

Carolyn Daves (Loon Lake Partners)

SAFETY AND HEALTH

Venue

The proper venue for an appeal under the Washington Industrial Safety and Health Act is the county in which the alleged violation occurred.*In re Carolyn Daves (Loon Lake Partners)*, BIIA Dec., 20 W1281 (2023)

Scroll down for order.

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

1 **IN RE: CAROLYN J. DAVES DBA) DOCKET NO. 20 W1281**
2 **LOON LAKE PARTNERS)**
3)
4)
5)
6 **CITATION & NOTICE NO. 317959021) ORDER VACATING PROPOSED DECISION**
7)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
29)
30)
31)
32)
33)
34)
35)
36)
37)
38)
39)
40)
41)
42)
43)
44)
45)
46)
47)

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.¹

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."²
29 This particular rule is awkward to apply to a WISHA case where, as here, there isn't a worker or

30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46 ¹ *In re Monte W. Hack*, Dckt. No. 99 18834, at 2 (June 11, 2001).

47 ² RCW 51.52.100.

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

13
14
15
16
17
18
19 This question appears to be one of first impression. We cannot find a reported case where
20 the venue for an administrative hearing in a WISHA appeal has been contested. For the first two
21 years this appeal was pending, nearly all Board hearings were held remotely (by telephone or
22 videoconference) due to the Governor's COVID-related restrictions on in-person events. Remote
23 hearings allowed all parties to participate regardless of where they were located. But here, Ms. Daves
24 consistently objected to remote hearings and asserted her right to an in-person hearing in Stevens
25 County. When the restrictions were lifted, the hearings were set in Spokane County.

26
27
28
29
30 After careful consideration of the law and the record, we hold that unless waived, the proper
31 venue for the administrative hearing before the Board of Industrial Insurance Appeals in a WISHA
32 appeal is the county where the alleged violation occurred. After the Governor rescinded the
33 emergency COVID-19 proclamation, the proper venue for this appeal was Stevens County.
34 Ms. Daves has shown good cause for the failure to appear at the Spokane hearing, and it should be
35 remanded for further proceedings.

36 37 38 39 **ORDER**

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

43
44
45
46
47

³ 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.
7
8
9

10 Dated: December 28, 2023.

11 BOARD OF INDUSTRIAL INSURANCE APPEALS

12 

13 HOLLY A. KESSLER, Chairperson

14 

15 ISABEL A. M. COLE, Member

16 

17 JACK S. ENG, Member
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

1 Addendum to Decision and Order
2 In re Carolyn J. Daves DBA Loon Lake Partners
3 Docket No. 20 W1281
4 Citation & Notice No. 317959021
5

6 Appearances

7 Employer, Carolyn Daves, dba Loon Lake Partners, by Carolyn Daves and by Joseph Gatley,
8 Manager
9

10 Interested Observer, Stephen M. Bergman

11 Department of Labor and Industries, William F. Henry, Office of the Attorney General
12
13

14 Petition for Review

15 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
16 and decision. The employer filed a timely Petition for Review of a Proposed Decision and Order
17 issued on June 28, 2023, in which the industrial appeals judge dismissed its appeal of the
18 Department's Corrective Notice of Redetermination No. 317959021 dated October 27, 2020.
19

20 Other

21 The transcript of the June 27, 2023 hearing contained multiple transcriptionist errors that could
22 lead one to erroneously believe that Mr. Gatley was present at the hearing. The "appearances" list
23 at p. 2, line 12 includes Mr. Gatley but does not state that he was not present. This is an obvious
24 transcriptionist error. At page 3, lines 3-4, the transcript notes that Mr. Gatley "are not present yet
25 here at the proceeding." At page 3, line 18, a question was asked of the Department, but the
26 transcript reflects that Mr. Gatley answered. At page 5, from lines 8-15, the transcript indicates that
27 the IAJ addresses a question to Mr. Gatley, who answers it. The questions were directed to Mr. Henry
28 and answered by him.
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47