

Chandler, Robert

[NOTICE OF APPEAL \(RCW 51.52.050, RCW 51.52.060\)](#)

Timeliness

Where the last day for filing an appeal falls on a Sunday, that day is excluded from the computation of the 60 day appeal period. A party has until the next succeeding business day to file the notice of appeal.*In re Robert Chandler*, BIIA Dec., 69 784 (1986)

Scroll down for order.

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

1 **IN RE: ROBERT L. CHANDLER**) **DOCKET NO. 69,784**
2)
3 **CLAIM NO. F-282841**) **DECISION AND ORDER**
4

5 APPEARANCES:

6
7 Claimant, Robert L. Chandler, by
8 Walthew, Warner, Keefe, Aaron, Costello & Thompson, per
9 John F. Warner

10
11 Employer, Magnuson Furniture Company (Account finalized)

12
13 Department of Labor and Industries, by
14 The Attorney General, per
15 Robert G. Swenson and John R. Wasberg, Assistants
16

17 This is an appeal filed by the claimant on January 28, 1985 from an order of the Department of
18 Labor and Industries dated November 21, 1984 which closed the claim with a permanent partial
19 disability award equal to 25% of the maximum allowable for unspecified disabilities, less prior award,
20 and with time loss compensation as paid. **AFFIRMED.**
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23 **DECISION**

24 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
25 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and order
26 issued on October 22, 1985 in which the order of the Department dated November 21, 1984 was
27 affirmed.
28

29 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no
30 prejudicial error was committed and said rulings are hereby affirmed.
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32 The issues presented by this appeal and the evidence presented by the parties are adequately
33 set forth in the Proposed Decision and Order. While we agree with the conclusion of the Proposed
34 Decision and Order that claimant's appeal was timely filed, we feel the factual and legal bases for that
35 outcome require some clarification.
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38 In finding Mr. Chandler's appeal timely, our industrial appeals judge erroneously relied on CR
39 6(e). In Tarabochia v. Gig Harbor, 28 Wn. App. 119 (1981), the court held that CR 6(e) cannot
40 extend the time within which an appeal must be filed because, as a procedural rule, CR 6(e) cannot
41 apply to an action until after that action has been properly commenced. However, the inapplicability of
42 CR 6(e) to bestow jurisdiction on this Board to hear this appeal does not end the matter.
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1 After we granted review, the parties stipulated as follows:

2 "The Department order of November 21, 1984 was mailed to claimant on
3 November 27, 1984. Claimant received the Department order on
4 November 28, 1984. Claimant's Notice of Appeal from the November 21,
5 1984 Department order was mailed to the Department on January 28,
6 1985 (as indicated by the postmark) and received by the Department on
7 January 29, 1985 and by the Board on February 8, 1985."
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10 Since the Department order of November 21, 1984 was communicated to Mr. Chandler on November
11 28, 1984, he had sixty days, until January 27, 1985, in which to file his Notice of Appeal pursuant to
12 RCW 51.52.060. We take official notice of the fact that January 27, 1985 was a Sunday. Pursuant to
13 WAC 263-12-175, CR 6(a), and RCW 1.12.040, when the last day of a time period falls on a Sunday,
14 that day is excluded and the next succeeding business day is included in the time computation. Since
15 Sunday, January 27, 1985 is excluded from the sixty-day time period for filing the Notice of Appeal, the
16 sixtieth day fell on January 28, 1985. Claimant's Notice of Appeal was mailed to the Department on
17 that date. Pursuant to RCW 51.52.060, a Notice of Appeal may be filed with either the Department or
18 the Board, and the filing of a Notice of Appeal is effectuated by mailing. Thus claimant's Notice of
19 Appeal was filed on the sixtieth day from the date the Department order of November 21, 1984 was
20 communicated to him, and his appeal is timely.
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23 With respect to the only substantive issue raised by this appeal, i.e., whether Mr. Chandler was
24 entitled to further curative treatment for his industrially related condition as of November 21, 1984, we
25 agree with our industrial appeals judge that he was not. In addition to the reasons given in the
26 Proposed Decision and Order, we note an additional reason for finding the testimony of Dr. Frederick
27 Tokarchek, an examining orthopedic surgeon, more persuasive than the testimony of Dr. Bobby
28 Adams, the most recent treating doctor.
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31 The issue before us is claimant's condition as of November 21, 1984, the closing date. Hyde v.
32 Department of Labor and Industries, 46 Wn. 2d. 31 (1955). Dr. Adams first saw Mr. Chandler on July
33 16, 1985, more than seven months after the closing date of November 21, 1984, and never related his
34 opinions to that date. When the claimant testified on September 4, 1985, he indicated that his back
35 pain had increased since the closing date. Thus, Dr. Adams's failure to relate his opinions to the
36 closing date is a significant flaw in the claimant's case. Mr. Chandler's industrially related condition
37 may have become aggravated after the closing date, but he has not proved that he needed any
38 curative treatment as of November 21, 1984, and that is the only question properly before us. Mr.
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1 Chandler may have a better case for applying to reopen the claim for aggravation or worsening of his
2 condition since the November 1984 closing.
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4 After consideration of the Proposed Decision and Order and the Petition for Review filed
5 thereto, and a careful review of the entire record before us, we are persuaded that the Proposed
6 Decision and Order is supported by the preponderance of the evidence and has reached the correct
7 disposition, of this appeal.
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10 **FINDINGS OF FACT**

