

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

1 IN RE: STEPHANIE R. KALIS)	1 DOCKET NO. 17 10985
2)	
3 <u>CLAIM NO. SB-14143</u>)	3 DECISION AND ORDER
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5 Stephanie R. Kalis was injured during the course of her employment as a customer service
6 lead for Alaska Airlines, Inc. (Alaska) when the luggage bag a passenger was pulling clipped her
7 heel, causing her to fall over the luggage and injure her neck, shoulder, back, wrists, and coccyx.
8 The Department of Labor and Industries allowed her claim. Ms. Kalis accepted the job as a sales
9 reservation agent Alaska offered her, but she left and did not return soon after she began training for
10 the job. A vocational specialist at the Department's self-insurance section wrote a letter declaring
11 that Ms. Kalis was not eligible for vocational rehabilitation services because she terminated the
12 training Alaska offered her without good cause. Ms. Kalis filed a dispute with the Department's
13 Vocational Dispute Resolution Office (VDRO). Coral Macy, the supervisor of VDRO, issued a letter
14 in which she overturned the Department's denial of vocational rehabilitation services to Ms. Kalis,
15 determined that she was eligible for such services, and directed Alaska to reinstate payment of
16 time-loss compensation benefits to Ms. Kalis and assign a vocational counselor to assess her ability
17 to work. Alaska appealed and Alaska, Ms. Kalis, and the Department each filed Motions for Summary
18 Judgment. Our industrial appeals judge denied the Summary Judgment Motions filed by Ms. Kalis
19 and the Department and granted Alaska's Summary Judgment Motion. She reasoned the Director
20 of the Department of Labor and Industries is required to make the final decision regarding provision
21 of such services after a dispute had been filed with VDRO. We agree. Alaska's Motion for Summary
22 Judgment is granted, and the Department's and Ms. Kalis's summary judgment motions are denied.
23 Ms. Macy's January 3, 2017 determination is **REVERSED** and this matter is **REMANDED** to the
24 Department for the Director to act on the dispute regarding Ms. Kalis's eligibility for vocational
25 rehabilitation services.
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DISCUSSION

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38 We have granted review in order to emphasize that a plain reading of Washington's regulations
39 and statutes requires the Director of the Department to make a final determination regarding the
40 provision of vocational rehabilitation services after a dispute has been filed.
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1 In making our decision, we have considered the following documents:

- 2 • Alaska's June 26, 2017 Motion for Summary Judgment with attached Declaration of Joanne
- 3 Kauzlarich.
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- 5 • Ms. Kalis's Motion for Summary Judgment dated June 26, 2017, with attached Affidavit of
- 6 Hannah Weaver and Exhibits 1 through 9.
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- 8 • Alaska's July 13, 2017 Response to Ms. Kalis's summary judgment motion.
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- 10 • Ms. Kalis's July 13, 2017 Reply to Alaska's Motion for Summary Judgment.
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- 12 • The Department's July 13, 2017 Cross Motion for Summary Judgment.
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- 14 • Alaska's July 28, 2017 Reply to the Department's summary judgment motion.
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- 16 • The Board's Jurisdictional History that was made part of the record in this appeal on March 7,
- 17 2017, and on May 2, 2017.
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- 19 • A transcript of the parties' oral arguments made on August 1, 2017.
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- 21 • The August 31, 2017 Order Denying Employer's Summary Judgment Motion, Denying
- 22 Claimant's Summary Judgment Motion, and Denying Department's Cross Motion for Summary
- 23 Judgment.
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- 25 • Alaska's September 12, 2017 Request for Interlocutory Review.
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- 27 • The September 22, 2017 Proposed Decision and Order Reversing Interlocutory Order Denying
- 28 Summary Judgment and Granting the Employer's Summary Judgment Motion.
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- 30 • Ms. Kalis's November 7, 2017 Petition for Review.
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32 RCW 51.32.095 sets forth the purpose of vocational rehabilitation services and the procedures

33 governing the provision of such services. This appeal has resulted in large part because some

34 sections of the statute discuss the role of the supervisor or the supervisor's designee while other

35 sections discuss actions that only the Director of the Department is authorized to take. Ms. Kalis

36 argues that the term "the supervisor" refers to the Director of the Department and authorizes the

37 supervisor or his or her designee to make final decisions regarding a worker's eligibility for vocational

38 rehabilitation services in disputed cases. We are convinced that the argument is belied by reading

39 together the provisions of the statute and the provisions of the Washington Administrative Code

40 enacted by the Department to effectuate the directives of the statute. By so doing, it is clear that the

41 statute and the administrative rules authorize the VDRO to make initial decisions regarding whether

42 a worker is entitled to vocational rehabilitation services. On the other hand, once a dispute regarding

43 the initial determination has been filed, only the Director of the Department has the power to resolve

44 the dispute.

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1 In pertinent part, RCW 51.32.095(10) provides:

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3 The director may, in his or her sole discretion and upon his or her own
4 initiative **or at any time that a dispute arises under this section**,
5 RCW 51.32.099, or section 5 of this act, promptly make such inquires as
6 circumstances require and take such other action as he or she considered
7 will properly determine the matter and protect the rights of the parties.

8 (Emphasis added.)

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10 WAC 296-19A-460 describes the role of VDRO after a dispute has been filed. It provides that
11 a VDRO consultant reviews vocational determination disputes and makes a recommendation to the
12 director, who makes a final decision. WAC 296-19A-470 declares that VDRO reviews the written
13 dispute and, if appropriate, issues an acceptance letter after which the Director, at his or her sole
14 discretion, initiates a review of the accepted dispute and directs VDRO staff to contact the parties in
15 an attempt to resolve the dispute. If the dispute is not resolved, the Director in his or her sole
16 discretion will take such action as is appropriate to protect the rights of the parties and will notify the
17 parties in writing of the action that is taken.

