

Wright, Ellen

TIME-LOSS COMPENSATION (RCW 51.32.090)

Stay at work (RCW 51.32.090(4))

Under the provisions of the so called "stay at work" law, RCW 51.32.090(4), an employer may receive reimbursement for keeping an injured worker at work for periods prior to receipt of the attending physician's approval of the job. ...***In re Ellen Wright, BIIA Dec., 15 19928 (2016)*** [*Editor's Note: The Board's decision was appealed to superior court under Kitsap County Cause No. 16-2-02175-3.*]

Scroll down for order.

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

1 **IN RE: ELLEN E. WRIGHT**)
2)
3 **CLAIM NO. AU-67653**) **DOCKET NO. 15 19928**
4) **DECISION AND ORDER**

5 The issue presented by this appeal is whether the stay-at-work provision of the Industrial
6 Insurance Act (RCW 51.32.090(4)) entitles Ellen Wright's employer, Holly Ridge Center, to
7 reimbursement for wages it paid to Ms. Wright for nine days in October 2014 when Ms. Wright,
8 returned to light-duty work. The Department determined Holly Ridge was not entitled to
9 reimbursement for the period at issue because the employer had not provided the attending medical
10 provider with a formal job description for the light-duty job before the worker began the light-duty
11 work. We disagree. The Department's order dated August 28, 2015, is **REVERSED AND**
12 **REMANDED** with direction to pay Holly Ridge Center wage reimbursement benefits for the period at
13 issue.
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DISCUSSION

19 This case was submitted for decision based on stipulated facts. The Department and the
20 employer, Holly Ridge Center, have stipulated to the following facts:
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23 Ellen Wright was injured on October 15, 2014, while in the course of her employment
24 with Holly Ridge Center, Inc. She filed an application for industrial insurance benefits
25 on October 16, 2014, which was allowed by order dated October 22, 2014.
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27 Beginning on October 16, 2014, Ms. Wright's attending provider placed restrictions on
28 her work activities.

29 Ms. Wright returned to work in a light-duty job with Holly Ridge Center on October 20,
30 2014. She continued working in that capacity through November 19, 2014. As of
31 October 31, 2014, Ms. Wright's attending physician had not reviewed a written
32 description of the job to which Ms. Wright returned. The job to which Ms. Wright
33 returned was consistent with the restrictions Ms. Wright's attending physician had
34 placed on her on October 16, 2014.

35 On November 3, 2014, Holly Ridge Center provided Ms. Wright's attending provider
36 with a description of a light-duty job they had offered her, and the attending provider
37 approved the job for Ms. Wright. On that same day, Ms. Wright met with her attending
38 provider, and the provider's chart notes indicate that "she is working under
39 restrictions." In August 2015, Ms. Wright's attending provider agreed that Ms. Wright
40 could do the light-duty job from October 20, 2014, through October 31, 2014.
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42 On May 14, 2015, Holly Ridge Center applied for stay-at-work wage reimbursement
43 benefits. The application showed that Ms. Wright worked the light-duty job her
44 attending provider had approved for twenty days between October 20, 2014, and
45 November 19, 2014.
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1 The Department paid reimbursement benefits for the 11 days requested in
2 November 2014, but denied reimbursement benefits for the 9 days requested in
3 October.

4 The parties also agreed to the admission of four pages of exhibits attached to Exhibit No. 5
6 (Ms. Wright's stipulation) into the Board's record. This material includes:

7 A copy of the June 8, 2015 order determining the employer was not eligible for
8 reimbursement for October 20, 21, 22, 23, 27, 28, 29, 30, and 31 and stated "the
9 Department cannot reimburse for dates prior to the day the light duty job description
10 was sent to the attending physician."
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12 A copy of a fax signed by Dr. Parminder Singh on August 5, 2015, in which the doctor
13 states "Ms. Wright was able to work the light duty described on the Employer's Job
14 Description from October 20, 2014, to October 26, 2014."

15 A copy of a fax signed by ARNP Edward Seiner indicating his agreement that
16 "Ms. Wright was able to work the light duty described on the employer's Job
17 Description, signed 11/03/14, effective 10/27/14."
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19 A copy of the Department's August 28, 2015 order affirming the June 8, 2015 stay at
20 work denial.

