

## **Robinson, John**

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### **APPEALABLE ORDERS**

#### **Protest divests Board of authority to hear appeal**

A protest automatically operates to set aside and hold an order in abeyance pending the issuance of a further appealable order. Thus, even though an appeal from a Department order had already been filed by the worker, the employer's subsequent but timely protest of the order appealed leaves the Board without jurisdiction to hear the worker's appeal. ...*In re John Robinson, BIIA Dec., 59,454 (1982)*

### **PROTEST AND REQUEST FOR RECONSIDERATION (RCW 51.52.050)**

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A request by the employer that the Department "reassume jurisdiction" constitutes a protest and request for reconsideration. ...*In re John Robinson, BIIA Dec., 59,454 (1982)*

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Scroll down for order.



1 A few months after this final action Mr. Robinson submitted an application to the Department  
2 on March 12, 1981, to reopen his claim based on aggravation of condition. On April 30, 1981 the  
3 Department issued an order denying the application, giving as its reason that the evidence showed  
4 no aggravation of the injury but did show that conditions complained of (anxiety and alcohol  
5 dependence) were unrelated to the injury covered by the claim. From this formal order and notice  
6 Mr. Robinson, through legal counsel, filed a notice of appeal to this Board which was received on  
7 May 8, 1981.  
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11 In addition to the typewritten language just capsulated, the remainder of the printed  
12 document of April 30, 1981 contained statutorily required wording explaining appeal rights as well  
13 as the following wording which has become a recognized integral part of a formal Department order  
14 and notice:  
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17  
18 " . . . Any protest or request for reconsideration of this order must be  
19 made in writing to the Department of Labor and Industries in Olympia  
20 within 60 days. A further appeal-able order will follow such a request . .  
21 . ." (Emphasis added.)  
22

23 Subsequent to the receipt of the claimant's notice of appeal at this agency, the employer through  
24 legal counsel hand-delivered a communication dated June 3, 1981 to a Department of Labor and  
25 Industries' employee, requesting the Department to "reassume jurisdiction" of the claim pursuant to  
26 RCW 51.52.060.  
27

28 We believe the said communication was tantamount to a "protest" or "request for  
29 reconsideration" of the Department's order, and such communication was made within 60 days of  
30 the entry of the Department's formal order and notice. Under such circumstances, the issue is  
31 presented whether this Board necessarily attains jurisdiction in an appeal where a timely protest is  
32 made to the Department even though the protest is made after a notice of appeal by another party  
33 has been filed with this Board. In a recent Decision and Order (In re Santos Alonzo, Docket No.  
34 56,833 and 56,833A dated December 9, 1981) this Board dismissed appeals which were received  
35 pursuant to RCW 51.52.060, but which had been filed after the self-insured employer had filed a  
36 request for reconsideration with the Department of Labor and Industries.  
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39 It has long been our interpretation of the printed wording in the Department's orders which is  
40 quoted supra, that a "protest" or "request for reconsideration" filed with the Department in response  
41 to the admonitory language in the order automatically operates to set aside the Department's order  
42 and hold in abeyance the final adjudication of the matter until the Department officially acts to issue  
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1 its final decision by a "further appealable order." RCW 51.52.060 authorizes the Department to  
2 direct the submission of further evidence or the investigation of any further facts during the time  
3 limited for filing a notice of appeal, which action will effectively toll the appeal filing period. In  
4 addition, that same section authorizes the Department "within the time limited for appeal" to  
5 "modify, reverse, or change any order, decision, or award, or may hold any such order . . . in  
6 abeyance . . . pending further investigation". We have very recently reiterated that language  
7 printed on the order is the Department's promise of further action and under most circumstances  
8 amounts to a statement of legal responsibility. Under such circumstances, it amounts to an  
9 enforceable right available to an aggrieved party to require the Department to act within the  
10 authority of RCW 51.52.060 to modify or at least hold in abeyance its prior action.

11  
12 It is patent in an examination of our transcript of proceedings that the employer was  
13 attempting to exercise that right in submitting its letter of June 3, 1981. It is vital--and obviously  
14 equitable-- that the employer as well as the worker have an opportunity to acquaint the Department  
15 with its version of facts. In the case of a self-insured employer, which would be fully responsible for  
16 defending the Department's action, there must be an opportunity to discover the nature of the claim  
17 being made by the worker and the reason for the Department's action on that claim. Where, as  
18 here, the self-insured employer was not even aware of the application to reopen for aggravation  
19 and was not consulted prior to entry of the denial order, the employer should at least have an  
20 opportunity for access to the Department. An appeal to the Board by the claimant would prohibit  
21 that access since the Department is not a necessary party to the appeal. Consequently, this Board  
22 will not accept jurisdiction under such circumstances. The Department's failure to issue a further  
23 determinative order was presumably on the ground that a notice of appeal had previously been filed  
24 with the Board. However, in the circumstances of this case, the Department simply cannot fulfill its  
25 legal responsibility to complete its adjudication merely by deferring such adjudication when a piece  
26 of paper containing the inscription "notice of appeal" is sent by the claimant to the Board. The self-  
27 insured employer her, being unaware of the aggravation application, had a right to rely on the  
28 Department's promise that it would issue a further determinative order if a protest or request for  
29 reconsideration was filed within 60 days. We believe the Department, in light of the procedural  
30 facts of this case, must be required to recognize that promise and must maintain its jurisdiction until  
31 that further determinative order is issued.

1 The Board being of the opinion that it is without jurisdiction to entertain the claimant's appeal  
2 and the employer's cross-appeal in this matter, and there being no contested jurisdictional facts, the  
3 following are entered as conclusions:  
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- 5
- 6 1. The Board of Industrial Insurance Appeals does not have jurisdiction  
7 over the subject matter of these appeals, i.e., whether or not claimant's  
8 application to reopen the claim for aggravation should be allowed, as no  
9 final determinative order has been rendered by the Department on said  
10 issue.
  - 11 2. The appeals are dismissed and the matter is returned to the Department  
12 of Labor and Industries for further appropriate action to complete  
13 administrative adjudication of the claimant's aggravation application.  
14

15 It is so ORDERED.

16 Dated this 26th day of January, 1982.

17 BOARD OF INDUSTRIAL INSURANCE APPEALS

18  
19  
20 /s/  
21 MICHAEL L. HALL Chairman

22  
23 /s/  
24 FRANK E. FENNERTY, JR. Member

25  
26 /s/  
27 PHILLIP T. BORK Member  
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