

## **Tiffany, Ralph (Dec'd)**

---

### **DEPARTMENT**

#### **Authority to recoup overpayment of benefits**

Where the Board's Decision and Order placing the worker on a pension is reversed by a final court order, the self-insured employer is entitled to reimbursement of time-loss compensation benefits it paid for the same period the Department paid pension benefits because the time-loss compensation payments were based on an erroneous adjudication order under RCW 51.32.040(4) ....*In re Ralph Tiffany (Dec'd)*, BIIA Dec., 13 22516 (2015)

Scroll down for order.



1 Decision and Order issued on November 6, 2014, in which the industrial appeals judge affirmed the  
2 Department order dated August 23, 2013.  
3

4 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
5 no prejudicial error was committed. The rulings are affirmed.  
6

7 We have granted review because we agree with the self-insured employer that it should be  
8 entitled to recoup payments for January 22, 2010, through September 20, 2011. This is the only  
9 issue raised by Hardel in its appeal and in its Petition for Review. We set forth only those facts  
10 necessary to explain our decision.  
11

12 Mr. Tiffany succeeded at the Board in obtaining benefits as a permanently totally disabled  
13 worker and entitled to what is commonly described as pension benefits. The Board issued its  
14 Decision and Order on July 8, 2011. Hardel appealed this decision to the Lewis County Superior  
15 Court on August 2, 2011. The Department of Labor and Industries issued a ministerial order  
16 implementing the Board's order on August 23, 2011. In the Department's order, Hardel was  
17 explicitly ordered to pay temporary total disability benefits or time-loss compensation benefits from  
18 March 30, 2009, through January 20, 2010. Pension benefits were effective January 21, 2010.  
19 Both the Department and Hardel paid benefits to Mr. Tiffany starting on January 21, 2010.  
20 Mr. Tiffany was not entitled to double payments. Sometime later in September 2011, the  
21 Department learned that Hardel was also paying Mr. Tiffany. Because the Department was paying  
22 the required pension benefits, Hardel's payments were characterized as time-loss compensation  
23 benefits. When it discovered that the Department was paying Mr. Tiffany, Hardel made no further  
24 payments to him after September 20, 2011.  
25

26 On October 21, 2011, the Department issued an order notifying Mr. Tiffany that he was paid  
27 time-loss compensation benefits from January 21, 2010, through September 20, 2011, at the same  
28 time he was receiving pension benefits, resulting in an overpayment of \$76,621.67. The  
29 Department advised Mr. Tiffany that the overpayment would be deducted from his monthly pension  
30 benefits and returned to the employer on collection. The Department did not declare that the  
31 overpayment resulted from adjudicator error. This is the same period and the same benefits that  
32 the Department later determined to result from adjudicator error as provided by  
33 RCW 51.32.240(1)(b). No party filed an appeal from the October 21, 2011 order.  
34

35 On April 20, 2012, the Lewis County Superior Court entered a judgment reversing the  
36 Board's Decision and Order of July 8, 2011. Following entry of Department orders implementing  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47

1 the Lewis County Superior Court judgment, Hardel filed an appeal with the Board subsequently  
2 resolved through entry of an Order on Agreement of Parties dated August 12, 2013. On August 23,  
3 2013, the Department entered an order implementing the parties' agreement. In this order, the  
4 Department established three separate overpayments:  
5

6  
7 An overpayment in the amount of \$36,521.13 exists for time-loss compensation  
8 payments made by the Employer for the period 03/30/09 through 01/20/10, and these  
9 payments were made due to an erroneous adjudication pursuant to  
10 RCW 51.32.240(4).  
11

12 An overpayment in the amount of \$63,034.53 exists for pension payments made by  
13 the Department for the period 01/21/10 through 05/05/12 and these payments were  
14 made due to an erroneous adjudication pursuant to RCW 51.32.240(4).  
15

16 An overpayment in the amount of \$76,503.09 exists for time-loss compensation  
17 payments made by the Employer for the period 01/22/10 through 09/20/11, and that  
18 these payments were made due the Employer's adjudicator error pursuant to  
19 RCW 51.32.240(1).  
20

