

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

1 **IN RE: PATRICIA VALENTIN**)
2)
3 **CLAIM NO. AW-88418**)
4) **DOCKET NOS. 17 10974 & 17 17875**
5) **DECISION AND ORDER**

6 Patricia Valentin sustained an industrial injury and was receiving time-loss compensation
7 benefits when a federal audit of the employer found that Ms. Valentin did not appear to have valid
8 credentials to be employed. She had used a false social security number when she applied for her
9 job. She continued to receive time-loss compensation benefits until her employer created a light-duty
10 job for her that was approved by her attending physician. She offered to accept the offer of light-duty
11 work as long as she was not required to provide the proper identification. The employer did not
12 respond and the Department ended her time-loss compensation benefits and determined she had
13 received an overpayment of benefits. Ms. Valentin requests that those orders be reversed, the
14 overpayment stricken, and her time-loss compensation benefits resumed. The industrial appeals
15 judge affirmed both orders. We agree with our industrial appeals judge but have granted the Petition
16 for Review to amend the jurisdictional history for Docket No. 17 17875 and to further discuss the
17 basis for our decision. The Department orders are **AFFIRMED**.

DISCUSSION

18 Ms. Valentin applied for a job with the employer, a janitorial service. On her application she
19 provided a driver's license and social security number and attested to their authenticity. The
20 employer, Pacific Building Services, Inc., accepted her at her word and did not attempt to verify if the
21 information was correct. She began work as a janitor in November 2014, quit, and then returned in
22 March 2015. She sustained an industrial injury on May 26, 2015. The claim was allowed and she
23 received time-loss compensation benefits.

24 Homeland Security conducted an audit of Pacific Building Services' payroll and Ms. Valentin's
25 immigration status was questioned. It was discovered that she had used a fake social security
26 number, which was cause to fire her but the company did not do so at that time.

27 Pacific Building Services created a light-duty position for Ms. Valentin, cleaning restrooms in
28 one of its customer's buildings. This was normally done by one of the regular cleaners during the
29 shift but Anthony Macfarlane, the company's HR manager, stated that this was a lighter job that the
30 company had provided to injured workers in the past. The other workers would add other duties so
31 that they were all working full time. Ms. Valentin's doctor signed off on the job and it was offered to
32 her.

1 Ms. Valentin accepted the offer as long as Pacific Building Services would not require her to
2 get the proper identification papers, which, of course, the company could not do. It did not respond
3 to her request and the Department stopped her time-loss compensation benefits and issued an
4 overpayment order.
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7 Ms. Valentin appealed the orders and the industrial appeals judge issued a Proposed Decision
8 and Order on cross-motions for summary judgment that affirmed the orders. We granted
9 Ms. Valentin's Petition for Review and vacated the Proposed Decision and Order in our Decision and
10 Order. We ordered that the matter be remanded to the hearing process to take further evidence
11 because there remained material issues of fact related to the employer's hiring practices;
12 Ms. Valentin's ability to work; whether Ms. Valentin actually started the offered light-duty job; and
13 whether it was a valid job offer.
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17 Further hearings were held and the industrial appeals judge again found that the Department
18 orders should be affirmed. Ms. Valentin raises the same issues she raised in the summary judgment
19 motion and her first Petition for Review. The bases for objections that the job offer is not valid are
20 not based on RCW 51.32.090(4)(b). She cites a number of discrepancies that she asserts do not
21 follow the statute, with one being that the job offer did not have a start date. We find no requirement
22 for a start date in the statute. The employer's position is that it was premature to set one until they
23 knew Ms. Valentin could accept the job due to scheduling cleaners for various buildings and shifts.
24 Mr. Macfarlane explained that until Pacific Building Services verified her availability, they were unable
25 to provide the start date.
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28 We also believe the job offer was bona fide. There is no dispute that the job was available,
29 other people had done it, and if Ms. Valentin was legally able to work she could have started
30 whenever she wanted. It was also within the physical restrictions set out by Ms. Valentin's attending
31 physician.
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34 We also find that the failure to provide the job offer in Spanish is not a valid objection. There
35 is no statutory requirement for this and we note that Ms. Valentin attended an in-person meeting with
36 an interpreter where Mr. Macfarlane explained the job duties and requirements and the offer. She
37 asked to take the offer with her and to think about it. She then hired an attorney who also reviewed
38 the job offer and represented her at the time she sent the letter accepting the job if she was not
39 required to present the required documentation. Ms. Valentin and her attorney should have known
40 Pacific Building Services could not be held to such a restriction.
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1 Because Ms. Valentin's doctor approved the job a month before it was sent to Ms. Valentin is
2 another instance of a nonissue, more of a form-over-substance argument than a real objection to the
3 requirements of the statute. We don't see a problem because if, in fact, Dr. Adams had a change of
4 heart he could have submitted a new opinion but he did not. The employer substantially complied
5 with the statute.
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8 We also don't find the failure to check Ms. Valentin's citizenship status at the time of her
9 application has any bearing on the issues presented in these appeals. Federal law only requires the
10 employer to require certain documents to establish a person's eligibility to work. Pacific Building
11 Services required a social security card and driver's license—documents that are both included in
12 the statute and rule.¹
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16 Although we are sympathetic to the plight of persons who have entered the country illegally
17 and have been here for a time attempting to make a living and raise a family, and in Ms. Valentin's
18 case where she has a large overpayment she needs to repay, both state and federal laws are clear
19 in this case. Ms. Valentin knowingly used a false social security number to obtain employment and
20 she should have known the potential consequences of her actions. In this case it is undisputed that
21 Ms. Valentin was capable of performing the light-duty job and it was available to her but the employer
22 was barred by law from hiring her.
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27 Our decision in *In re Patricia L. Ange^l* is on point and supports our decision in Ms. Valentin's
28 case. Ms. Angel was offered a light-duty job that she was able to perform and that she accepted.
29 She was unable to actually start the job because she was unable to provide proof of eligibility to work
30 in this country. We found that the inability to provide that proof was the proximate cause of her
31 inability to take the job and not her industrial injury. Therefore, we affirmed the Department order
32 denying her entitlement to time-loss compensation benefits.
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36 Ms. Valentin has also raised the issue of the timeliness of the protest to the August 2, 2016
37 time-loss compensation order. Even though the prior third-party administrator for the employer
38 received the order, the failure to serve the employer extended the time for it to protest or appeal.³
39 This situation, where the third-party administrator also represents a retrospective rating group, is
40 different than when an attorney gets the order for a party because the retrospective rating group has
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45 ¹ 8 U.S.C.A § 1324a and 8 C.F.R. §274a.2.

