**TIME-LOSS COMPENSATION (RCW 51.32.090)**

Provisional time-loss compensation (RCW 51.32.190(3) and RCW 51.32.210)

Provisional time-loss compensation is payable until the Department issues a determinative order of allowance or rejection of the claim. …*

*In re Sandra Walster (I), BIIA Dec., 43,049, (10/73) [dissent]; In re Florence Reid, BIIA Dec., 43,052 (1973) [dissent]*

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This is an appeal filed by Scott Paper Company, a self-insured employer, on August 27, 1973, from an order of the Department of Labor and Industries dated July 31, 1973, adhering to a prior order of June 28, 1973, which directed the employer to pay temporary disability compensation to which the claimant may be entitled in accordance with RCW 51.32.190. Appeals denied.

DECISION

This appeal raises solely a question of law. The pertinent facts as disclosed by the Department file, are as follows:

The claimant, Sandra Lucille Walster, alleges that she sustained an industrial injury to her low back in her employment for the self-insured employer, Scott Paper Company, on April 9, 1973. She filed a claim with the employer on May 22, 1973, and, after investigation, the employer on June 4, 1973, notified the claimant and the Department in writing, pursuant to RCW 51.32.190 (1), of its denial of the claim for the stated reason that claimant was not injured at work. The Department, on the basis of the information then before it, issued an order on June 15, 1973, rejecting the claim on the ground that there was no proof of a specific injury in the course of employment. Following an appeal by the claimant, the Department entered an order on June 26, 1973, holding its rejection order of June 15, 1973, in abeyance pending further investigation. Extensive additional investigation was done. Among other things, this disclosed that the claimant was in fact temporarily totally disabled by reason of her back condition from May 21, 1973, at least until the middle of August, 1973, and she underwent back surgery on June 4, 1973. The matter in controversy, of course, was whether there was an injury on April 9, 1973, which caused this disability. Based on all the further investigations, the Department entered its final order on August 28, 1973, reaffirming the prior order and rejecting the claim. The claimant has appealed that order to this Board (under Docket No. 43,109), and hearings will be held in her appeal, on the issue of whether or not an industrial injury was incurred on April 9, 1973.

In the meantime, while the above investigation was being accomplished, information was submitted on behalf of the claimant that the employer was not paying time-loss compensation to her for the period from May 21, 1973, when she went off work due to her back condition, until the date of the Department's determinative order on the claim, as required by RCW 51.32.190. The Department thereupon entered its order of June 28, 1973, directing the employer to pay such compensation pursuant to that statute.
Following a request for reconsideration filed by the employer, said order was reaffirmed by the Department's order of July 31, 1973, from which the employer filed the instant appeal.

It is the employer's contention that, since it has not been finally determined that claimant's alleged industrial injury caused her temporary disability, the employer is not required to pay this time-loss compensation. However, we believe this contention overlooks the basic legislative intent of the new statutory sections which are here involved.

Two statutory sections must be considered together in order to understand their intent. These are RCW 51.32.190, relating to prompt claim action and payment of temporary disability compensation in self-insured cases, and RCW 51.32.210, relating to prompt claim action and payment of temporary disability compensation in Department-insured cases. These are the codifications of Sections 25 and 26, Chap. 43, Laws of 1972 ex. sess.

RCW 51.32.190, as pertinent to this case, provides:

"(1) If the self-insurer denies a claim for compensation, written notice of such denial, clearly informing the claimant of the reasons therefor and that the director will rule on the matter shall be mailed or given to the claimant and the director within seven days after the self-insurer has notice of the claim.

(2) Until such time as the department has entered an order in a disputed case acceptance of compensation by the claimant shall not be considered a binding determination of his rights under this title. Likewise the payment of compensation shall not be considered a binding determination of the obligations of the self-insurer as to future compensation payments.

(3) Upon making the first payment of income benefits, and upon stopping or changing of such benefits except where a determination of the permanent disability has been made as elsewhere provided in this title, the self-insurer shall immediately notify the director in accordance with a form to be prescribed by the director that the payment or income benefits has begun or has been stopped or changed. Where temporary disability compensation is payable, the first payment thereof shall be made within fourteen days after notice of claim and shall continue at the regular semimonthly or biweekly intervals.

