

Reid, Florence

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

1 **IN RE: FLORENCE IRENE REID**) **DOCKET NO. 43,052**
2 **Scott Paper Company, Petitioner**)
3) **ORDER DENYING APPEAL**
4 **CLAIM NO. S-118008**)
5 _____

6 Appeal filed by the Scott Paper Company, a self-insured employer, on August 27, 1973, from
7 an order of the Department of Labor and Industries dated July 31, 1973, adhering to a prior order of
8 July 5, 1973, which directed the employer to pay temporary disability compensation to which
9 claimant is entitled until such time as a determinative order is issued, in accordance with RCW
10 51.32.190. Appeal **DENIED**.

DECISION

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

18 The claimant, Florence Irene Reid, alleges that she sustained an occupational back
19 condition due to her employment for the self-insured employer, Scott Paper Company, which
20 rendered her temporarily totally disabled for the period from May 25 through June 17, 1973. She
21 filed a claim with the employer on May 30, 1973, and the employer on June 8, 1973, notified the
22 claimant and the Department in writing, pursuant to RCW 51.32.190(1), of its denial of the claim for
23 the stated reason that there was no proof of a specific injury at work.

27 Thereupon the Department, by letter of June 25, 1973, advised both the employer and the
28 claimant that there was insufficient evidence to either allow or reject the claim. The employer was
29 requested to submit copies of its investigation report, medical substantiation, or other information
30 upon which its denial of the claim was based, and the parties were both advised that, upon receipt
31 of the additional information, the Department would review all material in the file and issue a
32 determinative order on allowance or rejection of the claim. Apparently, the submission of additional
33 information by the employer, and the issuance of the Department's determinative order, have not
34 yet been done.

39 In the meantime, information was submitted on behalf of the claimant on June 26, 1973, that
40 the employer did not pay her time-loss compensation from May 25 through June 17, 1973, the
41 period during which she was off work allegedly because of her back condition, as required by RCW
42 51.32.190. The Department thereupon entered its order of July 5, 1973, directing the employer to
43 pay claimant time-loss compensation to which she is entitled, pursuant to that statute. Following a
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1 request for reconsideration filed by the employer, said order was reaffirmed by the Department's
2 order of July 31, 1973, from which the employer filed the instant appeal.

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4 It is the employer's contention that, since it has not been finally determined that claimant's
5 alleged industrial injury caused her temporary disability, the employer is not required to pay this
6 time-loss compensation. However, we believe this contention overlooks the basic legislative intent
7 of the new statutory sections which are here involved.
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10 Two statutory sections must be considered together in order to understand their intent.
11 These are RCW 51.32.190, relating to prompt claim action and payment of temporary disability
12 compensation in self-insured cases, and RCW 51.32.210, relating to prompt claim action and
13 payment of temporary disability compensation in Department-insured cases. These are the
14 codifications of Sections 25 and 26, Chap. 43, Laws of 1972 ex. sess.
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17 RCW 51.32.190, as pertinent to this case, provides:

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19 "(1) If the self-insurer denies a claim for compensation, written notice of
20 such denial, clearly informing the claimant of the reasons therefor and
21 that the director will rule on the matter shall be mailed or given to the
22 claimant and the director within seven days after the self-insurer has
23 notice of the claim.
24

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

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

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

13 RCW 51.32.210 provides:

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15 "Claims of injured workmen of employers who have secured the
16 payment of compensation by insuring with the department shall be
17 promptly acted upon by the department. Where temporary disability
18 compensation is payable, the first payment thereof shall be mailed
19 within fourteen days after receipt of the claim at the department's offices
20 in Olympia and shall continue at regular semimonthly intervals.

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22 The payment of this or any other benefits under this title, prior to the
23 entry of an order by the department in accordance with RCW 51.52.050
24 as now or hereafter amended, shall be not considered a binding
25 determination of the obligations of the department under this title. The
26 acceptance of compensation by the workman or his beneficiaries prior to
27 such order shall likewise not be considered a binding determination of
28 their rights under this title." (Emphasis supplied)

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

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

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

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

43 As support for our legal conclusion, we need look no further than to our neighboring state of
44 Oregon. The Oregon workmen's compensation law, in ORS Sec. 656.262, has provisions very
45 similar to our applicable statutory sections; including requirements for prompt payments of
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1 compensation (subsection 2 of ORS 656.262) until denial of the claim is formally made (per
2 subsection (6); the requirement for paying compensation within 14 days after notice of claim and at
3 least biweekly thereafter (subsection 4); and the provision that "merely paying or providing
4 compensation shall not be considered acceptance of a claim or an admission of liability."
5 (Subsection 7).
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9 We are not aware of any decision by the Oregon appellate courts in which the question here
10 before us was squarely presented. However, the case of Logan v. Boise Cascade Corp., 5 Or.
11 App. 636, 485 P. 2d 441, (1971) is significant. Although the exact holding in that case was
12 concerned with whether or not a statute of limitations operated as a bar to the claim, the Court did
13 observe that initial payment of compensation did not, in view of the provisions of ORS 656.262(7),
14 prevent the employer from later contesting the claim on its merits.
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18 We conclude as a matter of law that the Department's order of July 31, 1973, was a correct
19 and proper order under the terms of RCW 51.32.190, and that this self-insured employer is required
20 to pay time-loss compensation to the claimant for whatever period between May 25, 1973 and June
21 17, 1973, that she was in fact temporarily totally disabled.
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24 **ORDER**

