

Roetcisoender, Zachariah

COMMUNICATION OF DEPARTMENT ORDER

Failure to provide order to attending physician

The Department issued an order in which it determined that it couldn't reconsider its closing order because the worker's protest was untimely. On appeal, the worker contended that the order never became final because it had not been mailed to a psychologist who treated him six times. Held: The psychologist wasn't the worker's attending provider. Citing *Shafer v. Dep't of Labor & Indus.*, 166 Wn.2d 710 (2009), the Board held that the order was properly communicated to the attending provider, Matthew Brown, D.O., and became final and binding when no protest or appeal was filed within 60 days of communication.***In re Zachariah Roetcisoender, BIIA Dec., 23 14840 (2024)*** [*Editor's Note: The Board's decision was appealed to superior court under Snohomish County Cause No. 24-2-02416-31.*]

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

1 **IN RE: ZACHARIAH**)
2 **ROETCISOENDER**)
3)
4 **CLAIM NO. BE-94739**) **DOCKET NO. 23 14840**
5) **DECISION AND ORDER**

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7 In 2019, Zachariah Roetcisoender was electrocuted in the course of employment with Mastec
8 North America, Incorporated. The Department of Labor and Industries allowed his industrial
9 insurance claim for an industrial injury and provided benefits, including treatment for his physical
10 injuries and mental health. On September 29, 2021, the Department issued an order closing the
11 claim. The Department mailed the closing order to Mr. Roetcisoender's attorney, employer, and
12 attending physician under the claim. Mr. Roetcisoender filed protests to the 2021 closing order on
13 February 15, 2023, and March 10, 2023. In response, the Department issued an order on
14 March 21, 2023, and determined that it could not reconsider the closing order because the protests
15 were not filed within 60 days of the disputed order. Mr. Roetcisoender appealed this decision.
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20 Our industrial appeals judge decided this appeal pursuant to a summary judgment motion.¹
21 After the parties filed briefing and our industrial appeals judge held a hearing, our judge determined
22 that the protests were not timely filed and affirmed the Department order. Mr. Roetcisoender filed a
23 timely Petition for Review. We agree with our judge's decision to affirm the Department order. We
24 granted review for the limited purpose of amending the findings of fact to include a finding addressing
25 the industrial injury, adding a finding of fact and a conclusion of law addressing the summary
26 judgment standard, and including a list of the documents and other evidence considered before
27 granting summary judgment pursuant to CR 56(h). Summary judgment is granted for the Department
28 and the Department order dated March 21, 2023, is accordingly **AFFIRMED**. The list of documents
29 and other evidence considered before granting summary judgment is included in the addendum to
30 this Decision and Order.
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DISCUSSION

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38 The Department issued an order closing Zachariah Roetcisoender's industrial injury claim on
39 September 29, 2021. It mailed the closing order to Mr. Roetcisoender's attorney, the employer, and
40 Matthew Brown, D.O., the attending physician under the claim. The Department did not receive
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46 _____
47 ¹ We note that the claimant's motion was titled "Claimant's Motion on Timeliness," but construe the motion as a motion for summary judgment herein, as our industrial appeals judge effectively did in the Proposed Decision and Order.

1 returned mail for the recipients of the closing order. Mr. Roetcisoender filed protests to the
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3 September 2021 closing order on February 15, 2023, and March 10, 2023.

4 While the claim was open, Dr. Brown treated Mr. Roetcisoender for his physical conditions.
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6 Later, Dr. Brown referred him to Leslie Poppe, Ph.D., a psychologist, to treat him for mental health
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8 conditions related to the injury. Mr. Roetcisoender saw Dr. Poppe for five or six visits from June 2020
9 through September 2020.

10 The substantive issue in this case is timeliness. The order on appeal was issued by the
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12 Department in response to Mr. Roetcisoender's protests filed about a year and a half after the
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14 Department issued the closing order. The order on appeal stated that the Department cannot
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16 reconsider its decision because the protest was not timely.

17 The Proposed Decision and Order affirmed the Department's order. Our industrial appeals
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19 judge rejected the claimant's legal argument that the psychologist, Dr. Poppe, who had treated
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21 Mr. Roetcisoender for accepted mental health conditions under the claim, should have been notified
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23 of the closing order. Mr. Roetcisoender filed a Petition for Review, and contends that his protests to
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25 the closing order were timely because the order did not become final and binding without service to
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27 Dr. Poppe.

