

Alcorn, Louella

SUSPENSION OF BENEFITS (RCW 51.32.110)

Vocational plan not pursued due to worker's relocation

A worker's move to an area where cost and housing were more affordable is not a "failure to cooperate in vocational rehabilitation" within the meaning of RCW 51.32.110, where the Department apparently did not determine feasibility of a vocational plan in the worker's new location and did not present evidence that such a plan would be impractical. *See Kolano v. Department of Labor & Indus.*, 172 Wash. 2d 113 (1933); *In re Elvina M. Munk*, BIIA Dec., 58,847 (1982). ...***In re Louella Alcorn*, BIIA Dec., 89 2619 (1991)**

Scroll down for order.

1 Department, and who, without prior notification or justification, moved during a vocational training
2 program to an area of the State where she would be unable to complete the training process.
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4 We conclude that the circumstances of Ms. Alcorn's relocation during the vocational program
5 did not represent a "failure to cooperate" within the meaning of RCW 51.32.110. While it may be
6 possible for a claimant's move to another area of the State to interfere with claim administration, the
7 facts presented in this instance did not warrant suspension of benefits.
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10 Louella Alcorn sustained an industrial injury on January 21, 1987, while working for the Monroe
11 Convalescent Center. She broke her right wrist when an agitated patient struck her as she tried to
12 transfer the patient into bed. Thereafter Ms. Alcorn obtained medical treatment, including surgery, and
13 received time-loss compensation benefits. At the time of her injury, she lived in Monroe, Washington.
14 Ms. Alcorn moved several times -- three moves in the Monroe area and two in Snohomish -- in the
15 two-year period after her industrial injury. She and her family moved in with her husband's
16 grandparents in Sultan, Washington in February 1989. In March 1989, Ms. Alcorn met with vocational
17 counselors. She moved to Forks, Washington at the end of that month when low-income housing
18 became available.
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24 Ms. Alcorn testified she would have been willing to participate in vocational services if she had
25 been contacted by a vocational counselor in the Forks area. She acknowledged she had trouble
26 keeping appointments with her vocational counselor but claimed it was due to a lack of transportation.
27 She recalled advising the Department about each of her several moves by telephone.
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30 Linda Luedtke, the Department claims manager, reviewed Ms. Alcorn's claim file and described
31 two occasions where it was necessary for her to contact the employer to obtain Ms. Alcorn's new
32 address. She believed Ms. Alcorn failed to keep certain appointments and arrived late at least once.
33 Ms. Luedtke arranged to have vocational services provided to Ms. Alcorn between December 1988
34 and June 1989. She recalled the vocational consultant's planning to have Ms. Alcorn obtain work as a
35 pharmacy assistant and believed the job market investigated was in the Monroe area.
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39 Ms. Luedtke learned of Ms. Alcorn's move to Forks on April 26, 1989. At that time, Ms. Alcorn
40 advised her she moved to Forks because it was less expensive to live there. Ms. Luedtke wrote to
41 Ms. Alcorn on May 1, 1989, advised her to return to the Monroe area, and to resume the vocational
42 plan. When she received no response, she recommended that Ms. Alcorn's benefits be suspended.
43 Ms. Luedtke did not check into the availability of vocational services in Forks, but believed the nearest
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1 services were in Port Angeles. She believed Ms. Alcorn's moving out of the job market area without
2 telling anyone constituted noncooperation.
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4 While there is no question Ms. Alcorn moved several times during the pendency of her claim, the
5 record is silent regarding the specifics of the vocational program which was being developed for her.
6 Ms. Luedtke referred to the vocational counselor's closing report and its recommendation that
7 vocational services be transferred to the Forks geographic area. The closing report also suggested
8 development of a behavioral contract to assure Ms. Alcorn would cooperate with those services. The
9 Department apparently did not check into the feasibility of a vocational plan to place Ms. Alcorn as a
10 pharmacy assistant in the Forks or Port Angeles area. Nothing in the record before us reveals the
11 impracticality of conducting the plan out of the Port Angeles or Forks area, nor the effect a transfer of
12 vocational services would have on the plan's development through March 1989. Absent that
13 information, we find no evidence Ms. Alcorn failed to cooperate with her vocational plan.
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19 RCW 51.32.110 provides for suspension of benefits if a worker refuses or obstructs "evaluation
