**Oshiro, Melvin**

**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 must be paid despite the subsequent rejection of the claim. *...In re Melvin Oshiro, BIIA Dec., 67,112 (1985) [Editor's Note: The Board's decision was appealed to superior court under King County Cause No. 85-2-068807.]; In re Lynnette Murray (II), BIIA Dec., 42,296 [dissent] (1974) [Editor's Note: See later statutory amendment of RCW 51.32.240(2) allowing recovery of provisional time-loss overpayment where claim subsequently rejected.]*

Scroll down for order.
BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

In Re: MELVIN OSHIRO ) DOCKET NO. 67,112
) }
Claim No. S-693994 ) DECISION AND ORDER

APPEARANCES:

Claimant, Melvin Oshiro, by Pro Se,

Self-insured employer, Safeway Stores, Inc., by Perkins, Coie, Stone, Olsen & Williams, per Calhoun Dickinson

Department of Labor and Industries, by The Attorney General, per Francois L. Fischer, Assistant and Deborah E. Hilsman, Law Clerk

This is an appeal filed by the self-insured employer on February 29, 1984, from an order of the Department of Labor and Industries dated January 5, 1984, adhering to the provisions of a prior order dated November 10, 1983, which rejected this claim for an alleged industrial injury of May 30, 1983, and which further ordered payment to the claimant of "provisional time-loss benefits as may be certified up to the date of this rejection order pursuant to RCW 51.32.190."

Affirmed.

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 Petition for Review filed by the employer to a Proposed Decision and Order issued on October 2, 1984, in which the order of the Department dated January 5, 1984 was affirmed.

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

The general nature and background of this appeal are very well set forth in the Proposed Decision and Order, and shall not be reiterated at great length herein. Our review of this appeal is prompted by the employer's complaint that an adequate discussion of legal issues raised

4/9/85
during the course of hearing were not addressed or disposed of in the Proposed Decision and Order.

It is the employer's position that the Department's authority to order the payment of provisional time-loss compensation is contingent upon there first being a *prima facie* showing by the claimant's original application for benefits, that the subject condition or injury is industrial. In effect, the employer's position would relate provisional time-loss compensation to the merits, or lack thereof, of the underlying claim itself.

It is, of course, well established that the legal criterion for allowance of a claim is at least a *prima facie* showing that the subject condition or injury is work-related. Provisional time-loss compensation, however, is not predicated upon the eventual validity of the underlying claim, but upon the failure to adjudicate the claim within fourteen days after "notice of claim". The purpose, of course, in requiring such compensation is to enforce expeditious adjudication of contested claims where the claimant is temporarily disabled and without wages. The statutory requirement that provisional time-loss compensation be paid must be evaluated separate from the question of a claimant's "rightful entitlement" to benefits under the Act. That is why the statute, in effect, provides that neither the payment nor the receipt of such provisional compensation shall, on the one hand, obligate the employer to further benefits under the Act, or, on the other, vest the employee with coverage thereunder.

Alternatively, it is the employer's position that where, as here, the Department's adjudicative order in a disputed claim upholds the employer's request that the claim be denied, the employer's liability to pay provisional time-loss compensation ceases as of the day it filed its SIF-4 form (request for claim denial) with the Department.

Certainly, the position urged by the employer finds no support in the express wording of the governing statute, RCW 51.32.190. If, in effect, the employer could stop the running of the "14-day clock" by merely submitting a SIF-4 by the 14th day, the financial incentive to
resolve controverted claims expeditiously would be nullified, thereby
undermining the very purpose of the provisional time-loss compensation
statute. Moreover, as noted in the Proposed Decision and Order, this
Board has previously held that provisional time-loss compensation, once
triggered, is thereafter payable until such time as the Department
issues its determinative order of allowance or rejection. Lynette A.
Murray, Docket No. 42,296 (1974); Sandra Lucille Walster, Docket No.
43,049 (1973).

It is clear that the true gravamen underlying the employer's
appeal is its ire over the protracted delay it encountered in securing
a determinative order out of the Department, thereby prolonging its
liability for provisional time-loss compensation. In this respect, the
employer argues that the Department should not be empowered to order
the employer to pay provisional time-loss compensation where the delay
giving rise to the employer's liability for such compensation was
occasioned by the Department's own inefficiency and negligence in
adjudicating the claim.

In response, we would note that the employer's liability to pay
provisional time-loss compensation does not stem from the order of the
Department ordering the employer to pay such compensation, but from the
statute itself. It is compensation statutorily mandated to the
claimant as a matter of right, and neither the Department nor this
Board is empowered by law to waive such mandate for any equitable
reason.

Before concluding, in all fairness, we think, it must be pointed
out that the inordinate delay by the Department in the adjudication of
this claim was due in substantial measure to the employer's own claim
service representative. To begin with, it was impossible for a
determinative order to have been issued in this matter within the
statutory 14-day time limitation. Mr. Oshiro's notice of claim to the
employer was completed on July 5, 1983. However, the employer's
request for denial of claim, the SIF-4, did not reach the Department
until July 20, 1983, because of a mailing error on the part of the
employer's service representative. The request for denial of claim was not accompanied by any report or records of Dr. Kenneth E. Mayeda, the medical physician who first saw and treated the claimant for his alleged industrial injury. Subsequent requests made for such records on July 29, August 1, October 13 and October 28, 1983, by the Department to the employer's service representative were to no avail.

Various reasons and explanations for the overall delay in this matter appear in the record -- each side attempting to assign blame to the other. In our view, it is sufficient to say that had the report of the initial physician been submitted to the Department with the SIF-4, as contemplated by WAC 296-15-070(2), this claim could have been adjudicated in a much more timely fashion. In this regard, the above-cited administrative rule provides in material part:

"With every such claim denial a self-insurer shall send to the Department all information on which the denial was based." (Emphasis added).

Under the testimony of Pamela DeMille, it is clear that the employer's notice of denial of the claim was based in part upon information it received from Dr. Mayeda's office, information which should have been immediately forwarded to the Department.

The proposed findings, conclusions and order of the Proposed Decision and Order entered October 2, 1984, are hereby adopted as the Board's final findings, conclusions and order, and are incorporated herein by this reference.

It is so ORDERED.

Dated this 9th day of April, 1985.

BOARD OF INDUSTRIAL INSURANCE

/S/______________________________________ MICHAEL L. HALL
Chairman

/S/______________________________________ FRANK E. FENNERTY, JR.
Member