

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

**IN RE: CAROLYN J. DAVES DBA  
LOON LAKE PARTNERS**

**DOCKET NO. 20 W1281**

**CITATION & NOTICE NO. 317959021**

**ORDER VACATING PROPOSED DECISION  
AND ORDER AND REMANDING THE APPEAL  
FOR FURTHER PROCEEDINGS**

In August 2020, the Department of Labor and Industries issued a citation in which it alleged that Carolyn J. Daves DBA Loon Lake Partners (Ms. Daves), committed 11 employer safety and health violations at the Loon Lake Motel. The Department fined her \$10,800. Ms. Daves appealed to the Department. After an informal conference, a reassumption hearing officer affirmed the citation and issued Corrective Notice of Redetermination 317959021 (the CNR). Ms. Daves appealed the CNR to this Board. After a lengthy prehearing phase, extended because of the COVID-19 pandemic, the withdrawal of an attorney for Ms. Daves, and various continuances, our industrial appeals judge scheduled an in-person hearing in Spokane, Washington to occur on June 27, 2023. At the hearing, neither Ms. Daves nor a representative for her appeared. Our judge dismissed the appeal pursuant to WAC 263-12-115(8)(b).

Ms. Daves filed a Petition for Review. She renewed arguments made in the prehearing phase, including her objection to the hearing being held in Spokane County. After careful consideration, we agree with Ms. Daves that the proper venue for the hearing is the county where the violation is alleged to have occurred. Here, the proper venue is Stevens County. Because the hearing was scheduled in the incorrect county, Ms. Daves has shown good cause for her failure to appear. The Proposed Decision and Order is **VACATED** and the appeal is **REMANDED** for a hearing to be held in Stevens County, Washington. All other prehearing rulings made by the industrial appeals judges are **AFFIRMED**.

**DISCUSSION**

Between April 2020 and May 20, 2020, the Department conducted a safety and health inspection of Loon Lake Motel in Stevens County, Washington. On August 4, 2020, the Department issued Citation and Notice 317959021. The Department cited Carolyn J. Daves DBA Loon Lake Partners for 11 violations of Washington safety and health standards, and assessed a \$10,800 penalty.

During the almost three years this appeal has been pending at the BIIA there have been six litigation orders issued by two industrial appeals judges. The most recent such order was issued on

1 March 8, 2023, based on matters decided during a March 6, 2023 telephone conference.  
2 Joseph Gately, identified in pleadings as Ms. Dave's husband, business advisor, and manager of  
3 Loon Lake Partners, LLC, was present for the telephone conference. After various pretrial motions,  
4 conferences, and continuances, the hearings were rescheduled for June 27 & 28, 2023, to be held  
5 at the Spokane office of the Board of Industrial Insurance Appeals. Ms. Daves' hearing time was also  
6 scheduled for July 18, 19 & 20, 2023, at the Spokane Board office. Earlier hearings were scheduled  
7 remotely because of the Governor's COVID-related proclamations. Throughout the pretrial phase,  
8 Ms. Daves and Mr. Gately strenuously objected to telephonic or video hearings. After the Governor's  
9 proclamation expired, the hearings were scheduled to occur in person in Spokane.

10 Ms. Daves objected to hearings being scheduled in Spokane on grounds that the venue was  
11 improper. In June 2023, Ms. Daves filed a motion specifically to object to venue for the hearing. The  
12 motion was denied, and Ms. Daves petitioned for interlocutory review. An assistant chief industrial  
13 appeals judge declined review of the order, and she directed that the hearing shall proceed in  
14 Spokane.

15 Neither Mr. Gately nor Ms. Daves appeared at the Spokane hearing. In an abundance of  
16 caution, the industrial appeals judge who presided over the hearing left a video conference window  
17 open in case one of Ms. Daves' representatives attempted to appear at the hearing electronically.  
18 No one appeared. The judge closed the record. Citing WAC 263-12-115(8)(b), he dismissed the  
19 appeal.

20 This subject of venue for the administrative hearing under the Washington Industrial Safety  
21 and Health Act is not clearly addressed in the Act, Chapter 49.17 RCW. But a careful reading of the  
22 Act and the Industrial Insurance Act, shows that the hearing must be in the county where the alleged  
23 violation occurred. RCW 49.17.140(4) provides that after a timely WISHA appeal is filed, "the board  
24 shall thereafter make disposition of the issues in accordance with procedures relative to contested  
25 cases appealed to the state board of industrial insurance appeals." Venue rules are procedural rules.  
26 We have long held that an administrative hearing before the Board must be held in the proper county.<sup>1</sup>

27 In industrial insurance appeals, "hearings shall be held in the county of the residence of the  
28 worker or beneficiary, or in the county where the injury occurred, at a place designated by the board."<sup>2</sup>  
29 This particular rule is awkward to apply to a WISHA case where, as here, there isn't a worker or

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46 <sup>1</sup> *In re Monte W. Hack*, Dckt. No. 99 18834, at 2 (June 11, 2001).

