Wood, Benson

DEPARTMENT

Reassumption of jurisdiction (RCW 51.52.060)

Whether the Department has taken further action in response to a notice of appeal "within thirty days after receiving a notice of appeal" is determined by the date it made its further decision and not by the date the decision was mailed to the parties. RCW 51.52.060.In re Benson Wood, BIIA Dec., 90 1810 (1990)

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS STATE OF WASHINGTON

IN RE: BENSON WOOD)	DOCKET NO. 90 1810
)	
CLAIM NO. K-128416)	DECISION AND ORDER

An appeal was filed by the claimant, on April 11, 1990, from an order of the Department of Labor and Industries "mailed" April 3, 1990.

From a review of the Department record in this matter it appears that the order "mailed" April 3, 1990 referenced in the notice of appeal is actually dated March 30, 1990. The order held an order dated January 22, 1990 in abeyance pending review and such further action as indicated. It was on the strength of the March 30, 1990 order that we denied the claimant's prior appeal of the order dated January 22, 1990 (Docket No. 90 1011).

The prior appeal was filed with the Board on March 1, 1990. It is the claimant's contention that since the Department did not mail the March 30, 1990 abeyance order until April 3, 1990, it was not entered within the time allowed by RCW 51.52.060 (i.e., "within thirty days after receiving a notice of appeal").

The order of March 30, 1990 does bear a date stamp indicating that it was not mailed until April 3, 1990. That is more than thirty days after the Department received the claimant's notice of appeal (March 2, 1990). However, we believe the time allowed the Department to take further action, as permitted by RCW 51.52.060, is controlled by the date it made its decision and not by the date the decision was mailed to the parties.

The record of the Board in the appeal assigned Docket No. 90 1011, of which we hereby take judicial notice, demonstrates that the order of March 30, 1990 was entered by the Department on or before that date. The order is date stamped received by the Board on March 30, 1990. Our Order Returning Case to Department for Further Action, which was issued as a result of the order of March 30, 1990, was also mailed the same date.

The Department's abeyance order of March 30, 1990 was entered within the time allowed by RCW 51.52.060. It is therefore ORDERED that the claimant's appeal therefrom be denied.

It is so ORDERED. Dated this 3rd day of May, 1990.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
SARA T. HARMON CHAIRPERSON
/s/
FRANK E. FENNERTY, JR. MEMBER
/s/
PHILLIP T. BORK MEMBER