

Bush, Barry

BOARD

Effect of claim rejection on pending claim administration issues

When we issue a decision to reject a claim, appealed orders adverse to the worker's interests are correct and should be affirmed.*In re Barry Bush*, BIIA Dec., 19 12861 (2020) [Editor's Note: The Board's decision was appealed to superior court under Benton County Cause No. 20-2-01488-2]

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

1 **IN RE: BARRY A. BUSH**) **DOCKET NOS. 19 12861, 19 13267, 19 19603,**
2) **19 19909, 19 22009, 19 22900 & 19 23606**
3)
4 **CLAIM NO. ZB-24636**) **DECISION AND ORDER**

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6 Barry A. Bush filed a claim with the Department of Labor and Industries, alleging that he had
7 developed disabling medical conditions as the result of distinctive conditions of his employment. The
8 Department allowed his claim for an occupational disease affecting both of his shoulders. Mr. Bush's
9 employer, Vintners Logistics, LLC (Vintners), contests claim allowance and four additional orders that
10 were adverse to its interests. Two of the orders authorized arthroscopic shoulder surgeries, one
11 declared that Mr. Bush's employer was responsible for the entire costs of the claim, and one accepted
12 responsibility for specified left shoulder conditions. Mr. Bush also contests two orders that were
13 adverse to his interests. One denied responsibility for cervical degenerative disc degeneration and
14 the other denied authorization for a left shoulder MRI procedure.

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16 Our industrial appeals judge reversed the Department order that allowed Mr. Bush's claim and
17 directed the Department to issue an order that rejects his claim. Our judge also reversed the other
18 orders that were adverse to Vintners and required the Department to take action in accordance with
19 the rejection of the claim. But our judge also reversed the orders that Mr. Bush appealed because in
20 view of her direction to the Department to reject his claim, she concluded that the orders were
21 incorrect. We agree with our industrial appeals judge decision to reject the claim and reverse the
22 other four orders that are adverse to Vintners' interests. We disagree with our industrial appeals
23 judge's decision to reverse the orders adverse to Mr. Bush's interests. Because we reject the claim,
24 it follows that the orders that are adverse to Mr. Bush's interests are correct and must be affirmed.
25 We have granted review to take that action.

