Short, Elois

AGGRAVATION (RCW 51.32.160)

"Deemed granted" application to reopen claim

RETROACTIVITY OF STATUTORY AMENDMENTS

Aggravation (RCW 51.32.160)

The 1995 amendment to RCW 51.52.060 reduced the time the Department has to place in abeyance the terms of orders involving applications to reopen claims. If an application to reopen is filed before the effective date, the statutory changes do not apply to the application to reopen. Additionally, even if the 1995 amendments could be applied, the failure of the Department to act within the proscribed time period will not result in the application being "deemed granted." **….*In re Elois Short*, BIIA Dec., 95 4522 (1996)** [dissent]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: ELOIS A. SHORT	**)**	**DOCKET NO. 95 4522**
	)	
CLAIM NO. M-602085	**)**	**DECISION AND ORDER**

APPEARANCES:

Claimant, Elois A. Short, by
Beemer & Mumma, per
Kent Mumma

Employer, Express Cuts,
None

Department of Labor and Industries, by
The Office of the Attorney General, per
Sheryl L. Gomez, Assistant

The claimant, Elois A. Short, filed an appeal with the Board of Industrial Insurance Appeals on September 22, 1995, from an order of the Department of Labor and Industries dated September 14, 1995. The order affirmed a Department order dated March 1, 1995, that denied the claimant's application to reopen her claim. **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 claimant to a Proposed Decision and Order issued on July 23, 1996, that dismissed the claimant's appeal.

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed and the rulings are affirmed. We have granted review to state the Board's interpretation of the recent statutory amendment to RCW 51.52.060 concerning the time allowed the Department to reconsider orders on reopening applications. Laws of 1995, ch. 253, § 1. We also will enter formal findings of fact and conclusions of law.

Ms. Short contends that her aggravation application must be "deemed granted" by operation of law pursuant to the 1995 amendment to RCW 51.52.060 and under RCW 51.32.160. Ms. Short

did not present factual or medical evidence to prove that her industrial injury had worsened and that the claim should be reopened for aggravation of disability. Thus, her case is based solely upon the argument that her aggravation application must be "deemed granted."

Ms. Short filed a claim with the Department for an industrial injury that she incurred on January 30, 1991. The claim was closed on October 31, 1994, with a permanent partial disability award for a right arm impairment. Three months later, on January 9, 1995, Ms. Short filed an application to reopen her claim. The Department denied the application on March 1, 1995, 51 days after it had been filed. Ms. Short protested the denial order on March 10, 1995, and the Department held its March 1, 1995 denial order in abeyance on April 12, 1995. The Department issued its order affirming the denial order on September 14, 1995, 197 days after it had received the aggravation application.

RCW 51.52.060 allows the Department to modify an order that has been appealed to this Board. Prior to the 1995 amendments to that statute, if the Department elected to reassume administration of an appealed order, the statute required the Department to issue another order within 90 days from the date it held the appealed order in abeyance. The Department could extend this period an additional 90 days for good cause stated in writing, to issue a further order on the matter. The time limitations of RCW 51.52.060 apply as well to parties' requests for Department reconsideration of its orders under RCW 51.52.050. *In re Clarence Haugen*, BIIA Dec., 91 1687 (1991).

The 1995 amendment to RCW 51.52.060 reduces the time the Department has to reconsider protests from orders denying reopening applications issued under the authority of RCW 51.32.160. The Department now has 90 days measured from the date of receipt of an application to reopen a claim, plus an additional 60 days for good cause to issue a further order. The Department exceeded both time frames when it issued its September 14, 1995 order in Ms.

Short's claim. Ms. Short contends that her application to reopen her claim should, therefore, be "deemed granted."

Ms. Short does not rely upon RCW 51.52.060 as it existed prior to the 1995 amendment. Prior to the 1995 amendment to RCW 51.52.060, our state Supreme Court held that the Department's period for reconsideration under RCW 51.52.05O was in addition to the period allowed for the Department's initial determinations on applications to reopen claims under RCW 51.32.160 *Tollycraft Yachts v. McCoy,* 122 Wn.2d 426 (1993). Also, prior to the amendments, this Board in a published Significant Decision, held that the "deemed granted" provisions of RCW 51.32.160, do not apply to situations wherein the Department reconsiders its timely initial determination on a reopening application **when requested to do so by a party**. *In re Edna Shore*, BIIA Dec., 89 5898 (1990). We will discuss *Tollycraft* in more detail, and refer to *Shore,* later in this decision.

