

Chambers Bay Golf Course

NOTICE OF APPEAL (RCW 51.52.050, RCW 51.52.060)

Aggrieved party

The Board lacks jurisdiction to hear an appeal from an advisory opinion issued by the Department of Labor and Industries. A party is not aggrieved by a Department determination unless the party has a proprietary, pecuniary, or personal right substantially affected by the Department action. ...*In re Chambers Bay Golf Course*, BIIA Dec., **09 20604 (2010)**

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

1 **IN RE: CHAMBERS BAY GOLF COURSE) DOCKET NO. 09 20604**
2 **FIRM NO. 109,095-00) DECISION AND ORDER**

3 APPEARANCES:
4

5 Firm, Chambers Bay Golf Course, by
6 Schwabe, Williamson & Wyatt, P.C., per
7 Michael T. Garone

8 Department of Labor and Industries, by
9 The Office of the Attorney General, per
10 Kay A. Germiot, Assistant

11 The firm, Chambers Bay Golf Course, filed an appeal with the Board of Industrial Insurance
12 Appeals on October 16, 2009, from a letter of the Department of Labor and Industries dated
13 August 17, 2009. In this letter, the Department stated a review was conducted at the request of
14 counsel for the firm to determine whether caddies in the Caddy Program were covered workers for
15 purposes of industrial insurance premiums. The Department determined that the caddies were
16 covered workers. The appeal is **DISMISSED**.

17 **PROCEDURAL AND EVIDENTIARY MATTERS**

18 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for
19 review and decision. The employer filed a timely Petition for Review of a Proposed Decision and
20 Order issued on July 21, 2010, in which the industrial appeals judge affirmed the Department
21 decision that caddies in the Caddy Program are covered workers for purposes of industrial
22 insurance premiums.

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

25 Chambers Bay Golf Course, a municipal course open to the public, is owned by Pierce
26 County and managed by Kemper Sports Management Company. The course has attracted some
27 prestigious tournaments since it opened in 2007, and anticipates hosting the U.S. Open
28 Championship in 2015. It is a links style course that prohibits the use of motorized golf carts except
29 for golfers who are physically unable to walk the course. Those golfers are allowed to use
30 motorized carts but are required to have a caddie drive the cart. Only caddies who have received
31 instruction on driving the cart safely are assigned to the disabled driver. Physically able golfers
32 must carry their own bag, use a hand cart, or employ the services of a caddy.

12/7/10

1 Kemper Sports Management has caddies available for hire for the golfer who does not bring
2 his or her own caddy, through its Caddy Program. The program has a full-time manager whose
3 primary responsibility is to facilitate the pairing of caddy and golfer. Chambers Bay's website
4 encourages golfers to use the services of their caddies, who are described as experienced,
5 knowledgeable, and able to assist the player in achieving their scoring goal. It is apparent that
6 Chambers Bay considers the availability of knowledgeable caddies an essential component of a
7 successful course, and to that end has established the Caddy Program.

8 In May 2008, the attorney for Chambers Bay requested that the Department of Labor and
9 Industries review the Caddy Program to determine whether the Department considered the caddies
10 covered workers for purposes of industrial insurance premiums. The Department reviewed the
11 Caddy Program and sent questionnaires to approximately 112 individuals who worked as caddies
12 at Chambers Bay. The Department was seeking information to assist the Department in
13 determining if the caddies were covered workers. Only three individuals returned the
14 questionnaires. The Department employee conducting the review managed to get information from
15 an additional eight individuals over the phone. The Department did not conduct an audit of
16 Chambers Bay's records. As a result of this review, no assessment for industrial insurance
17 premiums was made against Chambers Bay. The only action the Department took regarding the
18 request for the review was to send a letter, on August 17, 2009, to the general manager of
19 Chambers Bay. In this letter, the Department concluded that the caddies were covered workers for
20 industrial insurance purposes. The letter went on to suggest options that Chambers Bay could
21 consider given the Department's conclusion that the caddies were covered workers. The letter took
22 no action against Chambers Bay. It is this letter from the Department that is the basis of the
23 present appeal before us.

24 In order to pursue an appeal before this Board, Chambers Bay must be aggrieved by the
25 August 17, 2009 Department letter, as that term is used in RCW 51.52.060. Additionally, a
26 justiciable controversy must exist before Chambers Bay can challenge the Department's
27 determination set out in the August 17, 2009 letter.

28 The statutes that govern appeals to this Board, RCW 51.52.050 and RCW 51.52.060,
29 provide that a "person aggrieved" by an order or decision of the Department of Labor and Industries
30 must file an appeal to this Board before appealing to the courts. We have found no cases
31 interpreting the "person aggrieved" language in RCW 51.52.050 and RCW 51.52.060.

