Evanoff, Ingrid

AGGRAVATION (RCW 51.32.160)

"Deemed granted" application to reopen claim

After the Department places in abeyance the terms of an order that extends the time in which to act on an application to reopen the claim, the time to act is no longer extended. The application to reopen must be deemed granted if not acted on or again extended within 90 days of receipt of the application as required by RCW 51.52.060(4).In re Ingrid Evanoff, BIIA Dec., 08 18344 (2008) [Editor's Note: The Board's decision was appealed to superior court under Thurston County Cause No. 08-2-02400-5.]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS STATE OF WASHINGTON

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IN RE: INGRID A. EVANOFF

CLAIM NO. W-317395

DOCKET NO. 08 18344

ORDER GRANTING RELIEF ON THE RECORD

The claimant, Ingrid A. Evanoff, filed an appeal on September 3, 2008, from an order of the Department of Labor and Industries dated August 6, 2008. The order denied claimant's application to reopen the claim.

Our review of the Department record reveals that on March 10, 2008, the claimant filed an application to reopen this claim with the Department. The Department issued an order on June 3, 2008, extending until August 7, 2008, the time by which it must make a decision on the claimant's application to reopen the claim. The claimant filed an appeal with this Board on July 23, 2008, to the Department's June 3, 2008 extension order; the appeal was assigned Docket No. 08 16971. On August 4, 2008, the Department entered an order holding the June 3, 2008 order in abeyance; and on August 8, 2008, the Board entered an order in the appeal assigned Docket No. 08 16971, denying that appeal and returning the case to the Department for further action. On August 6, 2008, the Department entered the order here on appeal. Our further review of the Department record reveals that on September 10, 2008, the Department finally entered an order affirming the provisions of the June 3, 2008 extension order.

The Department must enter an order denying an application to reopen the claim, if at all, within 90 days after the application is filed with the Department or the claim is deemed to be reopened. However, the Department may, for good cause, extend for up to sixty days the time by which the order denying the application must be entered. RCW 51.32.160(1)(d). In this case the application to reopen the claim was filed on March 10, 2008. Any order denying that application, or any order extending the time by which to deny the application, must have been entered no later than June 9, 2008. The Department entered its order extending the decision deadline on June 3, 2008; however it held that order in abeyance on August 4, 2008, and did not affirm the June 3, 2008 extension order until September 10, 2008.

By holding the June 3, 2008 order in abeyance in response to the claimant's appeal, the Department prevented that order from becoming final. No further extension order was issued until September 10, 2008, after the Department had denied the application to reopen the claim on August 6, 2008. But the Department had denied the claimant's reopening application after the June 9, 2008 deadline for such an order had passed, and at a time when no final order extending its time to deny the claim existed. By its own actions in holding the June 3, 2008 extension order in abeyance, the Department also suspended its authority to deny the application to reopen the claim until a further order on the issue of the extension period was entered as required by RCW 51.52.060(4). The Department did not enter that further order until September 10, 2008. Accordingly, the Department lacked the authority on August 6, 2008 to deny claimant's application to reopen the claim, and the order dated August 6, 2008 is wrong as a matter of law.

Moreover, the Department's September 10, 2008 affirming order extended only until August 7, 2008 the time by which its decision on the claimant's application to reopen her claim must be entered. Although the Department entered an order on August 6, 2008, as discussed above that order is wrong as a matter of law and has no legal effect. The Department has entered no further order in response to the claimant's application to reopen her claim, has not further extended the time to do so, and the time for the Department to enter such orders has passed. Accordingly, claimant's application to reopen her claim is deemed granted. RCW 51.32.160(1)(d).

The order of the Department dated August 6, 2008, which denied claimant's application to reopen this claim, is reversed, and this matter is remanded to the Department pursuant to RCW 51.52.080, with directions to enter an order reopening the claim, and to take such other and further action as is necessary and proper under the facts and the law.

It is so ORDERED.

DATED: September 17, 2008.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/ THOMAS E. EGAN	Chairperson
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/s/ FRANK E. FENNERTY, JR.	Member
CALHOUN DICKINSON	Member