Ms. Short contends that the 1995 amendment to RCW 51.52.060 applies to her case even though she filed her application to reopen her claim, and the Department made its initial determination, **prior** to the effective date of the amendment; and, she further argues that, under the 1995 amendment, RCW 51.52.060 requires a "deemed granted" remedy when the Department fails to issue a timely final order upon reconsideration, even if the Department's initial determination was timely under RCW 51.32.160. We reject Ms. Shorts' argument with regard to applicability of the 1995 amendment and her interpretation of RCW 51.52.060 as amended.

We find that the 1995 amendment to RCW 51.52.060 does not apply because it was not in effect at the time Ms. Short filed her application to reopen her claim. Under our state constitution, the 1995 amendment to RCW 51.52.060 became effective on July 22, 1995, 90 days after the Regular Session of the legislature adjourned on April 23, 1995. Wash. Const. art. 2, § 41. Ms. Short filed her aggravation application on January 9, 1995, more than six months prior to the

effective date of the legislative changes. In a comparable situation, we held that a 1988 amendment to RCW 51.32.160 was remedial in nature and would apply to any application to reopen a claim filed after the effective date of the amendment. *In re Marven Sandven,* BIIA Dec., 89 3338 (1990).

We have examined the authority cited by our dissenting member on this point, including *Marine Power v. Human Rights Comm'n*, 39 Wn. App. 609 (1985). We do not believe the amendments in question here can be said to "not affect a substantive or vested right." *Marine Power,* at 617. Ms. Short seeks to establish a right to have her claim actually reopened based solely upon retrospective application of the amendments. If, as we believe, the amendments do not apply, Ms. Short has only the right to have her application considered. Whereas retrospective application of the amendment would literally, under Ms. Short's interpretation of the amendment, grant the relief requested. Correspondingly, the Department would be automatically deprived of its right and obligation to reconsider its determination, indeed its right to maintain its determination, if the amendment is applied retroactively in Ms. Short's case. Further, in some circumstances where the Department had expended 150 days, or more, on its initial determination under former RCW 51.32.160 (that allowed a total of 180 days), the Department would be deprived of any reconsideration authority at all. We, therefore, hold that the 1995 amendment to RCW 51.52.060, Laws of 1995, ch. 253, § 1, applies only to reopening applications filed after the effective date of the amendment, July 22, 1995. The 1995 amendment does not apply here since Ms. Short filed her aggravation application prior to its effective date.

Turning now to whether the 1995 amendment contains a "deemed granted" provision, we note again that our state Supreme Court has held that the deemed granted provisions of RCW 51.32.160 do not apply to Department reconsideration of initial determinations under RCW 51.52.060. *Tollycraft,* at 439. The 1995 Legislature was no doubt aware of the Supreme

Court's ruling in *Tollycraft* when it considered the amendment to RCW 51.52.060. At pages 438-439, the Supreme Court in *Tollycraft* explained the policy behind allowing the Department time to consider an application to reopen a claim noting, "brevity is itself not necessarily a virtue, nor always favorable to the injured worker."

> While sweeping in its scope, the Department's reconsideration power is well supported by the policies which motivate the Act. One purpose of the Department's reconsideration authority is to alleviate the harm to workers and employers that may be caused by potential errors in the adjudication of workers' compensation claims. Another is to ensure the 'proper application and disbursement of the accident fund.'

Tollycraft, at 434-435. (Citations omitted.)

The court made these statements in response to this Board's conclusion that the "deemed granted" provisions of RCW 51.32.160 applied to the time limits found in RCW 51.52.060 when the Department reconsiders its orders in the absence of a protest or an appeal by a party. If the Legislature objected to the Supreme Court's view of the deemed granted provision, it could simply have included language in the 1995 amendment providing that applications to reopen were in fact "deemed granted" whenever the Department exceeded its time limits for reconsideration. It did not.

