

## **Sims, Richard**

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### **BOARD**

#### **Petition for review**

### **PETITIONS FOR REVIEW (RCW 51.52.104; RCW 51.52.106)**

#### **Scope of review**

When a petition for review is filed, the scope of the Board's review extends to all contested issues of law and fact and is not limited to the specific issues raised by the petition for review. ....*In re Richard Sims*, BIIA Dec., **85 1748 (1986)** [*Editor's note: But See, Soriano v. Dep't of Labor & Indus.*, 3526-4 III (April 11, 2019).]

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

1     **IN RE: RICHARD W. SIMS**                     )     **DOCKET NO. 85 1748**  
2   )  
3   )     **ORDER DENYING REQUEST FOR**  
4   )     **RECONSIDERATION OF DECISION AND**  
5     **CLAIM NO. J-180508**                     )     **ORDER**  
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7             On June 10, 1985 the Department issued an order in the above-named claim adhering to a  
8 prior order dated April 20, 1984 closing the claim with no time-loss compensation and with a  
9 permanent partial disability award equal to 5% as compared to total bodily impairment to be paid at  
10 75% of the monetary value. On July 10, 1985 claimant filed a notice of appeal with this Board seeking  
11 "further treatment, . . .back time-loss compensation, . . . increased permanent partial disability award,  
12 or . . .permanent total disability award."  
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16             Hearings were held, and a Proposed Decision and Order was issued by our Industrial Appeals  
17 Judge on May 28, 1986, reversing the Department order and remanding the claim to the Department  
18 to pay time-loss compensation for the period of September 29, 1982 through October 16, 1984,  
19 medical expenses incurred by claimant during the period of April 20, 1984 through October 16, 1984,  
20 and an award for permanent partial disability equal to 10% as compared to total bodily impairment  
21 payable at 75% of the monetary value, and thereupon close the claim. The Proposed Decision and  
22 Order was received at claimant's attorney's office on June 3, 1986 and he filed a written request for an  
23 extension of the time in which to file a Petition for Review. That request was granted and the time was  
24 extended to July 3, 1986. Claimant's Petition for Review was received at the Board on July 3, 1986.  
25 No Petition for Review was filed by the Department.  
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29             In his Petition for Review claimant challenged Proposed Finding of Fact No. 7 and Proposed  
30 Conclusion of Law No. 2 contained in the Proposed Decision and Order. Finding of Fact No. 7 read  
31 as follows: "On September 29, 1982, the claimant had no income from his employment with The Rose  
32 Basket." Conclusion of Law No. 2 read as follows: "The claimant is not entitled to any benefits for loss  
33 of earning power as a result of his condition causally related to his industrial injury of September 29,  
34 1982. "Claimant requested that Finding of Fact No. 7 be modified to state that claimant's wage at the  
35 time of injury was \$600.00 per week or \$100.00 per day, and that Conclusion of Law No. 2 be  
36 "reversed."  
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39             On July 23, 1986 this Board granted review of the Proposed Decision and Order. On  
40 September 25, 1986 this Board issued its final Decision and Order reversing the Department order of  
41 June 10, 1985 and remanding to the Department to reopen and pay time-loss compensation for the  
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1 period of June 18, 1984 through October 1, 1984, loss of earning power compensation in the amount  
2 of 25% of time-loss compensation for the periods of September 29, 1982 through June 17, 1984 and  
3 October 2, 1984 through April 8, 1985, medical expenses for the period of April 20, 1984 through April  
4 8, 1985 and an award for permanent partial disability equal to 10% as compared to total bodily  
5 impairment, payable at 75% of the monetary value, less the prior award, and thereupon close the  
6 claim.  
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10 On October 9, 1986 claimant filed a Request for Reconsideration of Decision and Order.  
11 Claimant contends that when this Board reviews a case following a Petition for Review of a Proposed  
12 Decision and Order, its review is strictly limited to the specific issues raised in the Petition for Review  
13 and can go no further. Thus, according to the claimant, this Board is without authority to correct errors  
14 made by its employee Industrial Appeals Judge and is required to adopt incorrect Findings and  
15 Conclusions which the Board views as unsupported by the evidence. We strenuously disagree.  
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19 Claimant relies heavily on the statutory provisions of RCW 51.52.104 and 51.52.106, but  
20 neglects to acknowledge the provisions of RCW 51.52.020. That statute clearly indicates that the  
21 Legislature had no intention of tying our hands in the fashion suggested by the claimant. For RCW  
22 51.52.020 provides: "the board may not delegate to any other person its duties of interpreting the  
23 testimony and making the final Decision and Order on appeal cases." That clear and unambiguous  
24 language has been relied on by the courts in defining the broad scope of this Board's authority to  
25 review the record and issue its own final Decisions and Orders. Seese v. Department of Labor and  
26 Industries, 73 Wn.2d 213 (1968); Department of Labor and Industries v. Tacoma Yellow Cab, 31 Wn.  
27 App. 177 (1982). In the latter case, the court examined at some length the nature of this Board and its  
28 relationship to its employee hearing officers, and explicitly supported our interpretation of our broad  
29 statutory authority, by stating at pgs. 121-122:  
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36 "In effect, the board necessarily concluded: (1) all matters pending before  
37 the board, from the moment an aggrieved party files an appeal of a  
38 departmental order until a final board order is promulgated, properly lie  
39 within the bosom of the board for appropriate action; (2) hearing  
40 examiners are subordinate employees who have no jurisdictional authority  
41 independent of the board's authority; (3) the board cannot delegate to  
42 others its duty to make a final decision and issue an order based thereon;  
43 and (4) accordingly, we (the board) choose to review the merits of this  
44 appeal. In making that choice, the board acted well within its statutory  
45 authority."