25 Now, therefore, it is hereby ORDERED that the order of the Department of Labor and
26 Industries dated July 31, 1973, adhering to its prior order of July 5, 1973, and directing the self-
27 insured employer, Scott Paper Company, to pay temporary disability compensation to which the
28 claimant is entitled in accordance with RCW 51.32.190, be, and the same is hereby, confirmed; and
29 the employer's above-numbered appeal from said order, filed with this Board on August 27, 1973,
30 be, and the same is hereby, denied.
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34 Dated this 26th day of October, 1973.

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36 BOARD OF INDUSTRIAL INSURANCE APPEALS

37
38 /s/
39 PHILLIP T. BORK Chairman

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41 /s/
42 R.H. POWELL Member
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3 **DISSENTING OPINION**

4 The claimant in this case is an employee of Scott Paper Company; Scott Paper Company
5 being a self-insurer under the appropriate provisions of the Act. The record before us indicates that
6 the employee-claimant filed a claim of industrial injury with the employer on May 30, 1973; the date
7 of injury being May 25, 1973. On June 8, 1973, the employer denied the claim. It is observed that
8 the first paragraph of RCW 51.32.190 requires the self-insurer to rule upon such a matter within
9 seven days after the self-insurer has notice of the claim and this requirement of the statute was not
10 complied with.
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13 On July 5, 1973, the Department issued an order directing the employer to pay time-loss to
14 which she was entitled until such time as "a determinative order is issued." Thereafter, that order
15 was reaffirmed on July 31, 1973. Apparently the Department has not as yet made a determination
16 as to the actual validity of the claim.
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19 The employer has appealed the Department's order dated July 5, 1973, directing the
20 employer to pay time loss; the time interval being May 25, 1973 and June 17, 1973. The majority of
21 the Board has elected to deny the employer's appeal on the ground that the provisions of RCW
22 51.32.190(3) require the employer to pay time-loss in a situation of this nature. The final sentence
23 of RCW 51.32.190(3) reads as follows:
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26 "...Where temporary disability compensation is payable, the first
27 payment thereof shall be made within fourteen days after notice of claim
28 and shall continue at regular semimonthly or biweekly intervals."
29 (Emphasis added)
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32 In the opinion of the majority, the intent of the provisions of RCW 51.32.190 make it mandatory to
33 pay time-loss regardless of any determination as to the occurrence of an insured injury under the
34 Act and regardless of any determination as to whether or not the claimant was temporarily and
35 totally disabled because of the incident complained of.
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38 It is observed that the final paragraph of the statute quoted above reads "Where temporary
39 disability compensation is payable" and to my mind these words connote a situation where a true
40 injury under the Act has occurred and further there has been evidence of temporary total disability
41 due to that eligible injury. In the case before us, we have a factual pattern where the Department of
42 Labor and Industries has not made a determination as to the validity of the claim but nevertheless
43 has directed the employer to pay time-loss on an alleged claim.
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1 To me, it is patently incongruous that the Department would on the one hand hold up an
2 alleged claim and on the other hand direct a self-insured employer to pay time loss compensation
3 for an incident as to which a determination has not been made by the Department. In an ordinary
4 reject case where a self-insured employer is not involved, it is well settled that first there must be an
5 injury insurable under the Act and secondly, there must be temporary total disability attributable to
6 that injury in order to enable the employee to recover time-loss compensation. In the case before
7 us, there is no showing that there was an injury covered by the Act and there is no showing that the
8 employee was properly classified as temporarily and totally disabled due to the incident complained
9 of. I refer to Franks v. Department of Labor and Industries, 35 Wn. 2d 763, Stampas v. Department
10 of Labor and Industries, 38 Wn. 2d 48.

11 In my opinion, the action of the Department in this case requiring the employer to pay time-
12 loss regardless of whether or not there was an injury under the Act amounts to a violation of that
13 portion of the 14th Amendment to the Constitution of the United States which provides in part that
14 "nor shall any state deprive any person of life, liberty or property without due process of law."

15 It is my belief that the appeal made by the employer to this Board should be allowed and that
16 the employer should be afforded an opportunity to offer proof supporting a rejection of the initial
17 claim and also proof as available on the question of temporary total disability, attributable to the
18 incident complained of.

19 For the reasons noted, I accordingly dissent.

20 Dated this 26th day of October, 1973.

21 BOARD OF INDUSTRIAL INSURANCE APPEALS

22 /s/ _____
23 R.M. GILMORE Member