Instead, the Legislature unambiguously added language to RCW 51.52.060 under new subsection (b)(ii) stating that the Department should only,

> [h]old an order, decision, or award issued under RCW 51.32.160 in abeyance for a period not to exceed ninety days from the date of receipt of an application under RCW 51.32.160. The department may extend the ninety-day time period for an additional sixty days for good cause.

Both sections could have, but do not contain remedies for situations in which the Department exceeds the time limits for reconsideration. Reading RCW 51.32.160 and RCW 51.52.060 together, as urged by the dissent to produce a "deemed granted" result, was expressly prohibited in *Tollycraft*. Following *Tollycraft*, we do not read a "deemed granted" remedy into the 1995 amendment to RCW 51.52 060. Again, if the Legislature desired such a result, *Tollycraft* put the

Legislature on notice that it must clearly say so. Also, as indicated earlier, in a Significant Decision we held that the "deemed granted" provisions of RCW 51.32.160 do not apply when the Department holds its initial timely order in abeyance upon a Notice of Appeal. *In re Edna Shore*, BIIA Dec., 89 5898 (1990). We published *Shore* as a Significant Decision pursuant to legislative direction in RCW 51.52.160. We assume the Legislature is also aware of our application of these statutory provisions, especially when they are published pursuant to legislative mandate.

Finally, we observe that the court in a footnote in *Tollycraft* did speculate about an alternative remedy other than "deemed granted" when the Department exceeds its time limits.

> The presence of the deadlines contained in RCW 51.52.060 guarantee that the Department will not be permitted to delay a decision on an application to reopen indefinitely. *Cf. Erection Co. v. Department of Labor & Indus.*, 121 Wn.2d 513, 852 P.2d 288 (1993) (failure of Department to act within specified time period **may terminate Department's authority to act at all**).

Tollycraft, at 439. (Emphasis added.)

In *Erection Co.* the court held that the Department's failure to timely issue a further order after an employer's initial appeal in a case under the Washington Industrial Safety and Health Act, (WISHA) contained in RCW 49.17, *et. seq.*, divested the Department of jurisdiction. The court held that the employer's Notice of Appeal should be treated as an appeal to this Board of the initial order issued by the Department.

We do not view Footnote 8 in *Tollycraft* as necessarily providing definitive direction in the present case. The Department's failure to reconsider an application to reopen within the constraints of RCW 51.52.060 was not squarely before the court. The Supreme Court did not thoroughly discuss the matter now before us, including the potentially critical distinctions between the Washington Industrial Safety and Health Act and the Industrial Insurance Act. Further, we have previously held in a long line of decisions that, under the Industrial Insurance Act, we must return cases to the Department's jurisdiction with direction to issue a further order, if the

Department has failed to act on a timely protest to an order that contained language promising reconsideration and a further order upon a timely protest. *In re Santos Alonzo*, BIIA Dec., 56,833 (1981). *Alonzo* is another published Significant Decision of this Board. We note that the Department's January 3, 1995 order in the present case contained notice to Ms. Short of the same type utilized in *Alonzo*.

In any event, neither our holding in *Alonzo* nor Footnote 8 in *Tollycraft* contemplate that this Board or our courts would read a "deemed granted" remedy into RCW 51.52.060 when no such remedy is included in the statute. And, as indicated above, our Supreme Court has noted the important separate purposes of RCW 51.32.160 and RCW 51.52.060. The Legislature is presumably familiar with the court's decisions and our published Significant Decisions that speak to the issue of Department actions under RCW 51.32.160 and RCW 51.52.060. The Legislature considered both statutes and the Department procedures during its 1995 session, and simply did not amend RCW 51.52.060 to include a "deemed granted" remedy in that statute. We have nothing before us that indicates the Legislature intended to do so, and, as previously noted, we decline to read such a remedy into RCW 51.52.060 as amended. We, therefore, find that Ms. Short's application to reopen her claim is not "deemed granted."

As the appealing party, Ms. Short had the burden of proving that she had a disabling condition that became aggravated following the Department's closure of her claim on October 31, 1994. RCW 51.32.160 and *Phillips v. Department of Labor & Indus.,* 49 Wn.2d 195, 197 (1956). Ms. Short rested her case without providing evidence of aggravation. Therefore, we have no choice but to affirm the Department order denying her request to reopen the claim.