46 The Tacoma Yellow Cab opinion further stated, at page 123: "In the case  
47 at bench, the board took the . . . position . . . that it never lost jurisdiction to

1 act upon a petition to review a decision of one of its employees until it (the  
2 board) made and entered its final decision. In short, we hold that RCW  
3 51.52.104, even as amended in 1971, does not deprive the board of its  
4 nondelegable statutory duty 'of interpreting the testimony and making the  
5 final decision and order on [all] appeal cases.' RCW 51.52.020."  
6 (Emphasis supplied)  
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8 The case of Homemakers Upjohn V. Russell, 33 Wn. App. 777 (1983), cited in the claimant's Request  
9 for Reconsideration, does not derogate from the court's holdings in Tacoma Yellow Cab.  
10 Homemakers Upjohn involved the issue of effect of failure of a party aggrieved by a Proposed  
11 Decision and Order to petition for review thereof on that party's right of Superior Court appeal from the  
12 Board's final decision on the case. It made no observations on the scope of matters and issues which  
13 are properly within "the bosom of the board" during the entire time an appeal is before the Board, i.e.,  
14 from time of receipt of the appeal from the Department order until a "final board order is promulgated."  
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19 Nothing in RCW 51.52.104 or RCW 51.52.106 undermines the basic grant of authority  
20 contained in RCW 51.52.020. RCW 51.52.104 merely provides for the automatic adoption of a  
21 Proposed Decision and Order when no Petition for Review has been filed. It does not limit our review  
22 in the situation where a Petition for Review has in fact been filed. Furthermore, while RCW 51.52.104  
23 does provide that any issues not raised in a Petition for Review "shall be deemed" waived by the  
24 petitioning party, it does not in any way limit the issues which this Board can consider. Indeed,  
25 contrary to the claimant's restrictive reading of RCW 51.52.106, we read that statute to authorize this  
26 Board to consider any and all issues properly raised by the Department order and the notice of appeal  
27 from that order. To interpret RCW 51.52.104 and 51.52.106 in any other way would be to violate the  
28 clear language of RCW 51.52.020 and to permit a Board employee to bind this Board to an incorrect  
29 decision. The Legislature did not intend that result.  
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35 For all the foregoing reasons, it is hereby ORDERED that claimant's Request for  
36 Reconsideration of Decision and Order received on October 9, 1986, be, and the same is hereby,  
37 denied.  
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39 Dated this 29th day of October, 1986.

40 BOARD OF INDUSTRIAL INSURANCE APPEALS

41 /s/ \_\_\_\_\_  
42 GARY B. WIGGS Chairperson

43 /s/ \_\_\_\_\_  
44 FRANK E. FENNERTY, JR. Member

45 /s/ \_\_\_\_\_  
46 PHILLIP T. BORK Member  
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