20 or examination for the purpose of vocational rehabilitation" or if the worker "does not cooperate in
21 reasonable efforts at such rehabilitation". RCW 51.32.110. The question before us is whether Ms.
22 Alcorn's behavior constituted a "failure to cooperate" within the context of RCW 51.32.110.
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25 Because the word "cooperate" is not defined in RCW 51.32.110, we must give it its "usual and
26 ordinary meaning." State v. Von Thiele, 47 Wn.App. 558, 563, 736 P.2d 297 (1987). To cooperate is
27 "to act or work with another or others to a common end," while cooperation is a "joint operation" or
28 "common effort or labor". Webster's Third New International Dictionary 501 (1986).
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31 The State Supreme Court addressed noncooperation in submitting to medical treatment in
32 Kolano v. Dep't of Labor & Indus., 172 Wash. 27, 19 P.2d 113 (1933). Kolano involved a statutorily
33 authorized contract between an employer and an Aberdeen hospital for provision of services to injured
34 workers. The worker relocated to Tacoma after his benefits were suspended due to his refusal to
35 submit to medical treatment at the designated hospital. The court considered whether the claimant
36 was entitled to medical services of the doctor of his own choice in the geographic area he moved to
37 after leaving the hospital. The court determined the worker was not justified in leaving the hospital
38 which was prepared to render necessary treatment. Accordingly, it found the suspension of benefits
39 appropriate.
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45 We find the circumstances of this case to be distinct from Kolano. An injured worker leaving
46 the geographic area of a vocational plan in the preliminary stages is not the same as a worker leaving
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1 a hospital which was ready to provide necessary treatment. Further, there is no evidence that Ms.
2 Alcorn was ready to be placed in a training position and that such a position in the Monroe area had
3 been or was about to be arranged.
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5 The Board has considered the question of noncooperation in the context of a claimant's refusal
6 to participate in a psychiatric examination without her attorney being present. In re Elvina M. Munk,
7 BIIA Dec., 58,847 (1982). The Munk record amply demonstrated that the effect of another's presence
8 during the examination "would substantially frustrate the ability of the physicians to perform a proper
9 examination." Id. at 2. The question in this instance is whether Ms. Alcorn's relocation frustrated the
10 effort to train her for employment as a pharmacist's assistant.
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12 The record is silent regarding the availability of vocational services or pharmacist's assistant
13 positions in the Forks/Port Angeles area. The Department's justification for suspension of benefits
14 was Ms. Luedtke's conclusion that Ms. Alcorn's move out of the Monroe job market represented
15 noncooperation. In light of the directive that the Industrial Insurance Act is "remedial in nature and the
16 beneficial purpose should be liberally construed in favor of the beneficiaries", [Wilber v. Department of
17 Labor & Indus., 61 Wn.2d 439, 446, 378 P.2d 684 (1963) (citations omitted)] we are constrained to find
18 that Ms. Alcorn's actions were not tantamount to a failure to cooperate.
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20 As a result, the Department should not have suspended Ms. Alcorn's benefits due to her failure
21 to return to the Monroe area. The Department should explore the feasibility of providing vocational
22 services in the geographic area in which claimant resides, consider the appropriateness of a
23 behavioral contract to assure Ms. Alcorn's cooperation with the vocational program developed, and
24 determine if claimant could commute to the area in which a pharmacist's assistant position would be
25 available.
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27 After consideration of the Proposed Decision and Order and the Petition for Review filed
28 thereto, and a careful review of the entire record before us, we are persuaded that the Proposed
29 Decision and Order is not supported by the evidence and is incorrect as a matter of law.
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31 **FINDINGS OF FACT**

- 32 1. On January 29, 1987, the Department of Labor and Industries received an
33 application for benefits alleging that claimant, Louella C. Alcorn, sustained
34 an industrial injury on January 21, 1987, while in the course of her
35 employment with the Monroe Convalescent Center. On April 6, 1987, the
36 Department issued an order allowing the claim and closing it with medical
37 treatment benefits only. After an April 28, 1987 protest and request for
38 reconsideration, the Department issued an order on June 1, 1987, setting
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1 aside its April 6, 1987 order and kept the claim open for authorized
2 treatment and action as indicated.