46 ² Dckt. No. 08 13682 (October 30, 2009).

47 ³ *In re David Tapia-Fuentes*, BIIA Dec., 06 15128 (2007).

1 different interests even when it represents the employer at the Department. The employer filed its
2 protest within 60 days of its receipt of the order and is timely.
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4 The final issue we must resolve is the jurisdictional history for Docket No. 17 17875. The
5 orders dated December 29, 2016, and March 29, 2017, do not appear, on their face, to have been
6 timely protested. We performed a review of the Department claim file pursuant to *In re Mildred*
7 *Holzerland*⁴ and find that timely protests were filed to both orders.
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10 DECISION

- 11 1. In Docket No. 17 10974, the claimant, Patricia Valentin, filed an appeal with the Board of Industrial
12 Insurance Appeals on January 25, 2017, from an order of the Department of Labor and Industries
13 dated November 30, 2016. In this order, the Department affirmed its order dated November 10,
14 2016, finding an overpayment of \$10,122.42 assessed against Ms. Valentin. This order is correct
15 and is affirmed.
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- 18 2. In Docket No. 17 17875, the claimant, Patricia Valentin, filed a protest with the Department of
19 Labor and Industries within 60 days of her receipt of the Department order dated March 29, 2017.
20 The Department forwarded it to the Board of Industrial Insurance Appeals as an appeal. In the
21 March 29, 2017 order, the Department affirmed its order dated December 29, 2016, ending
22 time-loss compensation benefits on December 29, 2016, because the claimant was able to work.
23 This order is correct and is affirmed.
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28 FINDINGS OF FACT

- 29 1. **Docket 17 10974:** On March 2, 2017, an industrial appeals judge certified
30 that the parties agreed to include the Jurisdictional History in the Board
31 record solely for jurisdictional purposes.
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- 33 2. **Docket 17 17875:** On August 9, 2017, an industrial appeals judge
34 certified that the parties agreed to include the Jurisdictional History in the
35 Board record solely for jurisdictional purposes.
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- 37 3. Patricia Valentin began working for Pacific Building Services, Inc., in 2014
38 and, after a brief separation, was rehired in March 2015. She provided
39 documentation to support her eligibility for employment in the United
40 States and certified that the information she provided was true and
41 correct. She is a native Spanish speaker with limited English proficiency.
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- 43 4. Ms. Valentin was injured on May 15, 2015, while working for Pacific
44 Building Services. Her claim was allowed.
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⁴ BIIA Dec., 15,729 (1965).