1 The term "aggrieved party" is used in Rules of Appellate Procedure 3.1. RAP 3.1 is titled
2 "Who May Seek Review" and provides that "[O]nly an aggrieved party may seek review by the
3 appellate court." This rule applies to appeals to the appellate courts in Washington State. There
4 are a number of cases that interpret the "aggrieved party" language in RAP 3.1. Basically, the
5 courts find that an aggrieved party is one who's proprietary, pecuniary, or personal rights are
6 substantially affected. *Cooper v. Tacoma*, 47 Wn. App. 315 (1987). The courts have also held that
7 a party who is merely hurt in his or her feelings, or disappointed over a certain result, is not an
8 aggrieved party. *State v. Taylor*, 114 Wn. App. 124 (2002). We are persuaded by these decisions
9 that to be a "person aggrieved" by a decision of the Department, as that term is used in
10 RCW 51.52.050 and RCW 51.52.060, requires that the person have a proprietary, pecuniary, or
11 personal right which is substantially affected by the Department's determination.

12 Our review of the letter dated August 17, 2009, leads us to conclude that the letter is
13 advisory only. It was issued by the Department at the request of Chambers Bay. The Department
14 merely sets out its position regarding the status of the caddies as workers covered by the Industrial
15 Insurance Act, based on the information it obtained. The letter takes no action against Chambers
16 Bay. It is not an audit. No premiums are assessed as a result of the Department review.
17 Chambers Bay does not have a proprietary, pecuniary, or personal right substantially affected by
18 the statements made by the Department in the August 17, 2009 letter. Chambers Bay is not
19 aggrieved by the August 17, 2009 Department letter, as that term is used in RCW 51.52.050 and
20 RCW 51.52.060.

21 Additionally, a justiciable controversy must exist before Chambers Bay can challenge a
22 Department order or determination. In *ASARCO, Inc. v. Department of Ecology*, 145 Wn.2d 750,
23 760 (2002), the Washington Supreme Court stated,

24 [J]usticiability requires: (1) . . . an actual, present and existing dispute,
25 or the mature seeds of one, as distinguished from a possible, dormant,
26 hypothetical, speculative, or moot disagreement, (2) between parties
27 having genuine and opposing interests, (3) which involves interests that
28 must be direct and substantial, rather than potential, theoretical, abstract
or academic, and (4) a judicial determination of which will be final and
conclusive.

29 Citing *First United Methodist Church of Seattle v. Hearing Exam'r.*, 129 Wn.2d 238 (1996).

30 The letter advising Chambers Bay that the Department considers the caddies to be covered
31 workers under the Industrial Insurance Act does not create an actual dispute. The Department has
32 taken no action against Chambers Bay. There is no directive from the Department requiring

1 Chambers Bay to do anything. There has been no audit and no assessment of industrial insurance
2 premiums against Chambers Bay. The opinion of the Department that the caddies are covered
3 workers creates the possibility of a future dispute between the Department and Chambers Bay.
4 Finally, a determination by this Board regarding the letter opinion of the Department will not result in
5 a final and conclusive determination of whether a specific caddie is a covered worker, now or in the
6 future.

7 This appeal from the advisory opinion of the Department of Labor and Industries regarding
8 Chambers Bay's Caddie Program should have been denied on the basis that Chambers Bay was
9 not an aggrieved party as defined in RCW 51.52.050 and RCW 51.52.060. The confusion
10 regarding whether the appeal should have been granted and proceeded to a hearing and a
11 Proposed Decision and Order was created, in part, by the Department. We note that the letter sent
12 by the Department, dated August 17, 2009, explaining the Department's position, contains protest
13 and appeal language advising Chambers Bay that it may protest the decision to the Department or
14 appeal the decision to the Board of Industrial Insurance Appeals. The fact that the Department
15 places such appeal language on its correspondence does not create a right to appeal to this Board.
16 The rights of a party to appeal to the Board are contained in RCW 51.52.050 and RCW 51.52.060.
17 The Department should not advise parties of a right to appeal to this Board when no such right
18 exists in law.

19 Because Chambers Bay is not aggrieved by the advisory letter issued by the Department
20 and because the advisory letter does not create a justiciable controversy, this Board lacks
21 jurisdiction to hear the appeal, and the appeal is dismissed.

22 Dated: December 7, 2010.

23 BOARD OF INDUSTRIAL INSURANCE APPEALS

24
25 /s/ _____
26 DAVID E. THREEEDY Chairperson

27
28 /s/ _____
29 FRANK E. FENNERTY, JR. Member

30
31 /s/ _____
32 LARRY DITTMAN Member