After a review of the Proposed Decision and Order, Ms. Short's Petition for Review, and a thorough review of the record before us, we make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On February 21, 1991, Ms. Short filed an application for benefits with the Department of Labor and Industries for an industrial injury incurred on January 30, 1991, while working for Express Cuts. The claim was allowed, and on October 31, 1994, the Department issued an order closing the claim with a permanent partial disability award of 3 percent of the amputation value of the right arm at or above the deltoid insertion or by disarticulation at the shoulder. The order accepted the condition of bilateral De Quervain's syndrome, and it denied other conditions.

   On January 9, 1995, the claimant filed an application to reopen her claim with the Department of Labor and Industries. The Department denied the application in an order dated March 1, 1995. On March 10, 1995, the claimant filed a protest and request for reconsideration. The Department held the March 1, 1995 order in abeyance by an order dated April 12, 1995. On September 14, 1995, the Department issued an order that affirmed the March 1, 1995 order. On September 22, 1995, the claimant filed a Notice of Appeal with the Board of Industrial Insurance Appeals. The Board issued an order granting the appeal on October 17, 1995.

2. Ms. Short failed to present evidence that her condition proximately caused by the January 30, 1991 industrial injury worsened or became aggravated following the Department's issuance of the October 31, 1994 order that closed the claim with a permanent partial disability award.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter of this appeal.

2. The claimant's application to reopen her claim filed on January 1, 1995, is not deemed granted under RCW 51.32.160, RCW 51.52.050, or RCW 51.52.060.

3. The claimant failed to prove under RCW 51.32.160 that she has a disabling condition that became aggravated after the October 31, 1994 order that closed her claim.

4. The order of the Department of Labor and Industries dated September 14, 1995, that affirmed the March 1, 1995 order that denied the claimant's application to reopen her claim is correct, and is affirmed.

It is so **ORDERED.**

Dated this 20th day of December, 1996.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
S. FREDERICK FELLER Chairperson

/s/_____
JUDITH E. SCHURKE Member

DISSENT

I dissent from the majority determination. Ms. Short's application to reopen her claim should be deemed granted by operation of RCW 51.32.160 and RCW 51.52.060.

After the Supreme Court's decision in *Tollycraft* was issued on September 16, 1993, the Legislature revisited the issues raised in this case. The Legislature amended RCW 51.32.160 by simply numbering its paragraphs. The "deemed granted" provisions of the statute are now contained in RCW 51.32.160(1)(d). The substantive "deemed granted" provisions remained the same under the new numbering system.

The net effect of the new legislation is that under RCW 51.32.160(1)(d) the Department has an initial 90 days within which to issue an initial order either accepting or denying the aggravation application. That initial 90 days may be extended for good cause for an additional 60 days. Once the Department issues its initial order, and if that order is protested, the Department must follow the process and time limitations found in RCW 51.52.060. Specifically, while all other kinds of orders are to be dealt with under the provisions of RCW 51.52.060(4)(b)(i), the new legislation requires the Department to act on orders issued under RCW 51.32.160 within 90 days of the date of the **receipt of the application** under RCW 51.32.160. That 90 days may be extended an additional 60 days for good cause shown. RCW 51.52.060(4)(b)(ii). Thus, the Legislature has made it abundantly clear that the entire process of issuing an initial order upon the filing of an aggravation application

and acting on and ruling on a protest must be done within a maximum of 150 days from the receipt of the aggravation application.

The new legislation also dealt with the issues the Supreme Court declined to reach in *Tollycraft*. The last sentence of RCW 51.52.060(4)(b) that states, "This subsection (4)(b) does not apply to applications deemed granted under RCW 51.32.160" has the effect of preventing the Department from applying any part of RCW 51.52.060(4)(b) to further deal with the issues contained in the aggravation application if it has not timely issued an initial order under RCW 51.32.160. Thus, the last sentence of RCW 51.52.060(4)(b) effectively resolves the first issue raised by Tollycraft Yachts in relation to whether the Department could reconsider a deemed granted order. It cannot. The second issue pertained to the employer's right to appeal a deemed granted order. RCW 51.52.060(5) effectively resolves that issue in favor of the employer.

