

Kinder, Carl

TIMELINESS OF CLAIM (RCW 51.28.050; RCW 51.28.055)

Filing

A written report of accident completed at the hospital with the assumption that it would be mailed to the Department could not be considered a timely claim for benefits where there was no evidence that the report was mailed to or received by the Department within one year of the date of injury. The hospital was not an agent of the Department in dealing with the worker who had the sole responsibility for timely filing his claim. *...In re Carl Kinder, BIIA Dec., 44,967 (1976) [dissent]*

Scroll down for order.

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

1 **IN RE: CARL KINDER**)
2)
3 **CLAIM NO. G-675209**)
4)
 DOCKET NO. 44,967
 DECISION AND ORDER

5 **APPEARANCES:**

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7 Claimant, Carl Kinder, by
8 Jackson, Ulvestad & Goodwin, per
9 Roy E. Jackson and Brian D. Scott

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11 Employer, Buleh Winslow,
12 None

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14 Department of Labor and Industries, by
15 The Attorney General, per
16 Joseph Albo, Robert L. DiJulio, and James Kallmer, Assistants

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18 This is an appeal filed by the claimant on December 30, 1974, from an order of the
19 Department of Labor and Industries dated December 23, 1974, which rejected this claim on the
20 ground that it was not filed within one year after the day on which the alleged injury occurred.

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22 **SUSTAINED.**

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24 **DECISION**

25 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
26 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order
27 issued by a hearing examiner for this Board on September 11, 1975, in which the order of the
28 Department dated December 23, 1974, was sustained.

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

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32 The issue before the Board in this appeal is whether the claimant filed a claim with the
33 Department within one year following an injury he allegedly sustained while in the course of his
34 employment with Buleh Winslow on June 15, 1973, as required by the provisions of RCW
35 51.28.050.

36 The hearing examiner in his Proposed Decision and Order has adequately discussed the
37 facts upon which the claimant is attempting to rely to substantiate the allegation that he filed his
38 claim within one year of the alleged injury; and therefore there is no need to repeat such facts in
39 detail here.

1 It has been held by our Supreme Court that in order to qualify as a "claim," some sort of
2 written information must be received by the Department which "reasonably directs its attention to
3 the fact that an injury, with its particulars, has been sustained and that compensation is claimed."
4 Beels vs. Department of Labor and Industries, 178 Wash. 301; Nelson vs. Department of Labor and
5 Industries, 9 Wn. 2d 621; and Leschner vs. Department of Labor and Industries, 27 Wn. 2d 911.
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9 There is no evidence presented in this appeal that anything in writing was received by the
10 Department within one year following the date of alleged industrial injury. The claimant testified to
11 somesort of a report that he filled out at a hospital, which he assumed would be mailed to the
12 Department, but he acknowledged that he did not follow up to see whether it actually was in the
13 mail. However, even assuming that claimant did fill out a form in writing at a hospital under the
14 assumption that it was to be mailed to the Department, this did not constitute filing a claim with the
15 Department, because the hospital was not an agent of the Department in dealing with the claimant.
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17 Leschner, supra.
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21 In his Petition for Review, counsel for the claimant argues that to deny the claimant benefits
22 on the ground that he did not get an actual claim form into the Department's file, through no fault of
23 his own, would be "controverting" the purpose of the Act. He also alleges that the claimant had
24 applied for benefits under the Act on at least four occasions, two of which were within the one year
25 period. However, we have noted above that filling out a report at a hospital, which the claimant
26 allegedly did on at least two occasions, could not constitute filing a claim with the Department of
27 Labor and Industries. Leschner, supra. Furthermore, the Court has held that the ultimate
28 responsibility for filing a timely written claim rests solely with the workman. Pate v. General Electric
29 Company, 43 Wn. 2d 185.
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34 The claimant's counsel further argues in his Petition for Review that information concerning
35 the alleged injury was transmitted to an employee-agent of the Department, a Mr. William Moffat,
36 within one year, and that it was Mr. Moffat's duty under the Act to assist the claimant in filling out a
37 report of accident. Although claimant's counsel does not argue that by notifying Mr. Moffat of the
38 details of the accident, this constituted filing a claim with the Department, he apparently is urging
39 that mere oral notice to an agent of the Department satisfies the statute.
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1 We agree with the hearing examiner that there is very serious question concerning the
2 particulars of the conversation that the claimant had with Mr. Moffat, if such conversation took place
3 at all. Mr. Moffat testified that he did not remember any such conversation. The Board does not
4 believe that the statute was satisfied by any vague oral conversation which the claimant may have
5 had with an employee of the Department.
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8 **FINDINGS OF FACT**

9 After a careful review of the entire record, the Board finds as follows:
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- 11 1. The Department of Labor and Industries received a report of accident
12 from the claimant, Carl Kinder, on December 10, 1974, alleging that an
13 industrial injury occurred on June 15, 1973, while the claimant was in
14 the course of employment with Buleh Winslow.
15
- 16 2. On December 23, 1974, the Department of Labor and Industries issued
17 an order denying the claim for the reason that no claim was filed by the
18 claimant within one year after the day on which the alleged injury
19 occurred. On December 30, 1974, claimant filed a notice of appeal to
20 this Board, and on January 17, 1975, the Board entered an order
21 granting the appeal.
22
- 23 3. Within one year following June 15, 1973, the claimant signed two written
24 reports of some type at Harborview Hospital, containing information
25 concerning an alleged industrial injury occurring on June 15, 1973.
26 Neither of these reports were ever transmitted to the Department of
27 Labor and Industries.
28
- 29 4. At no time within one year subsequent to June 15, 1973, did the
30 Department of Labor and Industries receive anything in writing
31 concerning an industrial injury allegedly sustained by this claimant, Carl
32 Kinder, in the course of his employment with Buleh Winslow on June 15,
33 1973.
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- 35 5. The claimant did not at any time within one year following June 15,
36 1973, inform an agent for the Department of Labor and Industries that
37 he had suffered an industrial injury and wished to file a claim therefor.
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- 39 6. At no time within one year following June 15, 1973, did an agent of the
40 Department of Labor and Industries mislead the claimant concerning his
41 rights under the Workmen's Compensation Act.
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43 **CONCLUSIONS OF LAW**

44 From the foregoing findings of fact, the Board concludes as follows:
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- 46 1. This Board has jurisdiction of the parties and the subject matter of this
47 appeal.

1 2. The claimant did not file a timely application for benefits under the
2 Workmen's Compensation Act, and this claim therefore cannot be
3 recognized.

4 3. The order of the Department of Labor and Industries dated December
5 23, 1974, rejecting this claim, is correct and should be sustained.
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7 It is so ORDERED.

8 Dated this 12th day of March, 1976.

9 BOARD OF INDUSTRIAL INSURANCE APPEALS
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11
12 /s/ _____
13 PHILLIP T. BORK Chairman
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16 /s/ _____
17 R. M. GILMORE Member
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19 **DISSENTING OPINION**

20 I am convinced the claimant had the conversation with Mr. Moffat, an agent of the Department
21 of Labor and Industries. I am convinced that the conversation was as reported by the claimant.
22 This conversation, in my opinion, coupled with the claim form at Harborview Medical Center, is
23 sufficient to constitute a valid claim. By broadly and liberally construing the law for the benefit of the
24 worker, I would reverse the Department order and instruct the Department to accept the claim as
25 timely filed.
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29 Dated this 12th day of March, 1976.

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31 /s/ _____
32 SAM KINVILLE Member
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