

Mueller, Karl

SCOPE OF REVIEW

Employer's appeal of order that holds the claim open

The Department issued a closing order that was protested by the worker and the Department then issued an order holding the claim open. Where the employer appeals, the Board's jurisdiction extends to the date of the order under appeal, notwithstanding the fact that the Board found the claim should be closed effective the date of the first closure order.*In re Karl Mueller, BIIA Dec., 11 23759 (2013)*

Scroll down for order.

1 We previously issued a Decision and Order in this matter on March 11, 2013. We set the
2 March 11, 2013 Decision aside by Order Vacating Decision and Order dated April 9, 2013.
3 *Bergman v. Department of Labor & Indus.*, 44 Wn.2d 117 (1954). We did so because our
4 March 11, 2013 Decision and Order contains a misstatement regarding our jurisdiction in these
5 appeals.

6 We begin by again stating that we agree with the dispositions of the issues as set out in the
7 Proposed Decision and Order, as well as the rationale the industrial appeals judge used in reaching
8 his proposed decision.

9 In its May 10, 2011 order closing the claim, the Department ended Mr. Mueller's time-loss
10 compensation benefits as paid through November 29, 2010. Subsequent to a timely protest by
11 Mr. Mueller, the Department reversed that order through its order dated August 12, 2011, in which it
12 kept the claim open for treatment and directed the self-insured employer to reinstate time-loss
13 compensation benefits effective November 30, 2010. The self-insured employer appealed this
14 order to us. The appeal was granted under Docket No. 11 23759.

15 The Department also issued an order on November 10, 2011, in which it directed the
16 self-insured employer to pay time-loss compensation benefits from August 13, 2011, and to
17 continue as required by law. This order was appealed by the self-insured employer. The appeal
18 was granted under Docket No. 12 10359.

19 At an informal conference held on May 10, 2012, before Industrial Appeals Judge David K.
20 Crossland, the parties stipulated that additional time-loss compensation benefits were paid to
21 Mr. Mueller through January 24, 2011, but none thereafter. This stipulation established the initial
22 date of the time-loss compensation period at issue as January 25, 2011.

23 We dispose of these appeals as follows: In Docket No. 11 23759, we reverse the August 12,
24 2011 Department order and remand the matter to the Department to close the claim with time-loss
25 compensation benefits as paid through January 24, 2011, and not November 29, 2010, and no
26 award for permanent partial disability. The issue of entitlement to permanent total disability was not
27 before us, inasmuch as it was not included as an issue by the parties either at the May 10, 2012
28 informal conference or at the beginning of the October 26, 2012 hearing, when the issues were
29 specifically defined on the record. In Docket No. 12 10359, we reverse the November 10, 2011
30 Department order and remand to the Department to deny time-loss compensation benefits after
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1 January 24, 2011. We find that the claimant was capable of reasonably continuous employment as
2 of January 25, 2011, and not entitled to further time-loss compensation benefits.

3 In our Decision and Order dated March 11, 2013, we stated that because we found that the
4 Department was correct when it closed the claim on May 10, 2011, we lacked jurisdiction to
5 address a period of time-loss compensation after May 10, 2011, the first date the Department
6 closed the claim. This is an incorrect statement of our jurisdiction. When, as here, the Department
7 closes a claim and the closing order is timely protested by one of the parties and the Department
8 issues a further order, our jurisdiction extends to the date of the second Department order. Simply
9 stated, our jurisdiction extends to the date of the Department order on appeal. *Turner v.*
10 *Department of Labor & Indus.*, 41 Wn.2d 739 (1953); *Hyde v. Department of Labor & Indus.*, 46
11 Wn.2d 31 (1955). Although it would be factually inconsistent to award time-loss compensation
12 benefits for a period of time after we believed the claim was properly closed, we obtained
13 jurisdiction to address the time-loss compensation benefits after this date. We could have
14 determined time-loss compensation was payable after May 10, 2011, if not for our conclusion that
15 the Department properly closed the claim as of that date and time-loss compensation benefits were
16 not payable after that date. Here, the Department closed the claim by order dated May 10, 2011.
17 This order was timely protested by Mr. Mueller. The Department then issued the order on appeal
18 dated August 12, 2011. Our jurisdiction in the appeal in Docket No. 11 23759 extends to
19 consideration of benefits payable until August 12, 2011. Likewise, in Docket No. 12 10359, our
20 jurisdiction extends to November 10, 2011, the date of the order on appeal.

21 **FINDINGS OF FACT**

- 22 1. On May 7, 2012, an industrial appeals judge certified that the parties
23 agreed to include the Jurisdictional Histories in the Board record solely
24 for jurisdictional purposes.
- 25 2. Karl H. Mueller sustained an industrial injury on April 23, 2007, that
26 proximately caused conditions diagnosed as: (1) laceration to his chin;
27 and (2) head contusion with a brief period of unconsciousness.
- 28 3. As of August 12, 2011, Mr. Mueller's conditions proximately caused by
29 the April 23, 2007 industrial injury were medically fixed and stable and
30 did not require further proper and necessary treatment.
- 31 4. As of August 12, 2011, Mr. Mueller's conditions proximately caused by
32 the April 23, 2007 industrial injury did not result in any permanent partial
impairment.

- 1 5. Mr. Mueller is a 50-year-old, high school graduate with one year of
2 college, who has worked as a semi-truck driver the last 22 years, and
3 owned his own trucking business with six semi-trucks, which he sold in
4 2005. He has a current commercial driver's license, without restrictions,
5 issued in 2010 and valid until 2015. He had a prior back injury 20 years
6 ago with no documented impairment or restrictions. Mr. Mueller also
7 has preexisting high blood pressure.
6. As of August 12, 2011, Mr. Mueller had no physical or mental
7 limitations/restrictions due to the April 23, 2007 industrial injury.
- 8 7. Mr. Mueller was able to obtain and perform gainful employment on a
9 reasonably continuous basis as of January 25, 2011.

9 **CONCLUSIONS OF LAW**

- 10 1. The Board of Industrial Insurance Appeals has jurisdiction over the
11 parties and subject matter in these appeals.
- 12 2. As of August 12, 2011, Mr. Mueller was not entitled to further proper and
13 necessary treatment as authorized by RCW 51.36.010.
- 14 3. As of August 12, 2011, Mr. Mueller did not sustain a permanent partial
15 disability within the meaning of RCW 51.32.080.
- 16 4. Mr. Mueller was not a temporarily totally disabled worker within the
17 meaning of RCW 51.32.090 as of January 25, 2011.
- 18 5. The Department order dated August 12, 2011, is incorrect and is
19 reversed. This matter is remanded to the Department with direction to
20 close the claim with time-loss compensation benefits as paid through
21 January 24, 2011, and without an award for permanent partial disability.
- 22 6. The Department order dated November 10, 2011, is incorrect and is
23 reversed. This matter is remanded to the Department with direction to
24 find that Mr. Mueller was capable of reasonably continuous gainful
25 employment as of January 25, 2011, and is not entitled to time-loss
26 compensation benefits after that date.

27 DATED: April 26, 2013.

28 BOARD OF INDUSTRIAL INSURANCE APPEALS

29 /s/
30 DAVID E. THREEDY Chairperson

31 /s/
32 JACK S. ENG Member