Given the effects of the new legislation, it is clear that the Legislature did not necessarily agree with the Supreme Court's interpretation of RCW 51.32.160 and its interplay with RCW 51.52.060. The legislation was not, however, deemed to be emergency legislation and went into effect on July 23, 1995. Thus, the question presented on the facts of this case is whether the claimant is entitled to the retroactive benefit of the new legislation when her aggravation application was filed on January 9, 1995, and where it appears that the Department initially acted issuing an order to deny the reopening of the claim as early as March 1, 1995, both dates being prior to the effective date of the amendments. On the other hand, the Department did not complete the process of ruling on the claimant's protest of March 10, 1995, and act to affirm the March 1, 1995 order until September 14, 1995, well after the effective date of the amended law.

It can be argued, perhaps, that the new legislation clarifies the original intent of the Legislature in the enactment of RCW 51.32.160. If the legislation can be shown to be a clarification, then it should be held to be retroactive and effective from the original date of the

statute. *Marine Power v. Human Rights Comm'n*, 39 Wn. App. 609, 614 (1985). The court in *Marine Power* noted that there is an exception to that general rule, however. The court quoted 1A C. Sands, *Statutory Construction* § 27.04, at 313 (4th ed. 1973) as follows:

> The usual purpose of a special interpretive statute is to correct a *judicial interpretation* of a prior law which the legislature determines to be inaccurate. Where such statutes are given any effect, the effect is *prospective only*. Any other result would make the legislature a court of last resort.

(Footnote omitted. Italics theirs.)

In *Marine Power* at 615, the court further noted that the Legislature may not, by legislative enactment, overrule a prior authoritative Supreme Court opinion construing a statute. Clarifications may only clarify an ambiguous statute and once the Supreme Court has ruled on an issue, it no longer may be said that the statute is ambiguous. Accordingly, the new legislation in RCW 51.52.060 must be deemed an amendment.

The general rule is that a legislative amendment to a statute is presumed to operate prospectively. *Marine Power*, at 616. The court in *Marine Power* then went on to note at pages 616 and 617 that:

> However, this presumption is reversed to favor retroactive application if the enactment 'is remedial and concerns procedure or forms of remedies . . ..' 'A statute is remedial when it relates to practice, procedure, or remedies and does not affect a substantive or vested right.' Clearly, companies such as Marine Power have no vested right to discriminate against their employees. Furthermore, a close reading of the statute and the amendment indicates that the new section is remedial because it creates a supplemental remedy for enforcement of a preexisting right.

(Citations and footnotes deleted.)

The new legislation is remedial. It relates to the remedy that a claimant has for the slow processing of an aggravation application. It is equally clear that the new legislation relates to the practices of the Department and the procedures employed in acting on aggravation applications. I

can find no vested right on behalf of the Department in relation to the time limits it has in processing aggravation applications. There is no vested right in bureaucratic delay. Hence, I conclude that the new legislation is retroactive.

Finally, in relation to the retroactivity of the new legislation and its limits, I must note that the court further held that in cases where the law changes between the entering of an initial judgment below and consideration of the matter on appeal, the appellate tribunal should apply the new or altered law, especially where no vested rights are involved and the Legislature intended retroactive application. *Marine Power*, at 620. Thus, even if one feels that the Department's order of March 1, 1995, fulfilled the Department's obligations under the *Tollycraft* court's holding, one is bound to follow the new law on appeal in any event.

There remains one further legal issue that might bar deemed granted relief to the claimant that requires discussion. The Board, in the past, has held that there is no penalty for Department violations of the time limitations contained in the former RCW 51.52.060. *See, In re Edna Shore*, BIIA Dec., 89 5898 (1990). In the *Shore* case the Board stated, at page 4:

> The Department's failure to comply with the time limitations contained in RCW 51.52.060 may subject the Department to an action for mandamus (See, e.g., RCW 7.16, et. seq.) but will not result in the application to reopen being "deemed granted" pursuant to the provisions of RCW 51.32.160.

Hence, there is a potent argument that I would be required to follow under the former statute that if the Department reconsiders an initial order issued under RCW 51.32.160 and the time limits contained in RCW 51.52.060 are exceeded during reconsideration, there is no "deemed granted" remedy under that statute. Under this interpretation, the "deemed granted" remedy would only apply to issuance of the initial order under RCW 51.32.160.