11 Proposed Findings of Fact 2 and 3 are adopted as the Board's findings. Proposed Finding of
12 Fact 1 is corrected to read as follows:
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- 14 1. On March 24, 1965 the Department of Labor and Industries received a
15 report of accident from the claimant, Robert L. Chandler, alleging that he
16 sustained an injury on March 3, 1965 while he was working for Magnuson
17 Furniture Company. On August 13, 1965 the Department issued an order
18 allowing and closing the claim.
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20 In April 1967 the claimant filed an application to reopen the claim for
21 aggravation of condition. On April 25, 1967 the Department issued an
22 order reopening the claim. On October 29, 1968 the Department issued
23 an order closing the claim with a permanent partial disability award equal
24 to 5% of the maximum allowable for unspecified disabilities.
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26 On November 3, 1971 the claimant filed an application to reopen the claim
27 for aggravation of condition. On February 25, 1972 the Department
28 issued an order reopening the claim effective November 1, 1971. On
29 March 30, 1972 the Department issued an order terminating time loss
30 compensation and holding the claim open for treatment. On August 2,
31 1974 the Department issued an order closing the claim with a permanent
32 partial disability award equal to 16% of the maximum allowable for
33 unspecified disabilities, less prior award.

34 On March 2, 1977 the claimant filed an application to reopen the claim for
35 aggravation of condition. On March 17, 1977 the Department issued an
36 order reopening the claim effective February 20, 1977. On June 11, 1981
37 the Department issued an order closing the claim with no additional
38 permanent partial disability award. On August 11, 1981 the claimant filed
39 a notice of appeal with the Department. On August 14, 1981 the
40 Department issued an order holding its order of June 11, 1981 in
41 abeyance. On March 25, 1982 the Department issued an order denying
42 an aggravation application filed during the abeyance period, stating that
43 the claimant's condition was a direct result of a new traumatic incident
44 occurring on February 13, 1982 and adhering to its order of June 11,
45 1981. On April 5, 1982 the claimant filed a protest with the Department.
46 On April 12, 1982 the Department issued an order reopening the claim
47 effective February 16, 1982.

1 On November 1, 1983 the claimant filed an application to reopen the claim
2 for aggravation of condition, stating that the claim was closed on August 9,
3 1983. The Department's file discloses no order of August 9, 1983 which
4 closed the claim. On November 17, 1983 the Department issued an order
5 reopening the claim effective September 1, 1983. On November 13, 1984
6 the Department issued an order paying time loss compensation based
7 upon loss of earning power. On November 21, 1984 the Department
8 issued an order closing the claim with a permanent partial disability award
9 equal to 25% of the maximum allowable for unspecified disabilities, less
10 prior award. The Department order of November 21, 1984 was mailed to
11 claimant on November 27, 1984. Claimant received the Department order
12 on November 28, 1984. Claimant's notice of appeal from the November
13 21, 1984 Department order was mailed to the Department on January 28,
14 1985 and received by the Department on January 29, 1985. The appeal
15 was transmitted to the Board of Industrial Insurance Appeals on February
16 8, 1985. On February 13, 1985 the Board issued an order granting the
17 appeal subject to proof of timeliness, assigning the appeal Docket No.
18 69,784 and directing that hearings be held on the issues raised by the
19 appeal.
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21 CONCLUSIONS OF LAW

22 Proposed Conclusion of Law 1 is deleted, and in its stead the following Conclusion of Law is
23 entered:
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- 25 1. Robert Chandler's appeal filed on January 28, 1985 was timely pursuant
26 to the provisions of WAC 263-12-175, CR 6(a), RCW 1.12.040, and RCW
27 51.52.060. The Board has jurisdiction over the parties and subject matter
28 of this appeal.
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30 Proposed Conclusion of Law 2 is adopted. Proposed Conclusion of Law 3 is renumbered 4
31 and adopted. A new Conclusion of Law 3 is entered as follows:
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- 33 3. As of November 21, 1984 claimant had a permanent partial disability
34 attributable to the industrial injury of March 3, 1965 equal to 25% of the
35 maximum allowable for unspecified disabilities.
36

37 It is so ORDERED.

38 Dated this 14th day of April, 1986.

39 BOARD OF INDUSTRIAL INSURANCE APPEALS

40
41 /s/ _____
42 GARY B. WIGGS Chairperson

43
44 /s/ _____
45 PHILLIP T. BORK Member
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