(4) If, after the payment of compensation without an award, the self-insurer elects to controvert the right to compensation, the payment of compensation shall not be considered a binding determination of the obligations of the self-insurer as to future compensation payments. The acceptance of compensation by the workman or his beneficiaries shall not be considered a binding determination of their rights under this title."
(5) The director (a) may, upon his own initiative at any time in a case in which payments are being made without an award, and (b) shall, upon receipt of information from any person claiming to be entitled to compensation, from the self-insurer, or otherwise that the right to compensation is controverted, or that payment of compensation has been opposed, stopped or changed, whether or not claim has been filed, promptly make such inquiry as circumstances require, cause such medical examinations to be made, hold such hearings, require the submission of further information make such orders, decisions or awards, and take such further action as he considers will properly determine the matter and protect the rights of all parties." (Emphasis supplied)

RCW 51.32.210 provides:

"Claims of injured workmen of employers who have secured the payment of compensation by insuring with the department shall be promptly acted upon by the department. Where temporary disability compensation is payable, the first payment thereof shall be mailed within fourteen days after receipt of the claim at the department's offices in Olympia and shall continue at regular semimonthly intervals. The payment of this or any other benefits under this title, prior to the entry of an order by the department in accordance with RCW 51.52.050 as now or hereafter amended, shall be not considered a binding determination of the obligations of the department under this title. The acceptance of compensation by the workman or his beneficiaries prior to such order shall likewise not be considered a binding determination of their rights under this title." (Emphasis supplied)

Clearly, the overriding object of these statutes is to promote prompt investigation and determinative initial action on all claims filed by workmen under the law -- prompt action by both the self-insurer and the Department in self-insured cases, and prompt Departmental action in Department-insured cases. Especially is prompt action important in the cases where temporary total disability is involved. Thus, to make the objective effective, the "14-day law" was adopted, to require commencement of payment of time-loss compensation within that period of time after notice of the claim.

Furthermore, when this 14-day requirement is considered in conjunction with the other language in these statutes, it is clear that, if in fact there is temporary total disability, compensation for it must be paid, even though a determinative order has not yet been entered by the Department, determining that the temporary disability was industrially caused. This, in our opinion, is the obvious intent of these statutes when viewed in their entirety. If the intent were otherwise, there would be no need for the portions of the statutes providing that payment by the self-insurer or the Department, as the case may be, and acceptance by the claimant, of such compensation prior to the entry of a
determinative order, is not a "binding determination" of their respective rights and obligations under the Act. Clearly such payments are contemplated, or the statute would not have to provide for their non-binding nature. The "binding determination" on allowance or rejection of the claim must be a final determinative order entered by the Department which complies with the requirements for a "final" order as set forth in RCW 51.52.050. Thus, until said determinative order on allowance or rejection is entered, the Department or self-insurer, as the case may be, must comply with the "14-day" provision and pay time-loss compensation to the claimant for whatever period prior to said order that he is in fact temporarily totally disabled.

The reason for this new kind of statutory requirement appears to be a very practical one, namely, that when a workman is rendered temporarily unable to work because of a physical condition caused, or alleged to be caused, by his employment, there is usually an urgent economic need for prompt payment of temporary disability compensation as wage replacement. The lawmakers have apparently decided that this social need outweighs the wisdom of the previous practice that under no circumstances would any compensation be paid until a determinative administrative decision was made that liability existed. That practice could produce economic hardship for a claimant while awaiting the decision on acceptance of his claim, which decision in some cases was long in coming.

A consequence of this new statutory approach to forcing prompt administrative determinations on allowance or rejection of claims is, of course, that in some cases the claimant will have received time-loss compensation where it is later finally determined, by administrative or judicial decision, that the claim should be rejected and no benefits payable. The instant case could be an example of this possible result. However, this consequence points up the effectiveness of the statute in achieving its purpose, i.e., it should cause all people involved in administering the system to see to it that the Department's determinative order on allowance or rejection is entered promptly -- within 14 days whenever possible. If necessary investigative tasks result in a longer period (as, for example, the three months consumed here), the legislature has simply said that the economic burden of such investigative period should fall on the workmen's compensation system, not on the temporarily disabled claimant or on welfare or some other insurance program.

As support for our legal conclusion, we need look no further than to our neighboring state of Oregon. The Oregon workmen's compensation law, in ORS Sec. 656.262, has provisions very similar to our applicable statutory sections; including requirements for prompt payments of compensation (subsection 2 of ORS 656.262) until denial of the claim is formally made (per subsection 6); the requirement for paying compensation within 14 days after notice of the claim and at least biweekly thereafter (subsection 4); and the provision that "merely paying or providing compensation shall not be considered acceptance of a claim or an admission of liability." (Subsection 7).

We are not aware of any decision by the Oregon appellate courts in which the question here before us was squarely presented. However, the case of Logan v. Boise Cascade Corp., 5 Or App. 636, 485 P. 2d 441, (1971) is significant. Although the
exact holding in that case was concerned with whether or not a
statute of limitations operated as a bar to the claim, the Court
did observe that initial payment of compensation did not, in view
of the provisions of ORS 656.262(7), prevent the employer from
later contesting the claim on its merits. This language is
certainly pertinent to the instant case, where the question of
allowance or rejection of the claim will be determined on its
merits in the claimant's pending appeal under Docket No. 43,109.