With the passage of time and the new legislation, I am not persuaded by this argument for several reasons. First, it is no longer clear since *Tollycraft* that there is no penalty associated with

a failure to complete reconsideration within the time limits contained in RCW 51.52.060. A careful reading of the Supreme Court's opinion in that case potentially leads to a far different conclusion. The court, in its Footnote 8, that directly pertained to its holding at 122 Wn.2d 439 (1993), stated:

> The presence of the deadlines contained in RCW 51.52.060 guarantee that the Department will not be permitted to delay a decision on an application to reopen indefinitely. *Cf. Erection Co. v. Department of Labor & Indus.*, 121 Wn.2d 513, 852 P.2d 288 (1993) (failure of Department to act within specified time period may terminate Department's authority to act at all).

While this footnote is dicta in the *Tollycraft* decision, the word "guarantee" jumps out as strong language regardless of that fact. It appears likely that the Supreme Court will accept an argument by analogy from the *Erection Company* case, which related to reconsideration of citations issued under Washington Industrial Safety and Health Act (WISHA), that if the Department does not act within the time limits contained in RCW 51.52.060, then it may not act at all. The Department may simply lose jurisdiction to rule on the issues on reconsideration entirely. Given what the Legislature clearly already knew about *Tollycraft* at the time it crafted the amended statutes in question, the Legislature simply had to be aware of the footnote as well. Also apparent is that the "deemed granted" remedy is, in essence, a specific form of loss of jurisdiction, i.e., the Department loses authority to do anything but issue the deemed granted order.

Second, one must read statutes concerning the same subject matter together in order to ascertain their meaning. *State v. Houck*, 32 Wn.2d 681, 684-685 (1949); *State v. Alvarez*, 74 Wn. App. 250, 259 (1984). Prior to the new enactment there was nothing in RCW 51.52.060 that required one to also look to RCW 51.32.160 for penalties. That is no longer the case as there is language in both statutes in relation to the deemed granted issue. Accordingly, I conclude that RCW 51.32.160 and RCW 51.52.060 must now be read together in relation to whether the claimant is entitled to a deemed granted order upon the failure of the Department to issue an order upon reconsideration under RCW 51.52.060(4)(b)(ii). Indeed, it is obvious that the Legislature

absolutely intended RCW 51.32.160 and RCW 51.52.060 to be read together. Otherwise, why did the Legislature place the employer's appeal remedy from deemed granted orders in RCW 51.52.060(5)? If that appeal only flows from the Department's failure to issue an order under RCW 51.32.160, then the appeal right should have been placed in RCW 51.32.160. One must now read both statutes together to know that the employer has a right to appeal a deemed granted order issued pursuant to RCW 51.32.160.

Third, this peculiar placement of the employer's remedy in RCW 51.52.060(5) instead of in RCW 51.32.160 leads me to believe that the Legislature intended for that remedy to apply with equal weight to deemed granted orders that flowed from a failure of the Department to reconsider in a timely manner under the time constraints contained in RCW 51.52.060(4)(b)(ii). Taken in that light, this placement of the employer's remedy makes some sense when one realizes that it is altogether rather unlikely of the Department to fail to issue an initial order within the time constraints contained in RCW 51.32.160 in comparison to the potential failure rate in issuing an order on reconsideration under RCW 51.52.060(4)(b)(ii). If it has only the same potential 150 days, then the Department must almost certainly fail to meet the time limits more often when it is in the process of reconsidering its initial order than when it is issuing its initial order. Hence, the Legislature's placement of the employer's appeal remedy in RCW 51.52.060(5) not only absolutely requires one to read the two statutes together, but also leads one to believe that the Legislature intended the deemed granted remedy to apply when the Department failed to meet the time restrictions of RCW 51.52.060(4)(b)(ii) when it reconsiders the initial orders.

Given the foregoing conclusions, I find that RCW 51.52.060(4)(b)(ii) applies retroactively in this claim and that the Department, in failing to issue an order on reconsideration of its March 1, 1995 order within 150 days of Ms. Short's January 9, 1995 application to reopen her

claim, lost jurisdiction, and as a matter of law allowed Ms. Short's application to become "deemed granted."

Dated this 20th day of December, 1996.

BOARD OF INDUSTRIAL INSURANCE APPEALS

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