21 This appeal calls upon us to interpret the application of the stay-at-work program outlined in
22 RCW 51.32.090 as applied to the stipulated facts. RCW 51.32.090(4)(a) provides:

23 The legislature finds that long-term disability and the cost of injuries is significantly
24 reduced when injured workers remain at work following their injury. To encourage
25 employers at the time of injury to provide light duty or transitional work for their
26 workers, wage subsidies and other incentives are made available to employers
27 insured with the department.
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29 The statute provides financial incentive for employers to provide light-duty work to keep injured
30 workers working after an injury. RCW 51.32.090(4)(c) provides:

31 To further encourage employers to maintain the employment of their injured workers,
32 an employer insured with the department and that offers work to a worker pursuant to
33 this subsection (4) shall be eligible for reimbursement of the injured worker's wages
34 for light duty or transitional work equal to fifty percent of the basic, gross wages paid
35 for that work, for a maximum of sixty-six workdays within a consecutive twenty-four
36 month period.
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38 The Department takes the position that RCW 51.32.090 requires the employer to take certain
39 steps in the correct order to be entitled to stay-at-work reimbursement. In particular, the Department
40 insists that the provisions of RCW 51.32.090(4)(b) require the employer to provide the attending
41 medical provider a formal job description for the light-duty job being offered to the injured worker.
42 According to the Department, the doctor must sign off or approve the light-duty job description prior
43 to the employer being entitled to the stay-at-work reimbursement.
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1 It is the employer's position that it should be entitled to wage reimbursement so long as it
2 provides light-duty work to the injured worker that conforms to the restrictions outlined by the treating
3 provider in an activity prescription form and that approval by the provider of a more formal job
4 description may occur retroactively.
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7 We agree with the employer that the Department's interpretation would serve to delay return
8 to work even when the doctor has already approved light-duty or modified work for the injured worker.
9 In other words, denying reimbursement for work performed prior to formal approval of a job
10 description could result in more time loss and a delay in a worker's return to work.
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13 To date, the stay-at-work provision has been the subject of only one reported decision. In
14 *Cascadian Building Maintenance*¹ the employer appealed the Department's withholding
15 reimbursement for the first three days following an industrial injury. It was the Department's position
16 that because injured workers were not entitled to time-loss compensation benefits for the first three
17 days after injury, the employer should not be entitled to wage reimbursement for the first three days
18 even though the worker had returned to light-duty work and had been paid by the employer for those
19 days. The court determined that the Department's interpretation of the statute was inconsistent with
20 the legislature's intent "to encourage uninterrupted employment . . . the plain language thus
21 incentivizes an employer's continuous employment of an injured employee, not a return to light duty
22 after three days."²
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28 Allowing retroactive reimbursement as encouraged by the employer in Ms. Wright's case
29 advances the stay-at-work goal without compromising any of the safeguards for injured workers as
30 long as the modified work provided to the employee is in conformity with the limitations noted in the
31 attending provider's work release or activity prescription form. The object of the statute is to keep
32 injured workers working. This goal is better served by eliminating obstacles that serve to delay return
33 to work without benefiting the worker or the employer.
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37 Ellen Wright was able to return to work at light duty on October 20, 2014, with the approval of
38 her attending providers. She continued to work in this capacity through November 19, 2014. It was
39 not until November 3, 2014, that the employer provided Ms. Wright's attending provider with a
40 light-duty job description. This job was subsequently approved by Ms. Wright's attending providers.
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45 ¹ *Department of Labor & Indus. v. Cascadian Bldg. Maint.*, 185 Wn. App. 643 (2015). And see *In re Norma Tellez*, BIIA
46 Dec., 12 14405 (2013).

47 ² *Cascadian* at 651.

