

Randall, Russell

DEPARTMENT

Reassumption of jurisdiction (RCW 51.52.060)

Where the Department has issued a further determinative order under RCW 51.52.060 which affirms the order previously appealed to the Board it may not, in the event of a further appeal to the Board, hold such order in abeyance pending further consideration. RCW 51.52.060 allows the Department to reassume jurisdiction once, not twice, and it may not, on its own motion, artificially extend the time allowed by the Legislature to reconsider its decision once an appeal is filed with the Board. ...*In re Russell Randall*, BIIA Dec., 90 3634 (1990)

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: RUSSELL L. RANDALL) DOCKET NO. 90 3634
)
CLAIM NO. J-534209) ORDER DISMISSING APPEAL

An appeal was filed by the claimant, on June 28, 1990, from an order of the Department of Labor and Industries dated May 30, 1990. The order purported to affirm an order dated May 31, 1989. The order of May 31, 1989 closed the claim. The appeal was granted on August 9, 1990.

From a further review of the Department record in this matter and the records of the Board in the appeals assigned Docket Nos. 89 4053 and 90 0462 it is apparent that the Department had no legal authority to issue the order of May 30, 1990.

On August 9, 1989 the Department issued an order in response to the claimant's protest of the May 31, 1989 closing order. On September 19, 1989 we received the claimant's appeal from the order of August 9, 1989. In response to the notice of appeal the Department held the order of August 9, 1989 in abeyance by an order dated October 12, 1989. As required by RCW 51.52.060 we denied the appeal without prejudice to the right of any party to appeal from any further order of the Department.

Thereafter, on January 5, 1990, the Department entered another order which affirmed the order of May 31, 1989. On January 26, 1990 the claimant filed another appeal to the Board (Docket No. 90 0462). Then, by an order dated February 22, 1990, the Department entered an order purporting to hold the order of January 5, 1990 in abeyance. Recognizing that the Department no longer had any legal authority to further consider the matter we granted the appeal of the order of January 5, 1990.

RCW 51.52.060 allows the Department to reassume jurisdiction once, not twice, and we will not permit the Department, on its own motion, to artificially extend the time allowed by the Legislature to reconsider its decisions once an appeal is filed with the Board. The orders of February 22, 1990 and May 30, 1990 were issued without any authority in law and are therefore null and void. The appeal from the order of May 30, 1990 must therefore be dismissed. This is without prejudice to the right of the claimant to pursue his appeal of the order of January 5, 1990 (Docket No. 90 0462). It is our understanding that the parties have reached an agreement in that appeal to remand the claim to the

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1 Department for further consideration. To the extent the parties have agreed to allow the Department
2 to reconsider the claim we see no reason why that should not be allowed. The agreement of the
3 parties, however, will be addressed by further order in the appeal assigned Docket No. 90 0462.
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6 It is so ORDERED.

7 Dated this 22nd August, 1990.
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9 BOARD OF INDUSTRIAL INSURANCE APPEALS

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11
12 /s/
13 SARA T. HARMON CHAIRPERSON
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16 /s/
17 FRANK E. FENNERTY, JR. MEMBER
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20 /s/
21 PHILLIP T. BORK MEMBER
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