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4 The employer, on December 21, 1987, requested the Department to
5 cancel any further time-loss compensation benefits. On December 22,
6 1987, the Department issued an order paying time-loss compensation
7 benefits on an interlocutory basis. The employer filed a protest and
8 request for reconsideration on January 8, 1988. On January 11, 1988, the
9 Department allowed the claim and time-loss compensation benefits were
10 paid. On February 3, 1988, the Department issued an order determining
11 the claim had not been allowed and paying provisional time-loss
12 compensation benefits.

13 On February 8, 1988, the Department issued an order correcting,
14 superseding, and modifying from final to interlocutory the January 11,
15 1988 order and stating the claim had not been allowed and providing for
16 payment of provisional time-loss compensation benefits. On March 8,
17 1988, the Department issued an order paying time-loss compensation for
18 the period July 1, 1988 through July 12, 1988. That same date, the
19 Department issued an order providing for four semi-monthly time-loss
20 compensation payments for the period starting February 7, 1988.

21 On April 21, 1989, the Department issued an order canceling time-loss
22 compensation benefits for April 27 and May 12, 1989, because claimant
23 moved without notifying the Department. Subsequent time-loss
24 compensation orders were entered on May 1, 1989.

25 On May 1, 1989, the Department issued a letter notifying claimant to move
26 back to the Monroe area and cooperate fully with vocational services since
27 the Department and vocational counselor were not notified of claimant's
28 intended move, advising claimant time-loss compensation benefits would
29 be paid for a period of 30 days only, and that benefits would be suspended
30 if claimant decided not to cooperate. On June 19, 1989, claimant filed a
31 protest and request for reconsideration. On July 11, 1989, the Department
32 issued an order suspending time-loss compensation benefits, effective
33 June 1, 1989, for failure to cooperate in vocational rehabilitation.

34 On July 24, 1989, the claimant filed a notice of appeal from the July 11,
35 1989 Department order with the Board of Industrial Insurance Appeals.
36 On August 16, 1989, the Board issued an order granting the appeal,
37 assigning it Docket No. 89 2619, and directing that hearings be held on
38 the issues raised by the appeal.

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41 2. On January 21, 1987, Louella Alcorn injured her right wrist when an
42 agitated patient struck her as she tried to transfer the patient into bed,
43 while working as a nursing assistant for the Monroe Convalescent Center.
- 44 3. As a result of the injury of January 21, 1987, Ms. Alcorn fractured her right
45 wrist, which required medical treatment including surgery.
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4. On the date of her injury, Ms. Alcorn lived in Monroe, Washington. She moved several times after her injury, and in February 1989, resided with her husband's grandparents in Sultan, Washington. In March 1989, she received a vocational evaluation, after having missed prior appointments. During that period of time, she was slow to answer letters from the Department and often could not be reached.
 5. In late March 1989, Ms. Alcorn moved, with her husband and children, to Forks, Washington where the cost of living was less and low-income housing had become available.
 6. The Department contracted with a vocational rehabilitation consultant to provide vocational training to Ms. Alcorn from December 19, 1988 through June 19, 1989. A vocational plan for pharmacist's assistant was developed.
 7. Ms. Alcorn's move to the Forks, Washington area did not frustrate or obstruct the effort to retrain her vocationally.

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CONCLUSIONS OF LAW

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1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and the subject matter to this appeal.
 2. Ms. Alcorn's relocation of her residence from Monroe, Washington to Forks, Washington did not obstruct the vocational rehabilitation plan and did not constitute noncooperation with the Department, within the meaning of RCW 51.32.110.
 3. The order of the Department of Labor and Industries dated July 11, 1989, suspending time-loss compensation benefits effective June 1, 1989, for failure to cooperate with vocational rehabilitation is incorrect and should be reversed and remanded with directions to the Department to reinstate benefits and take further action as required by law.

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It is so **ORDERED**.

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Dated this 6th day of February, 1991.

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BOARD OF INDUSTRIAL INSURANCE APPEALS

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/s/ _____
SARA T. HARMON Chairperson

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/s/ _____
FRANK E. FENNERTY, JR. Member