

## Wagner, Richard

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### DEPARTMENT

#### Authority to issue further adherence order

Once the Department has issued an order, its authority to take further action with respect to such order is limited by RCW 51.52.050 and RCW 51.52.060. Absent the filing of a protest or request for reconsideration, the Department cannot simply issue a further order which only adheres to the provisions of the original order. In such case, the adherence order is a nullity. [*In re Thomas Houlihan*, BIIA Dec., 67,414 (1985).] ...***In re Richard Wagner*, BIIA Dec., 88 0962 (1988)**

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

<b>IN RE: RICHARD P. WAGNER</b>	)	<b>DOCKET NO. 88 0962</b>
	)	
<b>CLAIM NO. K 394328</b>	)	<b>ORDER DENYING APPEAL</b>

An appeal was filed by the claimant, on February 3, 1988, from an "appealable only" order of the Department of Labor and Industries dated January 22, 1988 which adhered to the provisions of an order dated October 28, 1987, which rejected the claim for the reason that the injury occurred while in the course of employment subject to federal jurisdiction (Longshore and Harbor Worker's Act). The appeal was assigned Docket No. 88 0471 and granted Subject to Proof of Timeliness (Department Order Not Available) by a Board order dated March 7, 1988.

On January 26, 1988, the Department issued a second "appealable only" order identical in all respects to the order dated January 22, 1988, also purporting to adhere to the order dated October 28, 1987. Thereafter, on February 3, 1988, the Department received claimant's protest and request for reconsideration of the order dated January 26, 1988. On March 8, 1988 the Board received a transmittal from the Department requesting the Board to process the claimant's protest and request for reconsideration of the January 26, 1988 order, as an appeal.

The Department's authority to issue a further order following the order of January 22, 1988 was limited by RCW 51.52.050 and RCW 51.52.060. A further order could be issued only if:

- (1) A protest or request for reconsideration had been filed by an aggrieved party within 60 days of the date the order was communicated to the party, RCW 51.52.050; or,
- (2) The Department, within the time limited for appeal, had directed the submission of further evidence or the investigation of any further fact, RCW 51.52.060; or,
- (3) The Department, within the time limited for appeal or within thirty days after receiving a notice of appeal, had elected to "modify, reverse or change" the order or "hold such order...in abeyance...". RCW 51.52.060.

There has been no showing that a protest or request for reconsideration had been filed by any party in response to the order dated January 22, 1988. Therefore, the Department was without authority to issue an order on January 26, 1988 which simply adhered to the provisions of the order of October 28, 1987, and did not modify, reverse, change, or hold in abeyance the order of January 22, 1988, nor direct the submission of further evidence or the investigation of any further fact.

The adherence order of January 26, 1988 is, therefore, a nullity. See e.g. In re Thomas N. Houlihan, BIIA Dec. 67,414 (1985). Since the Department lacked jurisdiction to enter the order of

1 January 26, 1988, the Board must deny the request to process the protest of that order as an appeal.  
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3 This is, of course, without prejudice to the right of any party to appeal from the final order of the  
4 Department dated January 22, 1988, or the right of the claimant to pursue the appeal of that order  
5 which has already been filed with the Board and assigned Docket No. 88 0471.  
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7 It is so ORDERED.

8 Dated this 14th day of March, 1988.  
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10 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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12  
13 /s/  
14 SARA T. HARMON Chairperson  
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16 /s/  
17 FRANK E. FENNERTY, JR. Member  
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19 /s/  
20 PHILLIP T. BORK Member  
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