AGGRAVATION (RCW 51.32.160)

First terminal date: effect of Board's determination of effective date of closure

A Department order issued in response to an Order Adopting Proposed Decision and Order is a ministerial order and the effective date of the closure of the claim is the effective date recited in the Board's order. It is not the date of the Order Adopting Proposed Decision and Order. …In re Donald Workman, BIIA Dec., 00 24102 (2001)

Scroll down for order.
The claimant filed an appeal on December 7, 2000, from an order of the Department of Labor and Industries dated October 12, 2000. The order affirmed the provisions of a July 11, 2000 order that indicated that it was entered to comply with the Board's decision of June 12, 2000, noted that the claim remains closed as of May 25, 1999, and paid a permanent partial disability award equal to category 2, permanent cervical and cervico-dorsal impairments.

The Department's order takes no action other than what was directed by our Order Adopting Proposed Decision and Order of June 12, 2000. We adopted as our final order the Proposed Decision and Order issued on May 10, 2000. That order directed the Department to accept certain conditions1 and to close the claim with an award for permanent partial disability consistent with category 2, permanent cervical and cervico-dorsal impairments. The order also concluded that Mr. Workman's conditions were medically fixed and stable as of May 25, 1999. For that reason, the July 11, 2000 order2, as affirmed by the October 12, 2000 order, was nothing more than a ministerial act taken in compliance with our order of June 12, 2000. This appeal is therefore denied with prejudice.

The notice of appeal, which incorporates a prior protest, asserts that the Department should not have indicated that the "claim remains closed as of 05/25/99." Citing our decision of In re Jimmy Storer, BIIA Dec., 86 4436 (1988), the claimant argued that the effective date of claim closure should be July 11, 2000, not May 25, 1999. In the protest, claimant seems to argue that the Storer decision is limited to Orders on Agreement of Parties. That is not the case.

The principle set forth in Storer is that the first terminal date, for purposes of establishing aggravation of a particular condition, is the date of the appealed order closing the claim, not the date of the ministerial order entered after resolution of the appeal. What we noted is that "[a]ll matters related to the claim were conclusively determined up to [the date of the appealed order] and no further." Storer, at 2. As a result, the date of medical fixity was the date of the appealed order.

The type of final Board order does not affect the effective date of our action. Instead, the question is whether the Board's final order determined all matters related to the claim. It is certainly possible that disputes may arise from Department efforts to comply with our final orders – had there been a dispute regarding the medical treatment benefits to be paid for the cervical condition in this case, it could have been pursued on appeal.

In this instance, our final order directed the Department to find the condition medically fixed and stable as of May 25, 1999, and to close the claim with a permanent partial disability award. As

1 By an order dated July 6, 2000, the Department accepted the conditions identified in our order.

2 The July 11, 2000 Department order is, itself, a ministerial order, but in issuing the order the Department included a statement of protest rights. The claimant filed a protest on September 13, 2000, so the Department was obligated to issue a further order.
a result, for purposes of determining the effective date of the Department's ministerial order, we conclude that it relates back to the date of the appealed order. Any other conclusion would be inconsistent with our final order determining the date of medical fixity.

Because the Department order of October 12, 2000 is a ministerial order, the appeal is denied with prejudice.

Dated this 5th day of January, 2001.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/ THOMAS E. EGAN Chairperson

/s/ FRANK E. FENNERTY, JR. Member

/s/ JUDITH E. SCHURKE Member