after the Department issued the  
20 wage order and unlikely that the employer was filing protests to a wage order issued that same day.  
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25 The evidence presented does not raise a genuine issue of material fact. After providing all  
26 reasonable inferences to Mr. Gheorghita, we hold that the employer's protests of the time-loss  
27 compensation orders did not reasonably put the Department on notice that the employer was  
28 protesting the July 19, 2023 wage order. Since we have determined that the content and context of  
29 the 14 protests are sufficient to determine this issue, we need not examine the questions of whether  
30 the employer was aggrieved by the July 19, 2023 wage order or if Mr. Gheorghita can benefit from  
31 the employer's filings. Mr. Gheorghita's motion for summary judgment is denied and the motions for  
32 summary judgment of the Department and the employer are granted. Since there was no timely  
33 protest filed to the July 19, 2023 Department order, the February 23, 2024 Department order denying  
34 reconsideration of the July 19, 2023 order is correct and is affirmed.  
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#### 40 **DECISION**

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42 In Docket No. 24 12743, the claimant, David O. Gheorghita, filed an appeal with the Board of  
43 Industrial Insurance Appeals on March 18, 2024, from an order of the Department of Labor and  
44 Industries dated February 23, 2024. In this order, the Department denied reconsideration of a  
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1 July 19, 2023 wage order because the protest was not received within the 60-day time limitation for  
2 filing. This order is correct and is affirmed.  
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#### 4 **FINDINGS OF FACT**

- 5 1. On April 29, 2024, and August 15, 2024, an industrial appeals judge  
6 certified that the parties agreed to include the Jurisdictional History in the  
7 Board record solely for jurisdictional purposes.  
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- 9 2. On August 19, 2022, David O. Gheorghita injured his left knee while  
10 working as a roofing estimator for Asset Roofing Company, LLC.  
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- 12 3. On July 19, 2023, the Department issued a wage order setting  
13 Mr. Gheorgita's monthly wages at \$9,850.05.  
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- 15 4. On July 19, 2023, the employer filed 14 protests to time-loss  
16 compensation orders.  
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- 18 5. The employer did not file a protest or request for reconsideration of the  
19 July 19, 2023 wage order.  
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- 21 6. On January 4, 2024, Mr. Gheorghita sent a letter to the Department  
22 requesting review and reevaluation of the July 19, 2023 wage order.  
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- 24 7. On February 23, 2024, the Department issued an order that it could not  
25 reconsider the July 19, 2023 wage order because Mr. Gheorghita's  
26 protest was not timely filed.  
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- 28 8. None of the employer's 14 protests submitted on July 19, 2023, put the  
29 Department on notice that the employer was requesting action  
30 inconsistent with the July 19, 2023 wage order.  
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- 32 9. The employer's protests did not reasonably put the Department on notice  
33 that the employer was protesting the July 19, 2023 wage order.  
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- 35 10. The pleadings and evidence submitted by the parties demonstrate that  
36 there is no genuine issue as to any material fact.  
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#### 38 **CONCLUSIONS OF LAW**

- 39 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties  
40 and subject matter in this appeal.  
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- 42 2. The parties are entitled to a decision as a matter of law pursuant to CR 56.  
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- 44 3. Neither Asset Roofing Company, LLC, nor David O. Gheorgita, filed a  
45 timely protest to the July 19, 2023 wage order. *Boyd v. City of Olympia*,  
46 1 Wn. App. 2d 17 (2017).  
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**Addendum to Decision and Order**  
**In re David O. Gheorghita**  
**Docket No. 24 12743**  
**Claim No. BK-38664**

**Appearances**

Claimant, David O. Gheorghita, by Staton Silber, P.S., per Eleana Stevens

Employer, Asset Roofing Company, LLC, by Employer Solutions Law, per Alicia A. McDonnell

Department of Labor and Industries, by Office of the Attorney General, per Jennifer Chen, Rule 9 Clerk, and per Travis Alley

**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 Department and employer filed timely Petitions for Review of a Proposed Decision and Order issued on September 23, 2024, in which the industrial appeals judge reversed and remanded the Department order dated February 23, 2024. The claimant filed a response to the Department's and the employer's Petitions for Review.

**Evidentiary Rulings**

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed. The rulings are affirmed.