21 The payments that are the focus of this appeal are limited to the period January 21, 2010, through  
22 September 20, 2011. The Department characterized its payments to Mr. Tiffany as pension  
23 benefits and Hardel's payments to him as time-loss compensation benefits. This distinction is  
24 important because it distinguishes the double payments received by Mr. Tiffany. The Department  
25 determined in the October 21, 2011 order that Mr. Tiffany received an overpayment of time-loss  
26 compensation benefits (paid by Hardel) because he was also receiving pension benefits (paid by  
27 the Department). The period of overpayment covered by the October 21, 2011 order is the same  
28 period covered by the order on appeal except for a slight discrepancy in the start date of the  
29 benefits. It is not clear to us why the Department used the start date of January 22, 2011 in the  
30 order on appeal when the Department, Board, and Superior Court orders all previously referenced  
31 January 21, 2010.  
32

33 The October 21, 2011 Department order has res judicata effect. In support of our own  
34 jurisdiction and scope of review, we can review the Department record.<sup>1</sup> In conducting such a  
35 review we found that in its October 21, 2011 order the Department declared that the overpayment  
36 would be deducted from Mr. Tiffany's pension payments and returned to the employer. The  
37 Department included in this order additional language regarding Mr. Tiffany's failure to repay the  
38 amount. Our review reveals no protest or appeal to this order by any of the parties.  
39  
40  
41  
42  
43  
44  
45

46  
47 <sup>1</sup> *In re Mildred Holzerland*, BIIA Dec., 15,729 (1965).

1 The industrial appeals judge determined this order was not entitled to res judicata effect  
2 because it did not detail the wage calculations on which the benefits were based.<sup>2</sup> However, the  
3 wage rate had been calculated in the Department order of August 4, 2008.<sup>3</sup> The order of  
4 October 21, 2011, was an overpayment order based on the wage and time-loss compensation  
5 benefits calculations already determined by the Department. The October 21, 2011 order is final  
6 and binding to all parties, including the Department, to the effect that the employer, Hardel, may  
7 receive reimbursement for the overpayments made to Mr. Tiffany.<sup>4</sup> The Department ruled on  
8 Hardel's right to receive repayment or reimbursement and cannot now change that determination.  
9

10 We wish to address the question of adjudicator error. Whether the overpayment of benefits  
11 was due to adjudication error or an erroneous adjudication affects Hardel's ability to recoup. If the  
12 overpayment was due to adjudicator error, the Department is prevented from assessing an  
13 overpayment.<sup>5</sup> This restriction on recoupment of benefits does not apply if the benefits were paid  
14 due to an erroneous adjudication.<sup>6</sup> Hardel paid benefits from January 21, 2010, through  
15 September 20, 2011, because the Board found Mr. Tiffany to be permanently totally disabled. This  
16 Board's decision was eventually superseded by the Lewis County's superior court's finding that  
17 Mr. Tiffany was not a permanently totally disabled worker. Therefore, any interim benefits paid to  
18 Mr. Tiffany based on the Board's order of July 8, 2011, were due to an erroneous adjudication that  
19 Mr. Tiffany was entitled to such benefits. Even assuming adjudicator error, no payments would  
20 have been made to Mr. Tiffany absent the erroneous adjudication of the Board. Once the Board's  
21 decision was reversed by the superior court, Hardel should be entitled to recover all payments. The  
22 erroneous adjudication precedes any alleged adjudicator error. Hardel would not have paid the  
23 benefits but for the erroneous adjudication.  
24

25 In summary, the Department previously determined that Hardel was entitled to  
26 reimbursement for the time-loss compensation benefits paid to Mr. Tiffany from January 21, 2010,  
27 through September 20, 2011. That determination, as indicated by the order of October 21, 2011, is  
28 final and binding. The Department cannot now alter Hardel's right to receive reimbursement. The  
29 Department possessed all the facts pertaining to the overpayment as of its October 21, 2011 order  
30 and did not assert adjudicator error. This finding and conclusion resolves the issues before us.  
31

32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44 <sup>2</sup> *In re Louise Scheeler*, BIIA Dec., 89 0609 (1990).