- 1 5. Pacific Building Services was audited by U.S. Immigration and Customs
2 Enforcement (ICE). On June 1, 2015, ICE issued a notice of suspect
3 documents to Pacific Building Services naming employees whose
4 eligibility for employment couldn't be verified. Ms. Valentin was one of the
5 employees named.
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7 6. Pacific Building Services sent Ms. Valentin a letter requesting
8 documentation to verify employment eligibility. Ms. Valentin did not
9 provide such documentation or dispute the ICE audit findings. Pursuant
10 to company policy, she was subject to termination for providing false
11 information to Pacific Building Services in her employment application.
- 12 7. Ms. Valentin was terminated on June 19, 2015, but she was paid time-loss
13 benefits from May 19, 2015, through October 25, 2016, via orders dated
14 August 2, 2016 (paying time-loss from 7/20/2016-8/2/2016); August 16,
15 2016 (paying time-loss from 8/3/2016-8/16/2016); August 30, 2016
16 (paying time-loss from 8/17/2016-8/30/2016); September 13, 2016
17 (paying time-loss from 8/31/2016-9/13/2016), September 27, 2016
18 (paying time-loss from 9/14/2016-9/27/2016); October 11, 2016 (paying
19 time-loss from 9/28/2016-10/11/2016); and October 25, 2016 (paying
20 time-loss from 10/12/2016-10/25/2016). Each of these orders was
21 appealed by the employer, but the employer's appeal from the August 2,
22 2016 order was received by the Board of Industrial Insurance Appeals on
23 October 10, 2016.
- 24 8. The Department did not mail the August 2, 2016 order to Pacific Building
25 Services, instead mailing it to the third-party administrator of the
26 retrospective rating group Pacific Building Services was a member of until
27 October 1, 2016. Pacific Building Services did not receive such
28 correspondence until it took over claim management on October 1, 2016.
- 29 9. On June 6, 2016, Pacific Building Services sent a written light-duty job
30 offer to Ms. Valentin, based on the certification of attending physician,
31 Archie Adams, M.D., of the job duties as within her physical capacities.
32 On June 29, 2016, a Pacific Building Services' manager and Ms. Valentin
33 met to discuss the job offer and the requirement that she provide proof of
34 employment eligibility. She declined to make a decision until she could
35 consult an attorney, which she subsequently did.
- 36 37 10. On July 7, 2016, Ms. Valentin and her attorney wrote to Pacific Building
38 Services' HR manager, Anthony Macfarlane, indicating that she would
39 accept the offer if Pacific Building Services would first confirm its
40 willingness to employ her despite her undocumented status.
- 41 42 11. Mr. Macfarlane planned to hire Ms. Valentin back if she had proof that she
43 was authorized to work in the United States, but instead she confirmed
44 her undocumented status. So he did not contact her again. No start date
45 was ever identified.
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- 1 12. Pacific Building Services is in the business of janitorial services for
2 commercial buildings in major urban areas of Western Washington. It
3 includes dusting, sweeping, trash removal, restroom cleaning, floor care,
4 carpet cleaning, and general maintenance, days and nights, seven days
5 a week. There were about 250 employees when Ms. Valentin was first
6 hired in 2014. There are currently about 400 employees.
- 7 13. Pacific Building Services' standard hiring process in 2014 involved
8 obtaining photocopies of new employee identification such as a driver's
9 license and social security card, in order to complete a Federal I-9 form
10 verifying authorization for employment in the U.S. The process also
11 involved providing an orientation packet to new employees, including
12 company policies and procedures, providing them a uniform, and putting
13 them in the payroll system. The hiring process followed in Ms. Valentin's
14 case followed Pacific Building Services' standard hiring process. She had
15 a Spanish-speaking coworker explain the paperwork to her.
- 16 14. Ms. Valentin's job of injury was cleaning floors, cleaning bathrooms,
17 dusting, mopping, vacuuming, trash removal, and cleaning glass.
- 18 15. The light-duty job offered to Ms. Valentin in June 2016 was restroom
19 cleaning, which takes a little more time than the general dusting, trash
20 removal, and vacuuming in offices. But it's a position that accommodates
21 her lifting restrictions and could continue indefinitely.
- 22 16. The light-duty job offered to Ms. Valentin in June 2016 was a valid position
23 in furtherance of the employer's business.
- 24 17. **Docket No. 17 10974:** The August 2, 2016 Department order was not
25 communicated to the Pacific Building Services until October 1, 2016.

26 **CONCLUSIONS OF LAW**

- 27 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
28 and subject matter in these appeals.
- 29 2. Pacific Building Services, Inc., made a valid job offer to Ms. Valentin within
30 the meaning of RCW 51.32.090(4)(b).
- 31 3. Pacific Building Services' hiring practices followed the requirements of
32 8 U.S.C.A § 1324a and 8 C.F.R. § 274a.2
- 33 4. **Docket No. 17 10974:** Pacific Building Services' appeal from the
34 Department order dated August 2, 2016, was timely filed as required by
35 RCW 51.52.060, and the Board has jurisdiction over this appeal.
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**Addendum to Decision and Order
In re Patricia Valentin
Docket Nos. 17 10974 & 17 17875
Claim No. AW-88418**

Appearances

Claimant, Patricia Valentin, by Wallace Law, PLLC, per Dorian D.N. Whitford

Employer, Pacific Building Services, Inc., by Holmes Weddle & Barcott PC, per Ann M. Silvernale and Kristen Eshleman

Retrospective Rating Group, Association of WA Business- Retail, Wholesale, Services #10128, by Compwise, per Melinda Derosa, Lay Representative

Department of Labor and Industries, by Office of the Attorney General, per David I. Matlick

Petition for Review

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The claimant filed a timely Petition for Review of a Proposed Decision and Order issued on November 1, 2018, in which the industrial appeals judge affirmed the orders of the Department dated November 30, 2016, and March 29, 2017. The employer filed a response to the Petition for Review on January 10, 2019.