28 After review of the record, we agree with our industrial appeals judge and hold that
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30 Mr. Roetcisoender's statutory construction arguments lack support and misconstrue the cited legal
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32 authority. We find that the 2021 closing order was properly communicated pursuant to
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34 RCW 51.52.050 and became a final and binding order because no protest or appeal was filed in a
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36 timely manner. We do not agree with the argument that the order was not properly communicated
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38 because the Department did not mail the order to Dr. Poppe, a psychologist who had six visits with
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40 Mr. Roetcisoender in 2020 and, as conceded by Mr. Roetcisoender, was not his attending physician.
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42 RCW 51.52.050(1) requires the Department to "serve the worker, beneficiary, employer, or other
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44 person affected thereby," and the Department complied with this requirement when it mailed the 2021
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46 closing order in this claim. In compliance with *Shafer v. Dep't of Labor & Indus.*, the Department also
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48 properly served Dr. Brown, the attending provider for Mr. Roetcisoender.²

49 Our industrial appeals judge decided this matter on summary judgment. Summary judgment
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51 was appropriate as the facts were not in dispute. An order granting summary judgment requires
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53 1) a designation of the documents and other evidence considered before the order was issued,
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² See *Shafer v. Dep't of Labor & Indus.*, 166 Wn.2d 710 (2009).

1 2) a finding of fact that there is no genuine issue of material fact, and 3) a conclusion of law that the
2 Department is entitled to a decision as a matter of law per CR 56. We granted review to add these
3 three items as they were not included in the Proposed Decision and Order. We also add a factual
4 finding to address Mr. Roetcisoender's industrial injury.
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7 **DECISION**

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9 In Docket No. 23 14840, the claimant, Zachariah Roetcisoender, filed an appeal with the Board
10 of Industrial Insurance Appeals on April 11, 2023, from an order of the Department of Labor and
11 Industries dated March 21, 2023. In this order, the Department determined it could not reconsider its
12 September 29, 2021 order. This order is correct and is affirmed.
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14 **FINDINGS OF FACT**

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16 1. On September 15, 2023, an industrial appeals judge certified that the
17 parties agreed to include the Jurisdictional History in the Board record
18 solely for jurisdictional purposes.
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20 2. Zachariah Roetcisoender sustained an industrial injury on
21 September 12, 2019, when he was electrocuted in the course of his
22 employment.
23
24 3. On September 29, 2021, the Department issued an order closing
25 Mr. Roetcisoender's claim, BE-94739.
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27 4. Copies of the closing order were mailed to Mr. Roetcisoender's attorney
28 of record, Mr. Roetcisoender's attending provider, and the employer of
29 injury. None were returned as undeliverable.
30
31 5. Between September 29, 2021, and February 14, 2023, no protests or
32 appeals were filed with the Department or the Board of Industrial
33 Insurance Appeals to the Department's September 29, 2021 closing
34 order.
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36 6. Mr. Roetcisoender, through his new attorney, filed protests to the
37 September 29, 2021 order on February 15, 2023, and March 10, 2023.
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39 7. On March 21, 2023, the Department issued an order declining to
40 reconsider the September 29, 2021 order because the protests were not
41 received within the 60-day time limitation.
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43 8. The pleadings and evidence submitted by the parties demonstrate that
44 there is no genuine issue as to any material fact.
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46 **CONCLUSIONS OF LAW**

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1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
and subject matter in this appeal.
2. The Department is entitled to a decision as a matter of law as
contemplated by CR 56.

1 3. Mr. Roetcisoender did not file a timely Protest and Request for
2 Reconsideration with the Department, from the Department order dated
3 September 29, 2021, within the meaning of RCW 51.52.050.

4 4. The Department order dated March 21, 2023, is correct and is affirmed.
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6 Dated: March 14, 2024.
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8 BOARD OF INDUSTRIAL INSURANCE APPEALS

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10 HOLLY A. KESSLER, Chairperson

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12 JACK S. ENG, Member
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**Addendum to Decision and Order
In re Zachariah Roetcisoender
Docket No. 23 14840
Claim No. BE-94739**

Appearances

Claimant, Zachariah Roetcisoender, by Law Office of James R. Walsh, per James R. Walsh
Employer, Mastec North America, Inc. (did not appear)
Department of Labor and Industries, by Office of the Attorney General, per Shara De Lorme

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 December 1, 2023, in which the industrial appeals judge affirmed the Department order dated March 21, 2023.

Documents and other evidence considered before the order on summary judgment was entered, pursuant to CR 56(h):

1. Claimant's Motion on Timeliness;³
2. Declaration of Zachariah Roetcisoender;
3. Declaration of Joshua Lee Hughes and Ex. A;
4. Department's Response to Claimant's 'Motion on Timeliness';
5. Declaration of Kristi Monroe and Exs. 1-4;
6. Declaration of Joshua Bruney and Exs. 1 & 2;
7. Hearing transcript, November 6, 2023.

³ The claimant's motion is properly construed as a motion for summary judgment.