Hall, Stan

TIMELINESS OF CLAIM (RCW 51.28.050; RCW 51.28.055)

Filing

A claim is not filed with the Department until it is received by the Department. An accident report mailed within one year of the industrial injury but received by the Department more than one year after the industrial injury is untimely and the claim must be rejected. **….*In re Stan Hall*, BIIA Dec., 36,628 (1971)** [*Editor's Note*: To the extent it is inconsistent, *Hall* was overruled by *In re Gwen Carey*, BIIA Dec., 03 13790 (2005).]

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: STAN R. HALL	**)**	**DOCKET NO. 36,628**
	)	
CLAIM NO. F-919405	**)**	**DECISION AND ORDER**

APPEARANCES:

Claimant, Stan R. Hall, by
Gosta E. Dagg

Employer, Municipality of Metropolitan Seattle
None
(In attendance: Winston Chick, Personnel Manager)

Department of Labor and Industries, by
The Attorney General, per
Edward G. Gough, Assistant

This is an appeal filed by the claimant on August 7, 1970, from an order of the Department of Labor and Industries dated June 11, 1970, which held the Department's prior order dated May 18, 1970, for naught and rejected the claim and ordered refund of prior overpayment to claimant of $141.85 previously paid for time-loss compensation, said rejection of claim and said order for refund being on the ground that "no claim has been filed by said workman within one year after the day upon which the alleged injury occurred." **SUSTAINED**.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Statement of Exceptions filed by the claimant to a Proposed Decision and Order issued by a hearing examiner for this Board on May 10, 1971, in which the order of the Department dated June 11, 1970, was sustained.

The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no prejudicial error was committed and said rulings are hereby affirmed.

The record establishes that the claimant sustained an injury to the left knee on March 3, 1969, in the course of his employment with the Municipality of Metropolitan Seattle. A report of accident with regard to that injury was signed and placed in the mail by the claimant's attending physician, Dr. E. P. Palmason, on March 2, 1970. The report of accident was stamped as having been received by the Department at its Olympia Office on March 5, 1970. On May 18, 1970, an order was entered by the Department terminating time-loss compensation for the period from March 28, 1970 to April 19, 1970, with the order reflecting that the claimant was injured on March 3, 1970,

rather than March 3, 1969, as ultimately established. On June 11, 1970, the Department issued an order holding the order of May 18, 1970 for naught and rejecting the claim for the reason that no claim had been filed by the workman within one year after the day upon which the alleged injury occurred. The claimant, having taken exceptions from the examiner's Proposed Decision and Order sustaining the Department's order of June 11, 1970, urges for consideration two points of view; first, that the record before the Board establishes that the claimant's claim with respect to the injury which he sustained on March 3, 1969, was timely filed within the meaning of RCW Section 51.28.050, the interpretation of which should be the subject of liberal construction, and, secondly, in the event it be determined that claim was not timely filed, the Department should be held to its order of March 18, 1970, which in effect allowed the claim. On this latter point, the claimant contends that the Department once having allowed the claim no longer has the legal authority to rescind its action, having allowed more than sixty days to lapse following its action.

As noted, the record establishes that the claimant was injured in the course of his employment with Municipality of Metropolitan Seattle on March 3, 1969, and that his attending physician, Dr. Palmason, placed in the mail a report of accident with regard to that injury on March 2, 1970. The record further indicates that the parties stipulated that had a witness been called by the Department, that witness would have testified that the claimant's report of accident was received by the Department on March 5, 1970. RCW Section 51.28.050 provides:

> "No application [for compensation] shall be valid or claim thereunder enforceable unless filed [with the Department] within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued."

Under the fact pattern outlined and under the statute as quoted, it would be incumbent upon the claimant to establish that the report of accident was mailed on March 2, 1970, which he has done, and that in the ordinary course of business, the Department would have timely received that application on March 3, 1970. The latter element is lacking and there is nothing to rebut the Department's contention that the report of accident was received on the same date that it was logged in namely, March 5, 1970. The statute quoted is jurisdictional in character and the claimant has failed to establish the timely filing of his claim.

The doctrine of liberal construction urged by the claimant is not applicable in this instance in that the doctrine applies to those who have established their entitlement to benefits under the Workmen's Compensation Act. Those claiming rights under the Act will be held to strict proof of

their right. Olympia Brewing Company v. Department of Labor and Industries (1949) 34 Wn. 2d 498. This Board cannot apply a doctrine of liberal construction to cases such as this one in view of our Supreme Court's determination that it is incumbent upon the claimant to timely file his claim and that the Department has no power to make exceptions to the statute for "equitable reasons". Pate v. General Electric Co., (1953) 43 Wn. 2d 185. Essentially the same position was taken earlier by the Court in Wheaton v. Department of Labor and Industries, (1952) 40 Wn. 2d 56, when the Court held that the timely filing of a claim was a limitation on the right to compensation and that unless the claim was timely filed, the right was extinguished. In the Wheaton case, the Department had allowed the claim, provided medical treatment, and a subsequent application to reopen for aggravation of condition had been allowed when the Department's jurisdiction was challenged successfully for the reason that the claim had not been filed within the one-year period required by statute.

The Department's order of June 11, 1970, should be sustained in accord with the findings and conclusions as hereinafter set forth.

FINDINGS OF FACT

After a careful review of the entire record herein, this Board finds as follows:

1. On March 3, 1969, the claimant, Stan R. Hall, sustained an injury to the left knee in the course of his employment with the Municipality of Metropolitan Seattle. Acting on a report of accident with reference to that injury marked as having been received by the Department of Labor and Industries at its Olympia Office on March 5, 1970, the Department paid time-loss compensation to the claimant for the period from March 28, 1970 to April 19, 1970, pursuant to an order dated May 18, 1970, which indicated thereon that the claimant had sustained his injury on March 3, 1970. Thereafter on June 11, 1970, the Department issued an order holding the order of May 18, 1970 for naught and rejecting the claim for the reason that no claim had been filed with the Department within one year after the date upon which the injury occurred. The order of June 11, 1970, further directed repayment of time-loss compensation previously paid in the sum of $141.85. From that order, the claimant appealed to this Board on August 7, 1970, which granted the appeal by order dated October 9, 1970.

2. Claimant's claim, based upon his alleged industrial injury, claimed by claimant to have occurred on March 2 or 3, 1969, (but over date of claimant's signature of March 2, 1970, on exhibit four showing date of injury as "5 mo ago" - which quoted statement appears on exhibit four, said accident report form) was filed with the Department as received from claimant on March 5, 1970.

3. The claimant's report of accident with reference to his injury of March 3, 1969, was placed in the United States Mail by his attending physician, Dr. E. P. Palmason, on Monday, March 2, 1970. The claimant's report of accident was received by the Department at its Olympia Office on Thursday, March 5, 1970.

4. The claimant's claim with reference to his injury of March 3, 1969, was not timely filed as required by RCW Section 51.28.050.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, this Board concludes:

1. This Board has jurisdiction of the parties and the subject matter of this appeal.

2. The order of the Department of Labor and Industries entered herein on June 11, 1970, is correct and the same is hereby sustained.

It is so ORDERED.

Dated this 20th day of September, 1971.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
ROBERT C. WETHERHOLT Chairman

/s/_____
R.H. POWELL Member