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19 This interpretation is in consonance with our decision and order in *In re Todd V. Eicher*,¹
20 wherein we stated:

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22 The threshold determination whether vocational rehabilitation services are
23 both necessary and likely to return a worker to gainful employment is
24 committed to the supervisor's or supervisor's designee discretion.
25 RCW 51.32.095. Any dispute from that decision as to whether the claimant
26 is entitled to vocational services is vested in the Director's sole discretion.
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29 The record establishes that Ms. Macy lacked the authority to determine whether Ms. Kalis was
30 entitled to vocational rehabilitation services because the self-insured employer had disputed the
31 Department's decision. This appeal does not present a genuine issue as to any material fact. Alaska
32 is entitled to judgment as a matter of law and its Motion for Summary Judgment is granted. The
33 summary judgment motions filed by the Department and Ms. Kalis are denied.
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36 **DECISION**

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38 In Docket No. 17 10985, the employer, Alaska Airlines, Inc., filed a protest with the Department
39 of Labor and Industries on January 20, 2017. The Department forwarded it to the Board of Industrial
40 Insurance Appeals as an appeal. The employer appeals a Department letter dated January 3, 2017.
41 In this letter, the supervisor of the Vocational Dispute Resolution Office of the Department overturned
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47 ¹ Dckt. No. 88 4477 (April 23, 1990).

1 a prior determination that Ms. Kalis was not eligible for vocational rehabilitation services, declared
2 that she was eligible for such services, and required the self-insured employer to reinstate payment
3 of time-loss compensation benefits to Ms. Kalis and to assign a vocational counselor to assess the
4 claimant's ability to work. This letter is incorrect and is reversed and this matter is remanded to the
5 Department for the Director of the Department to act on the dispute related to Ms. Kalis's eligibility
6 for vocational rehabilitation services.
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10 **FINDINGS OF FACT**

- 11 1. On March 7, 2017, and May 2, 2017, an industrial appeals judge certified
12 that the parties agreed to include the Jurisdictional History in the Board
13 record solely for jurisdictional purposes.
- 14 2. On August 10, 2016, the Department of Labor and Industries issued a
15 vocational determination that Stephanie Kalis was not eligible for
16 vocational rehabilitation services because without good cause, she
17 abandoned the training program provided by her self-insured employer to
18 prepare her to perform a job the employer offered and Ms. Kalis accepted.
- 19 3. Ms. Kalis filed a dispute of the August 10, 2016 determination with the
20 Department on August 26, 2016.
- 21 4. On January 3, 2017, Coral Macy, the supervisor of the Department's
22 Vocational Dispute Resolution Office, issued a letter in which she
23 overturned the Department's denial of vocational rehabilitation services to
24 Ms. Kalis, determined that she was eligible for such services, and directed
25 the self-insured employer to reinstate payment of time-loss compensation
26 benefits to Ms. Kalis and assign a vocational counselor to assess the
27 claimant's ability to work.
- 28 5. On January 20, 2017, the self-insured employer filed a dispute of
29 Ms. Macy's decision with the Department.
- 30 6. The Director of the Department has yet to issue a decision resolving the
31 dispute over Ms. Kalis's eligibility for vocational rehabilitation services.
- 32 7. The pleadings and evidence submitted by the parties demonstrate that
33 this appeal does not present any genuine issue as to any material fact.

34 **CONCLUSIONS OF LAW**

- 35 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
36 and subject matter in this appeal.
- 37 2. In accordance with CR 56, the self-insured employer is entitled to a
38 decision as a matter of law and its Motion for Summary Judgment is
39 granted.
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3. Resolution of vocational disputes rests within the sole discretion of the Director of the Department and the decision may not be delegated. RCW 51.32.095(10), WAC 296-19A-460, WAC 296-19A-470.
 4. Per the terms of CR 56, the Department is not entitled to judgment as a matter of law in this appeal and its Cross Motion for Summary Judgment is denied.
 5. Per the terms of CR 56, Ms. Kalis is not entitled to judgment as a matter of law in this appeal and her Motion for Summary Judgment is denied.
 6. The January 3, 2017 letter authored by Coral Macy is incorrect and is reversed, and this matter is remanded to the Department for the Director of the Department to act on the vocational dispute regarding Ms. Kalis's eligibility for vocational rehabilitation services.

15 Dated: January 2, 2018.

16 BOARD OF INDUSTRIAL INSURANCE APPEALS

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19 LINDA L. WILLIAMS, Chairperson

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22 JACK S. ENG, Member
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3 **Addendum to Decision and Order**
4 **In re Stephanie R. Kalis**
5 **Docket No. 17 10985**
6 **Claim No. SB-14143**

7 **Appearances**

8 Claimant, Stephanie R. Kalis, by David B. Vail & Jennifer Cross-Euteneier & Assoc., per
9 Hannah M. Weaver

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11 Self-Insured Employer, Alaska Airlines, Inc., by Bauer, Moynihan & Johnson, LLP, per Mark K.
12 Conley

13 Department of Labor and Industries, by Office of the Attorney General, per Kay A. Germiot
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15 **Petition for Review**

16 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
17 and decision. The claimant filed a timely Petition for Review of a Proposed Decision and Order issued
18 on September 27, 2017, in which the industrial appeals judge reversed and remanded the
19 Department order dated January 3, 2017.
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