DECISION

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36 1. In Docket No. 19 12861, the claimant, Barry A. Bush, filed an appeal with the Board of Industrial
37 Insurance Appeals on April 11, 2019, from an order of the Department of Labor and Industries
38 dated April 1, 2019. In this order the Department affirmed the provisions of an order dated
39 January 25, 2019, denying responsibility for a condition described as cervical disc degeneration.
40 This order is correct and is affirmed.
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42 2. In Docket No. 19 13267, the employer, Vintners Logistics, LLC, filed a protest with the Department
43 of Labor and Industries on April 15, 2019. The Department forwarded it to the Board of Industrial
44 Insurance Appeals as an appeal. The employer appeals a Department order dated March 29,
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1 2019. In this order, the Department affirmed the provisions of an order dated January 16, 2019,
2 that allowed Mr. Bush's claim for an occupational disease for conditions diagnosed as bilateral
3 shoulder impingement, right shoulder bicipital [sic] tendinitis, and osteoarthritis. This order is
4 incorrect and is reversed and this matter is remanded to the Department to issue an order rejecting
5 Mr. Bush's claim because his condition was not proximately caused by an occupational disease
6 process or an industrial injury event.
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10 3. In Docket No. 19 19603, the employer, Vintners Logistics, LLC, filed a protest with the Department
11 of Labor and Industries on April 19, 2019. The Department forwarded it to the Board of Industrial
12 Insurance Appeals as an appeal. The employer appeals a Department order dated May 1, 2019.
13 In this order, the Department affirmed the provisions of an order dated April 18, 2019, authorizing
14 arthroscopic shoulder surgery that was to include biceps tendon repair. This order is incorrect
15 and is reversed and this matter is remanded to the Department to issue an order denying
16 authorization for arthroscopic shoulder surgery that includes biceps tendon repair because
17 Mr. Bush's claim has been rejected.
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22 4. In Docket No. 19 19909, the employer, Vintners Logistics, LLC, filed an appeal with the Board of
23 Industrial Insurance Appeals on September 20, 2019, from an order of the Department of Labor
24 and Industries dated September 20, 2019. In this order the Department affirmed the provisions
25 of an order dated April 30, 2019, that declared that the date of manifestation of Mr. Bush's
26 occupational disease was March 8, 2018, that the date of last injurious exposure was January 31,
27 2018, and that Vintners Logistics, LLC, was responsible for 100 percent of the costs of the claim.
28 This order is incorrect and is reversed and this matter is remanded to the Department to issue an
29 order declaring that because Mr. Bush's claim is rejected, there is no date of manifestation for an
30 occupational disease, date of last injurious exposure, or responsible employer.
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35 5. In Docket No. 19 22009, the employer, Vintners Logistics, LLC, filed an appeal with the Board of
36 Industrial Insurance Appeals on November 5, 2019, from an order of the Department of Labor and
37 Industries dated October 22, 2019. In this order, the Department affirmed the provisions of a letter
38 dated April 5, 2019, authorizing arthroscopic shoulder surgery. This order is incorrect and is
39 reversed and this matter is remanded to the Department to issue an order denying authorization
40 for arthroscopic shoulder surgery because Mr. Bush's claim has been rejected.
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45 6. In Docket No. 19 22900, the employer, Vintners Logistics, LLC, filed an appeal with the Board of
46 Industrial Insurance Appeals on November 5, 2019, from an order of the Department of Labor and
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1 Industries dated October 25, 2019. In this order, the Department accepted responsibility for
2 conditions described as a left shoulder SLAP tear and left shoulder osteoarthritis. This order is
3 incorrect and is reversed and this matter is remanded to the Department to issue an order denying
4 responsibility for conditions described as a left shoulder SLAP tear and left shoulder osteoarthritis
5 because Mr. Bush's claim has been rejected.
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9 7. In Docket No. 19 23606, the claimant, Barry A. Bush, filed an appeal with the Board of Industrial
10 Insurance Appeals on December 23, 2019, from a letter of the Department of Labor and Industries
11 dated November 27, 2019. In this letter, the Department denied authorization for an MRI study
12 without dye of the joint of Mr. Bush's left shoulder because the procedure was not medically
13 necessary. This letter is correct and is affirmed.
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16 **FINDINGS OF FACT**

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18 1. On September 14, 2019, December 22, 2019, and January 16, 2020, an
19 industrial appeals judge certified that the parties agreed to include the
20 Jurisdictional History in the Board record solely for jurisdictional purposes.
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22 2. Barry A. Bush was 49 and 50 years old at the times that are relevant to
23 the issues involved in these appeals. His relevant work experience has
24 been in outside sales. From January 2017 through January 2018,
25 Vintners Logistics, LLC (Vintners) employed Mr. Bush exclusively in a
26 sales position, a job in which he drove a small SUV and performed
27 primarily clerical work.
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29 3. Mr. Bush received a medical discharge from the United States Marine
30 Corp in 1988 because of a service-related cervical injury for which he
31 obtained treatment on a routine basis at the V.A. for three years. The
32 V.A. again began treating Mr. Bush for his cervical condition in 2002.
33 Cervical MRI films dated December 1, 2016 revealed multilevel
34 degenerative disc disease and an EMG study dated February 6, 2017,
35 was positive for chronic C7 radiculopathy.
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37 4. When the wine-making season began in August 2017, Mr. Bush's work
38 functions changed so that in addition to his sales activities, he delivered
39 empty wine barrels belonging to the wineries he visited. Barrels were
40 delivered in a small box truck that held a maximum of 65 barrels. The
41 empty barrels weighed between 100 and 120 pounds and were stacked
42 two-high by Vintners' warehouse employees so that he did not have to
43 repetitively reach over his head to unload them. Mr. Bush unloaded the
44 barrels which were on the second tier by dropping them onto a used tire,
45 which cushioned the fall. Mr. Bush then rolled the barrels to the back of
46 the truck where winery employees removed and took them into the facility.
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48 5. In August 2017, Mr. Bush delivered 324 barrels over the course of nine
49 days; in September, 2017, he delivered 482 barrels in 10 days; and in

1 October 2017, he delivered 6 barrels in a single day. Because winery
2 employees unloaded 94 of the barrels, Mr. Bush unloaded 718 barrels
3 during the 2017 wine-making season.