47 <sup>2</sup> RCW 51.52.100.

beneficiary, and there is no county where an injury occurred. But that doesn't end the analysis. The Industrial Insurance Act also provides, "Except as otherwise provided in this chapter, the practice in civil cases shall apply to appeals prescribed in this chapter."<sup>3</sup> There are two venue statutes for civil cases that are applicable here. The first is RCW 4.12.020(1), which provides that an action for recovery of a penalty imposed by statute must be brought in the county in which the cause originates. WISHA penalties are penalties imposed by statute. So, if we follow RCW 4.12.020(1), we would hold the hearing in Stevens County, the county where the citation occurred. Another statute governing venue in civil cases is also found in the Industrial Safety and Health Act itself. RCW 49.17.150, mandates that "[a]ny person aggrieved by an order of the board of industrial insurance appeals issued under RCW 49.17.140(3) may obtain a review of such order in the superior court for the county in which the violation is alleged to have occurred . . ." Thus, if this particular case is appealed to superior court after our final order, it must be brought in Stevens County.

This question appears to be one of first impression. We cannot find a reported case where the venue for an administrative hearing in a WISHA appeal has been contested. For the first two years this appeal was pending, nearly all Board hearings were held remotely (by telephone or videoconference) due to the Governor's COVID-related restrictions on in-person events. Remote hearings allowed all parties to participate regardless of where they were located. But here, Ms. Daves consistently objected to remote hearings and asserted her right to an in-person hearing in Stevens County. When the restrictions were lifted, the hearings were set in Spokane County.

After careful consideration of the law and the record, we hold that unless waived, the proper venue for the administrative hearing before the Board of Industrial Insurance Appeals in a WISHA appeal is the county where the alleged violation occurred. After the Governor rescinded the emergency COVID-19 proclamation, the proper venue for this appeal was Stevens County. Ms. Daves has shown good cause for the failure to appear at the Spokane hearing, and it should be remanded for further proceedings.

### ORDER

This appeal is **REMANDED** to the hearings process, as provided by WAC 263-12-145(5), for further proceedings as indicated by this order. All other rulings made by the industrial appeals judge are **AFFIRMED**.

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<sup>3</sup> RCW 51.52.140.

1 Unless the matter is settled or dismissed, or venue is waived, the assigned industrial appeals  
2 judge will hold hearings in Stevens County, Washington. And the judge will issue a new Proposed  
3 Decision and Order. The new order will contain findings and conclusions as to each contested issue  
4 of fact and law. Any party aggrieved by the new Proposed Decision and Order may petition the Board  
5 for review, as provided by RCW 51.52.104. This order vacating is not a final Decision and Order of  
6 the Board within the meaning of RCW 51.52.110.  
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10 Dated: December 28, 2023.

11 BOARD OF INDUSTRIAL INSURANCE APPEALS

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Addendum to Decision and Order  
In re Carolyn J. Daves DBA Loon Lake Partners  
Docket No. 20 W1281  
Citation & Notice No. 317959021

Appearances

Employer, Carolyn Daves, dba Loon Lake Partners, by Carolyn Daves and by Joseph Gatley, Manager

Interested Observer, Stephen M. Bergman

Department of Labor and Industries, William F. Henry, Office of the Attorney General

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 employer filed a timely Petition for Review of a Proposed Decision and Order issued on June 28, 2023, in which the industrial appeals judge dismissed its appeal of the Department's Corrective Notice of Redetermination No. 317959021 dated October 27, 2020.

Other

The transcript of the June 27, 2023 hearing contained multiple transcriptionist errors that could lead one to erroneously believe that Mr. Gatley was present at the hearing. The "appearances" list at p. 2, line 12 includes Mr. Gatley but does not state that he was not present. This is an obvious transcriptionist error. At page 3, lines 3-4, the transcript notes that Mr. Gatley "are not present yet here at the proceeding." At page 3, line 18, a question was asked of the Department, but the transcript reflects that Mr. Gatley answered. At page 5, from lines 8-15, the transcript indicates that the IAJ addresses a question to Mr. Gatley, who answers it. The questions were directed to Mr. Henry and answered by him.