

Brawner, Karen

APPEALABLE ORDERS

Interlocutory orders

The Department may pay benefits on a temporary basis only when it has issued no order in accordance with RCW 51.52.050. Where the Department has already issued an order allowing a claim, it cannot pay time-loss compensation on a temporary basis after that date.***In re Karen Brawner, Order Granting Motion for Reconsideration in Part, and Granting Relief on the Record, BIIA Dec., 24 15585 (2024)*** [*Editor's Note: The Board's decision was appealed to superior court under Clark County Cause No. 24-2-03527-06.*]

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

1 **IN RE: KAREN L. BRAWNER**) **DOCKET NOS. 24 15585, 24 15586**
2) **24 15587**
3)
4) **ORDER GRANTING MOTION FOR**
5) **RECONSIDERATION IN PART, AND GRANTING**
6 **CLAIM NO. BK-50528**) **RELIEF ON THE RECORD**

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8 Upon consideration is Karen L. Brawner's Motion for Reconsideration of three orders denying
9 her appeals. We denied Ms. Brawner's appeals because, in addition to her appeals with the Board,
10 we believed that she had also timely protested the three orders with the Department of Labor and
11 Industries. For the reasons explained below, Ms. Brawner's Motion for Reconsideration is granted in
12 part. Instead of granting two of the three appeals, as requested by Ms. Brawner, we exercise our
13 authority under RCW 51.52.080, and grant relief on the record.
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16 The Department issued an order allowing this claim on January 5, 2023. In late 2023, the
17 Department issued three payment orders designated as temporary: an August 31, 2023 order that
18 paid time-loss compensation from August 22, 2023, through September 4, 2023; a
19 September 20, 2023 order that paid time-loss compensation from September 5, 2023, through
20 September 18, 2023; and an October 2, 2023 order that paid time-loss compensation from
21 September 19, 2023, through October 2, 2023. On October 6, 2023, the Department issued an order
22 assessing an overpayment from September 22, 2023, through October 2, 2023. The overpayment
23 order effectively reconsidered the October 2, 2023 payment order, and therefore the October 2, 2023
24 order is no longer a final order.
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27 On October 26, 2023, Ms. Brawner sent a Secure Message to the Department, where she
28 indicated she was sending a protest letter in the mail concerning her claim and recent IME. Then, on
29 May 1, 2024, Ms. Brawner appealed the three payment orders to the Board. The October 26, 2023
30 Secure Message was treated as a protest of the three payment orders. Accordingly, we denied all
31 three appeals on *Santos Alonzo* grounds.¹
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34 Ms. Brawner, by and through her attorney, Douglas Palmer, filed this Motion for
35 Reconsideration asking us to reconsider two of the three orders denying the appeals. She contends
36 that neither the Secure Message nor the letter described in the Secure Message were a protest of
37 the three payment orders. She contends they were a protest to the October 6, 2023 overpayment
38 order. She asks us to grant the appeals of the August 31, 2023, and the September 20, 2023 orders.
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¹ *In re Santos Alonzo*, BIIA Dec., 56,833 (1981).

1 She acknowledges that the October 2, 2023 order is no longer final because the October 6, 2023
2 order effectively reconsidered the October 2, 2023 order. However, because there was no protest to
3 the October 2, 2023 order, the appeal was incorrectly denied on *Santos Alonzo* grounds.
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5 CR 60(b)(1) provides that a court may relieve a party from a final judgement in cases of
6 "[m]istakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or
7 order." It appears that the appeals to the three payment orders were denied based on the mistaken
8 belief that the Secure Message was a protest to those orders. According to Ms. Brawner's counsel,
9 the deny orders were received by his office on June 3, 2024. The Motion for Reconsideration was
10 filed on June 10, 2024. The motion is timely filed under CR 59(b).
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12 By law the Department may pay benefits on a temporary basis only so long as it has issued
13 no order in accordance with RCW 51.52.050.² In this claim, the Department issued its first order in
14 accordance with RCW 51.52.050 on January 5, 2023, when it allowed the claim. Accordingly, the
15 Department lacked the authority to pay time-loss compensation on a temporary basis after
16 January 5, 2023.
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18 We note that Ms. Brawner's counsel, Douglas Palmer, has successfully argued this same
19 issue in previous appeals.³ *In re Kristen Rice* involved facts similar to these appeals. In that appeal,
20 we granted the motion for reconsideration and granted the appeal stating:
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22 Once the Department has issued a determinative order, the Department cannot
23 insulate its further orders from Board review by deeming these orders as interlocutory.
24 Our review of the Department record reveals that the Department entered such an
25 order when it allowed the claim on April 14, 2023. Additionally, an interlocutory order
26 that creates an immediate economic impact is subject to appeal. Thus, the order of
27 August 16, 2023, was improperly designated as temporary and should not be treated
28 as such. (Citations omitted.)
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30 After the appeal was granted the matter was resolved by a Report of Proceeding and Order
31 on Agreement of Parties, which provided that the "temporary" order should be reversed and "the
32 claim remanded to the Department to issue a determinative order."
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34 In the interests of judicial economy, we are not inclined to grant the specific relief requested in
35 Ms. Brawner's Motion for Reconsideration. That is, to grant the appeals of the August 31, 2023, and
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46 ² RCW 51.32.210.

47 ³ *In re Kristen G. Rice*, Dckt. No. 23 18828 (December 18, 2023), and *In re Michael D. Johnson*, Dckt. No. 23 24640 (May 7, 2024).

1 September 20, 2023 orders. As demonstrated in *In re Kristen Rice*, this would require the parties to
2 do the obvious and resolve the appeals by agreement to remand to the Department or go to trial.
3

4 **ORDER**

5 **Docket No. 24 15585 and Docket No. 24 15586**

6 Pursuant to RCW 51.52.080, we instead **GRANT RECONSIDERATION, GRANT RELIEF ON**
7 **THE RECORD**, and determine that the two orders dated August 31, 2023 (Docket No. 24 15585),
8 and September 20, 2023 (Docket No. 24 15586), are wrong as a matter of law and are **REVERSED**
9 **and REMANDED** to the Department to vacate the temporary payment orders and issue determinative
10 orders.
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12 **Docket No. 24 15587**

13 We further determine that the appeal to the October 2, 2023 payment order (Docket
14 No. 24 15587), was incorrectly denied on *Santos Alonzo* grounds but must remain denied. This is
15 because the Department effectively reconsidered that order when it issued the October 6, 2023
16 overpayment order.
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18 Dated: September 16, 2024.
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