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5 6. Mr. Bush developed bilateral shoulder pain in approximately September
6 2012. He was diagnosed with left shoulder tendinitis six months later.
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8 7. The activities that Mr. Bush performed during the course of his
9 employment with Vintners are common to all employments in general and
10 in activities of daily living and they did not constitute distinctive conditions
11 of his employment.
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13 8. Mr. Bush's work activities for Vintners did not cause or aggravate his
14 preexisting cervical disc degeneration.
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16 9. Mr. Bush's work activities for Vintners did not cause or aggravate
17 conditions described as bilateral shoulder impingement, right shoulder
18 bicipital tendonitis or osteoarthritis or a left shoulder SLAP tear or left
19 shoulder osteoarthritis

20 **CONCLUSIONS OF LAW**

- 21 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
22 and subject matter in these appeals.
23
24 2. Mr. Bush did not develop an occupational disease within the meaning of
25 RCW 51.08.140 as the result of conditions of his employment for Vintners.
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27 3. Under Docket No. 19 12861, the April 1, 2019 Department order, is
28 correct and is affirmed.
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30 4. Under Docket No. 19 13267, the March 29, 2019 Department order is
31 incorrect and is reversed and this matter is remanded to the Department
32 to issue an order rejecting Mr. Bush's claim because his condition(s)
33 was/were not proximately caused or aggravated by an occupational
34 disease process or an industrial injury event.
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36 5. Under Docket No. 19 19603, the May 1, 2019 Department order is
37 incorrect and is reversed and this matter is remanded to the Department
38 to issue an order denying authorization for arthroscopic shoulder surgery
39 that includes biceps tendon repair because Mr. Bush's claim has been
40 rejected.
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42 6. Under Docket No. 19 19909, the September 20, 2019 Department order
43 is incorrect and is reversed and this matter is remanded to the Department
44 to issue an order declaring that because Mr. Bush's claim is rejected,
45 there is no date of manifestation, date of last injurious exposure, or
46 responsible employer for an occupational disease.
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48 7. Under Docket No. 19 22009, the October 22, 2019 Department order is
49 incorrect and is reversed and this matter is remanded to the Department
50 to issue an order denying authorization for arthroscopic shoulder surgery
51 because Mr. Bush's claim has been rejected.

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8. Under Docket No. 19 22900, the October 25, 2019 Department order is incorrect and is reversed and this matter is remanded to the Department to issue an order denying responsibility for conditions described as a left shoulder SLAP tear and left shoulder osteoarthritis because Mr. Bush's claim has been rejected.
 9. Under Docket No. 19 23606, the November 27, 2019 Department letter is correct and is affirmed.

9 Dated: November 30, 2020.

10 BOARD OF INDUSTRIAL INSURANCE APPEALS

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12 LINDA L. WILLIAMS, Chairperson

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14 JACK S. ENG, Member

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Addendum to Decision and Order
In re Barry A. Bush
Docket Nos. 19 12861, 19 13267, 19 19603, 19 19909, 19 22009, 19 22900 & 19 23606
Claim No. ZB-24636

Appearances

Claimant, Barry A. Bush, by Smart Law Offices, per Marcus R. Henry

Employer, Vintners Logistics, LLC, by Employer Resources Northwest, Inc., per Erin J. Dickinson

Retrospective Rating Group, WA Food Industry Assoc. #00041 (did not appear)

Department of Labor and Industries, by Office of the Attorney General, per Patti J. Foster

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 September 22, 2020, in which the industrial appeals judge reversed and remanded the orders of the Department dated April 1, 2019, March 29, 2019, May 1, 2019, September 20, 2019, October 22, 2019, October 25, 2019, and November 27, 2019. On November 23, 2020, the employer filed a response to the Petition for Review.