1 Ms. Wright's employer retroactively applied for wage reimbursement for the period October 20,
2 2014, through November 19, 2014. The Department paid reimbursement benefits for the 11 days
3 requested for November but not for the 9 days requested for light-duty work provided in October.
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5 We determine that because Ms. Wright's medical providers approved her return to work on
6 light duty on October 20, 2014, and ongoing, the employer is entitled to wage reimbursement
7 pursuant to the statute. RCW 51.32.090(4)(a) does not require an attending provider to sign off on a
8 formal job description prior to return to work at a modified job in order for the employer to benefit from
9 the wage reimbursement provisions.
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11 **DECISION**

12 In Docket No. 15 19928, the employer, Holly Ridge Center, filed an appeal with the Board of
13 Industrial Insurance Appeals on September 2, 2015, from an order of the Department of Labor and
14 Industries dated August 28, 2015. In this order, the Department affirmed its order denying stay-at-
15 work reimbursement for October 20, 2014, through October 23, 2014, and October 27, 2014, through
16 October 31, 2014. This order is incorrect and is reversed and remanded to the Department to allow
17 for stay-at-work reimbursement for these periods.
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19 **FINDINGS OF FACT**

- 20 1. On April 4, 2016, an industrial appeals judge certified that the parties
21 agreed to include the Jurisdictional History in the Board record solely for
22 jurisdictional purposes.
23
- 24 2. Ellen E. Wright was injured on October 15, 2014, while in the course of
25 her employment with Holly Ridge Center.
26
- 27 3. Ms. Wright filed an application for industrial insurance benefits, which was
28 allowed by the Department on October 22, 2014.
29
- 30 4. Ms. Wright returned to work in a light-duty position with Holly Ridge
31 Center on October 20, 2014, with approval of her attending provider. She
32 continued to work in that capacity through November 19, 2014
33
- 34 5. As of October 31, 2014, Ms. Wright's attending physician had not
35 reviewed a written description of the job to which Ms. Wright returned, but
36 the job was consistent with the restrictions placed on Ms. Wright by her
37 attending physician on October 16, 2014.
38
- 39 6. On November 3, 2014, Holly Ridge Center provided Ms. Wright's
40 attending provider with a description of a light-duty job they had offered
41 her and the attending provider approved the job for Ms. Wright.
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- 43 7. In August 2015 Ms. Wright's attending provider agreed that Ms. Wright
44 could perform the light-duty job from October 20, 2014, through
45 October 31, 2014.
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- 1 8. On May 14, 2015, Holly Ridge Center applied for stay-at-work wage
2 reimbursement benefits. The application showed that Ms. Wright worked
3 the light-duty job her attending provider had approved for 20 days
4 between October 20, 2014, and November 19, 2014.
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6 9. The Department paid reimbursement benefits for the 11 days requested
7 for November 2014 but denied reimbursement benefits for the 9 days
8 requested for October 2014.

9 **CONCLUSIONS OF LAW**

- 10 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
11 and subject matter in this appeal.
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13 2. Pursuant to RCW 51.32.090, the employer, Holly Ridge Center, is entitled
14 to stay-at-work reimbursement for Ms. Wright's wages for light-duty work
15 equal to 50 percent of the gross wages paid for that work for the dates
16 she worked in October 2014 (October 20, 21, 22, 23, 27, 28, 29, 30, and
17 31) as well as for the dates she worked light duty in November 2014.
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19 3. The Department order dated August 28, 2015, is incorrect and is reversed
20 and remanded to the Department to pay Holly Ridge Center
21 wage-reimbursement benefits under the stay-at-work provisions of
22 RCW 51.32.090 for the dates October 20, 21, 22, 23, 27, 28, 29, 30, and
23 31, 2014.

24 Dated: November 4, 2016.

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26 BOARD OF INDUSTRIAL INSURANCE APPEALS
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30 /s/ _____
31 DAVID E. THREEDY Chairperson
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35 /s/ _____
36 JACK S. ENG Member
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**Addendum to Decision and Order
In re Ellen E. Wright
Docket No. 15 19928
Claim No. AU-67653**

Appearances

Claimant, Ellen E. Wright, Pro Se

Employer, Holly Ridge Center, Inc., by Approach Management Services, per Jennifer Gulbin,
Lay Representative

Retro Group, Approach Management Services, by Holmes Weddle & Barcott, P.C., per Ann M.
Silvernale

Department of Labor and Industries, by The Office of the Attorney General, per James S.
Johnson

Petition for Review

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The employer, Holly Ridge Center, through Approach Management Services filed a timely Petition for Review of a Proposed Decision and Order issued on June 14, 2016, in which the industrial appeals judge affirmed the Department order dated August 28, 2015. The Department filed a response to the petition for review on August 22, 2016.