

Hill, Roy

PROTEST AND REQUEST FOR RECONSIDERATION (RCW 51.52.050)

Contents

A letter requesting the Department approve a knee surgery is not a protest of an order setting wages because it did not put the Department on notice that the worker sought action inconsistent with the wage order. ...*In re Roy Hill, BIA Dec., 15 22318 (2016)* [Editor's Note: The Board's decision was appealed to superior court under Jefferson County Cause No. 16-2-00182-2.]

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

1 **IN RE: ROY L. HILL**)
2)
3 **CLAIM NO. AQ-84215**)
4)
5 **DOCKET NO. 15 22318**
6)
7 **DECISION AND ORDER**

8 The only issue in this appeal is whether Roy L. Hill filed a timely Protest and Request for
9 Reconsideration to a wage order issued by the Department of Labor and Industries (Department) on
10 January 14, 2015. Mr. Hill presented two theories: (1) the order was not communicated to him within
11 the meaning of RCW 51.52.050(1) because of his learning disability or, alternatively, (2) that his
12 March 11, 2015 letter was a timely protest. The Department asserted the January 14, 2015 order
13 was mailed and received at the correct address and no timely appeal was filed by Mr. Hill. The
14 Department Order is **AFFIRMED**.

DISCUSSION

15 At hearing Mr. Hill raised the questions of whether the January 14, 2015 Department wage
16 order (Exhibit 11) was communicated to him due to his learning disability, or whether Mr. Hill's letter
17 dated March 11, 2015 (Exhibit 15) should be considered a protest to the January 14, 2015
18 Department order. Our industrial appeals judge found that Mr. Hill's March 11, 2015 letter was a
19 timely protest to the January 14, 2015 Department order.

20 The facts of the case show that the January 14, 2015 Department order was properly
21 communicated to Mr. Hill even though he had a learning disability. Although the original mailing of
22 the January 14, 2015 order was returned to the Department, it was remailed to Mr. Hill with his
23 updated address on February 9, 2015. Nothing in the record indicates that the letter was again
24 returned to the Department. Mr. Hill initially testified that he did not receive a wage order in January or
25 February 2015. Mr. Hill then recalled receiving a letter that he wanted his mother to read to him. He
26 even telephoned the Department about the letter.

27 Due to his reading and comprehension difficulties, Mr. Hill wanted his mother to read the letter
28 to him but she was not available. Mr. Hill testified that he recognized the envelope to know when a
29 mailing was from the Department, and he was aware he needed to have it explained to him and to
30 find out what it was about. It should be noted that Mr. Hill's March 11, 2015 letter was accompanied
31 by three other letters; one from his mother, one from his sister, and one from a family friend. Although
32 Mr. Hill indicated his mother was not available to read the January 14, 2015 letter to him, there is no
33 evidence as to whether these other individuals known to him were unavailable as well.

1 Taken as a whole, the evidence shows that the Department communicated the January 14,
2 2015 order to Mr. Hill's correct address on February 9, 2015. As the Board has long held, proof that
3 a Department order was mailed on a particular date, with proper address and sufficient postage,
4 creates a presumption the order was received in the due course of mailing. No persuasive testimony
5 or other evidence was presented to overcome the presumption.¹
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9 The January 14, 2015 Department order was communicated to Mr. Hill on February 9, 2015,
10 after it was remailed to Mr. Hill following his change of address. Mr. Hill sent a letter to the Department
11 dated March 11, 2015. The parties stipulated at hearing that the March 11, 2015 letter (Exhibit 15)
12 was received by the Department within 60 days of the order dated January 14, 2015. Mr. Hill began
13 the letter with the phrase, "This is my written request for reconsideration with the Department of L&I"
14 (Exhibit 15). Mr. Hill's letter goes on at length regarding Mr. Hill's surgeon and treatment concerns.
15 Multiple letters from other individuals accompanied the March 11, 2015 letter. Notably, the March 11,
16 2015 letter does not reference the January 15, 2015 Department order. Also, it does not mention
17 anything about wages, wage calculations, or a wage order. The next possible protest of the
18 January 14, 2015 order was the protest letter from Mr. Hill's attorney dated September 28, 2015
19 (Exhibit 17), which is well beyond the 60-day time limit.
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22 The Board has pointed out that a Protest and Request for Reconsideration, ". . . is sufficient if
23 the Department receives a written document, filed within the time allowed by law, which is reasonably
24 calculated to put the Department on notice that the party submitting the document is requesting action
25 inconsistent with the Department."² *In re Anderson*³ is another case where the Board discussed the
26 content required for a valid protest. In *Anderson*, the Board found a general protest letter was a
27 timely filed protest to an order where the Department set forth the claimant's time-loss compensation
28 rate because the protest showed the employer understood from the order that the Department
29 planned on charging a considerable amount of time-loss compensation benefits to its account.⁴
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32 In the present case, no such adverse language is found in the March 11, 2015 letter from
33 Mr. Hill, nor in the letters sent with the March 11, 2015 letter. The March 11, 2015 letter merely
34 requested that the Department approve a knee replacement surgery and discussed delay in
35 treatment. Unlike the situation in *Anderson*, the March 11, 2015 letter with attachments contains no
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45 ¹ *In re Edward Morgan*, BIIA Dec., 09,667 (1959).