45 <sup>3</sup> *In re Tex Prewitt*, BIIA Dec., 95 2064 (1996).

46 <sup>4</sup> *Marley v. Department of Labor & Indus.*, 125 Wn.2d 533 (1994).

47 <sup>5</sup> RCW 51.32.240(1)(b).

<sup>6</sup> RCW 51.32.240(4).

1 Even though we find that Hardel's right to receive repayment of time-loss compensation  
2 benefits is established by the order of October 21, 2011, we also conclude that the payments were  
3 made pursuant to an erroneous adjudication .  
4

5 The Department order dated August 23, 2013, should be reversed to the extent that Hardel  
6 be allowed to claim the overpayment of benefits paid to Mr. Tiffany for January 21, 2010, through  
7 September 20, 2011, under the Department order dated October 21, 2011.  
8  
9

10 **FINDINGS OF FACT**

- 11 1. On January 21, 2014, an industrial appeals judge certified that the  
12 parties agreed to include the Jurisdictional History in the Board record  
13 solely for jurisdictional purposes.
- 14 2. On June 26, 2006, Ralph I. Tiffany injured his low back in the course of  
15 his employment with Hardel Mutual Plywood Corporation.
- 16 3. Under a July 8, 2011 Board Decision and Order finding Mr. Tiffany  
17 entitled to time-loss compensation benefits from March 30, 2009,  
18 through January 20, 2010, and determining Mr. Tiffany was entitled to a  
19 pension benefit effective January 21, 2010, the self-insured employer  
20 made payments to Mr. Tiffany.  
21
- 22 4. The Department learned that the self-insured employer was making  
23 payments to Mr. Tiffany for January 21, 2010, through September 20,  
24 2011. The Department issued an order dated October 21, 2011, in  
25 which it determined that an overpayment of pension benefits for this  
26 period totaling \$76,621.67; directed Mr. Tiffany repay this amount; and  
27 the overpayment would be returned to the employer.  
28
- 29 5. In its order dated October 21, 2011, the Department included language  
30 advising the parties that a request for reconsideration or appeal must be  
31 filed in writing within 60 days of the date the order is communicated to  
32 the parties.  
33
- 34 6. The Department order of dated October 21, 2011 was not protested or  
35 appealed by any party.
- 36 7. The self-insured employer, Hardel Mutual Plywood Corp., appealed the  
37 Board's Decision and Order to Lewis County Superior Court on  
38 August 2, 2011.
- 39 8. On April 20, 2012, the Lewis County Superior Court entered a judgment  
40 in which it reversed the Board's Decision and Order of July 8, 2011, and  
41 found that the claimant, Mr. Tiffany, was not entitled to benefits as a  
42 permanently totally disabled worker as of January 21, 2010.  
43

44 **CONCLUSIONS OF LAW**

- 45 1. The Board of Industrial Insurance Appeals has jurisdiction over the  
46 parties and subject matter in this appeal.  
47

- 1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47
2. The Department order dated October 21, 2011, is final and binding as a matter of law.
  3. The self-insured employer's payment of time-loss compensation benefits to Mr. Tiffany from January 21, 2010, through September 20, 2011, was made under an erroneous adjudication and was not based on adjudicator error.
  4. The Department's order dated August 23, 2013, is incorrect and is reversed. This matter is remanded to the Department to find that the self-insured employer, Hardel Mutual Plywood Corporation, is entitled to reimbursement for the time-loss compensation benefits paid to Ralph I. Tiffany for January 21, 2010, through September 20, 2011. The Department is to affirm the other provisions of the August 23, 2013 order.

Dated: March 16, 2015.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/ \_\_\_\_\_  
DAVID E. THREEEDY Chairperson

/s/ \_\_\_\_\_  
JACK S. ENG Member