We conclude as a matter of law that the Department's order
of July 31, 1973, was a correct and proper order under the terms
of RCW 51.32.190, and that this self-insured employer is required
to pay time-loss compensation to the claimant for whatever
period between May 21, 1973 and August 28, 1973, that she was in
fact temporarily totally disabled.

ORDER

Now, therefore, it is hereby ORDERED that the order of the
Department of Labor and Industries dated July 31, 1973, adhering
to its prior order of June 28, 1973, and directing the self-
insured employer, Scott Paper Company, to pay temporary disability
compensation to which the claimant is entitled in accordance with
RCW 51.32.190, be, and the same is hereby, confirmed; and the
employer's above-numbered appeal from said order, filed with this
Board on August 27, 1973, be, and the same is hereby, denied.

Dated this 26th day of October, 1973.

BOARD OF INDUSTRIAL INSURANCE APPEALS

PHILLIP T. BORK          R. H. POWELL
Chairman                Member

DISSENTING OPINION

The claimant in this case is an employee of Scott Paper
Company; Scott Paper Company being a self-insurer under the
appropriate provisions of the Act. The record before us indicates
that the employee-claimant filed a claim of industrial injury
with the employer on April 9, 1973; the date of injury being the
same date. On June 5, 1973, the employer denied the claim. It
is observed that the first paragraph of RCW 51.32.190 requires
the self-insurer to rule upon such a matter within seven days
after the self-insurer has notice of the claim and this require-
ment of the statute was not complied with.

On June 15, 1973, the Department issued an order denying the
claim on the basis that there was no proof of an injury at a
definite time and place in the course of employment. Thereafter,
that order was held in abeyance. On June 28, 1973, the Department
issued an order directing the employer to pay time-loss to the
claimant pursuant to the provisions of RCW 51.32.190 and a
further order dated June 31, 1973 affirmed the prior order dated
June 28, 1973. On August 28, 1973, the Department issued an order rejecting the claim for the reason previously given, i.e., no proof of an injury at a definite time and place in the course of employment.

The employer has appealed the Department's orders directing the employer to pay time-loss; the time interval being May 21, 1973 to August 28, 1973. The majority of the Board has elected to deny the employer's appeal on the ground that the provisions of RCW 51.32.190(3) require the employer to pay time-loss in a situation of this nature. The final sentence of RCW 51.32.190(3) reads as follows:

"...Where temporary disability compensation is payable, the first payment thereof shall be made within fourteen days after notice of claim and shall continue at regular semimonthly or biweekly intervals." (Emphasis added)

In the opinion of the majority, the intent of the provisions of RCW 51.32.190 make it mandatory to pay time-loss regardless of any determination as to the occurrence of an insured injury under the Act and regardless of any determination as to whether or not the claimant was temporarily and totally disabled because of the incident complained of.

It is observed that the final paragraph of the statute quoted above reads "Where temporary disability compensation is payable" and to my mind these words connote a situation where a true injury under the Act has occurred and further there has been evidence of temporary total disability due to that eligible injury. In the case before us, we have a factual pattern where the Department of Labor and Industries has actually rejected the claim but nevertheless has directed the employer to pay time loss for a time interval up to the time that the Department issued its final order rejecting the claim.

To me, it is patently incongruous that the Department would on the one hand reject the claim and on the other hand direct a self-insured employer to pay time loss compensation for an incident which was not a compensable injury under the Act. In an ordinary reject case where a self-insured employer is not involved, it is well settled that first there must be an injury insurable under the Act and secondly, there must be temporary total disability attributable to that injury in order to enable the employee to recover time-loss compensation. In the case before us, there is not showing that there was an injury covered by the Act and there is no showing that the employee was properly classified as temporarily and totally disabled due to the incident complained of. I refer to Franks v. Department of Labor and Industries, 35 Wn. 2d 763, Stampas v. Department of Labor and Industries, 38 Wn. 2d 48.

In my opinion, the action of the Department in this case requiring the employer to pay time-loss regardless of whether or not there was an injury under the Act amounts to a violation of that portion of the 14th Amendment to the Constitution of the United States which provides in part that "nor shall any state deprive any person of life, liberty or property without due process of law."
It is my belief that the appeal made by the employer to this Board should be allowed and that the employer should be afforded an opportunity to offer proof supporting a rejection of the initial claim and also proof as available on the question of temporary total disability, attributable to the incident complained of.

I am unable to concur in the majority opinion and therefore dissent.

Dated this 26th day of October, 1973.

BOARD OF INDUSTRIAL INSURANCE APPEALS

R. M. GILMORE

Member