46 ² *In re Mike Lambert*, BIIA Dec., 91 0107 (1991).

47 ³ *In re David E. Anderson*, Dckt No. 02 17664 (October 19, 2004).

⁴ *Anderson*, at 2.

1 language to reasonably put the Department on notice that Mr. Hill sought action inconsistent with the
2
3 January 14, 2015 wage order.

4 **DECISION**

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6 In Docket No. 15 22318, the claimant, Roy L. Hill, filed a protest with the Department of Labor
7 and Industries on October 12, 2015. The Department forwarded it to the Board of Industrial Insurance
8 Appeals as an appeal. The claimant appeals a Department order dated October 7, 2015. In this
9 order, the Department declined to reconsider a wage order dated January 14, 2015 because the
10 claimant's protest was not received within the 60-day time limitation. This order is correct and is
11 affirmed.
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14 **FINDINGS OF FACT**

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16 1. The Department of Labor and Industries issued an order on January 14,
17 2015. This notice was mailed to an address where the claimant, Roy L.
18 Hill, did not reside.
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20 2. On February 3, 2015, Mr. Hill provided the Department with his correct
21 mailing address.
- 22
23 3. On February 9, 2015, the Department mailed the January 14, 2015 order
24 to Mr. Hill's correct mailing address.
- 25
26 4. On March 11, 2015, Mr. Hill's mother drafted a letter for Mr. Hill that
27 stated, "This is my written request for reconsideration with the Department
28 of L&I." Letters from other individuals were attached to the March 11,
29 2015 letter.
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31 5. The March 11, 2015 letter and attachments from Mr. Hill was received by
32 the Department of Labor and Industries within 60 days of January 14,
33 2015.
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35 6. The March 11, 2015 letter and attachments from Mr. Hill do not reference
36 the January 15, 2015 Department order. Also, they do not mention
37 anything about wages, wage calculations, or a wage order.
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39 7. The March 11, 2015 letter and attachments contain no language to
40 reasonably put the Department on notice that Mr. Hill sought action
41 inconsistent with the January 14, 2015 wage order.
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3 **CONCLUSIONS OF LAW**
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- 5 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
6 and subject matter in this appeal.
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8 2. Roy L. Hill did not file a timely Protest and Request for Reconsideration
9 with the Department from the Department order dated January 14, 2015,
10 within the meaning of RCW 51.52.050.
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12 3. The Department order dated October 7, 2015, is correct and is affirmed.

13 Dated: October 3, 2016.

14 BOARD OF INDUSTRIAL INSURANCE APPEALS

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17 /s/ _____
18 DAVID E. THREEDY Chairperson

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22 /s/ _____
23 JACK S. ENG Member
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Addendum to Decision and Order
In re Roy L. Hill
Docket No. 15 22318
Claim No. AQ-84215

Appearances

Claimant, Roy L. Hill, by Law Office of William D. Hochberg, per William D. Hochberg

Employer, Various Employers, None

Department of Labor and Industries, by The Office of the Attorney General, per Charlotte Ennis
Clark-Mahoney

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 Department filed a timely Petition for Review of a Proposed Decision and Order issued on July 1, 2016, in which the industrial appeals judge reversed and remanded the Department order dated October 7, 2015. The claimant filed a Response to the Department's Petition for Review.

Evidentiary Rulings

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