

Lambert, Mike

PROTEST AND REQUEST FOR RECONSIDERATION (RCW 51.52.050)

Contents

There are no strict requirements on the form of a "protest" or "request for reconsideration", a document will suffice as a protest or request for reconsideration if it is reasonably calculated to put the Department on notice that the party is requesting action inconsistent with the decision of the Department.***In re Mike Lambert*, BIIA Dec., 910107 (1991)** [*Editor's Note*: The Court of Appeals changed the requirements of the protest to remove the necessity that the communication be **calculated** to put the Department on notice, stating, "to be a protest the communication must reasonably put the Department on notice that the worker is taking issue with some Department decision." *Boyd v. City of Olympia*, 1 Wn. App. 2d. 17 (2017).]

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

1 IN RE: MIKE LAMBERT)	DOCKET NO. 91 0107
2)	
3)	DECISION GRANTING RELIEF ON THE
4 CLAIM NO. J-144825)	RECORD

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6 An appeal was filed by the claimant, on January 9, 1991 from a letter of the Department of
7 Labor and Industries dated December 27, 1990 which denied reconsideration of an order dated
8 September 7, 1990.

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10 From a review of the Department record in this matter it appears that by the order of
11 September 7, 1990 the Department distributed a third party recovery of \$180,000, making demand
12 for reimbursement from the claimant in the amount of \$86,447.99. The order was entered by June
13 Gorsky of the Department's third party section. On October 8, 1990 the Department received an
14 October 4, 1990 letter from the claimant's attorney, addressed to June Gorsky. In the letter the
15 claimant's attorney denies that the Department has any right to share in the \$180,000 third party
16 recovery and states his reasons for that position. Specifically, he states the Department is
17 precluded from sharing in the recovery by virtue of the "employer fault" provision of the third party
18 statute. RCW 51.24.060(1)(f). The attorney suggests that the issue could be decided by way of a
19 declaratory judgment action and asks that the matter be referred to a Department staff attorney for
20 further discussion.

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22 The matter was referred to the Office of the Attorney General. However, by the letter dated
23 December 27, 1990 the claimant's attorney was advised that the order of September 7, 1990 was
24 "now final and binding." It is the contention of the Department that the letter of October 4, 1990 is
25 not a request for reconsideration.

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27 It is true that the attorney's letter of October 4, 1990 does not use the words "protest" or
28 "request for reconsideration." It is also true that the attorney's letter does not specifically refer to
29 the order of September 7, 1990. On the other hand, we have never imposed any strict
30 requirements on what may constitute a "protest" or "request for reconsideration". See, e.g., In re
31 Charles Weighall, BIIA Dec. 29,836 (1970) (Application to reopen claim construed as protest of
32 order closing claim). The use of "magical" statutory words is not required. It is sufficient if the
33 Department receives a written document, filed within the time allowed by law, which is reasonably
34 calculated to put the Department on notice that the party submitting the document is requesting
35 action inconsistent with the decision of the Department. Upon receipt of the October 4, 1990 letter
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1 June Gorsky knew, or should have known, that the claimant was disputing the Department's right to
2 share in his third party recovery and was thereby aggrieved by the order of September 7, 1990.
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4 Pursuant to RCW 51.52.080 we conclude that the record of the Department sustains the
5 contention of the claimant that the letter of October 4, 1990 constitutes a timely protest of the order
6 of September 7, 1990. As a result, that order is not "final and binding." In re Santos Alonzo, BIIA
7 Dec., 56,833 (1981). The letter of December 27, 1990 is therefore reversed and this matter is
8 remanded to the Department with direction to reconsider the order of September 7, 1990 and issue
9 a further order appealable to this Board.
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12 During reconsideration we suggest that the parties consider the implications of our decision
13 in In re James Funston, Dckt. No. 88 2863 (August 16, 1990) (page 7). A copy of that decision is
14 attached to this order.
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18 It is so ORDERED.
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20 Dated this 29th day of January, 1991.
21

22 BOARD OF INDUSTRIAL INSURANCE APPEALS
23

24
25 /s/
26 SARA T. HARMON CHAIRPERSON
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28
29 /s/
30 FRANK E. FENNERTY, JR. MEMBER
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33 /s/
34 PHILLIP T. BORK MEMBER
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