

Pierce, Charles

APPLICATION FOR BENEFITS

Reasonable notification

When an application for benefits identified two dates within a week of each other that injuries had occurred, the reference to the earlier injury in medical notes attached to the application for benefits in the second injury constituted a filing of a request for benefits because it reasonably put the Department on notice of the earlier alleged industrial injury. *...In re Charles Pierce, BIIA Dec., 91 4625 (1993)* [Editor's Note: The Board's decision was appealed to superior court under Pierce County Cause No. 91-2-07862-4.]

Scroll down for order.

1 filing for benefits as required by RCW 51.28.050 because it reasonably put the Department on notice
2 that the earlier industrial injury had allegedly occurred.
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4 The evidence presented by the parties, including a stipulation of facts, was adequately set
5 forth in the Proposed Decision and Order. We will briefly reiterate the pertinent facts of this case as
6 needed to explain our decision.
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8 **DECISION**

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10 Charles Pierce was a choke setter and a chaser for Browning Timber, Inc., when, while
11 allegedly in the course of employment on July 29, 1988, he injured his right calf and knee. Mr. Pierce
12 received conservative treatment for this injury and returned to work within a few days. On August 5,
13 1988 Charles Pierce was again working as a chaser for Browning Timber, Inc. On that date, he
14 injured his left calf when he attempted to stop a rolling log.
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18 On September 6, 1988 the Department of Labor and Industries received an application for
19 benefits from Charles Pierce for injuries which occurred on both August 5, 1988 and July 29, 1988.
20 The application specifically referred to the August 5, 1988 industrial injury and contained Dr. Hanley's
21 chart notes of that same date. Dr. Hanley's notes stated that the claimant had a similar injury while
22 running up some logs approximately one week prior to the August 5, 1988 injury. Additionally, those
23 notes indicated that the earlier injury involved a gastrocnemius tear on the right side. The doctor's
24 concluding written assessment on August 5, 1988 was that the claimant had sustained a "medial head
25 of the gastrocnemius tear bilaterally, right being one week old, left being new."
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29 In order to obtain benefits for an industrial injury, a claimant must file an application with the
30 Department of Labor and Industries (or with the self-insured employer, if such be the case) within one
31 year of the date of the incident. See Wheaton v. Dep't of Labor & Indus., 40 Wn.2d 56 (1952). The
32 requirement that an application be filed is met by any form of writing submitted to the Department, so
33 long as it states facts sufficient to give notice to the Department that an injury was allegedly suffered
34 and that the claimant was seeking compensation. This has long been the law. Nelson v. Dep't of
35 Labor & Indus., 9 Wn.2d 621 (1941).
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39 In this case, the application filed on September 6, 1988 contained attached medical notes
40 which reasonably placed the Department of Labor and Industries on notice that an additional alleged
41 right leg injury occurred one week prior to the left gastrocnemius tear of August 5, 1988. The attached
42 medical notes further placed the Department on notice that the right gastrocnemius tear on July 29,
43 1988 was industrial in nature. Specifically, the notes informed the Department that Mr. Pierce injured
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1 himself while engaging in the same kind of logging activity as was noted in the August 5, 1988
2 incident. From the information contained in the September 1988 application for benefits, it was
3 completely reasonable to understand that Mr. Pierce was making claim for compensation based on
4 two separate industrial incidents, one on July 29, 1988 involving the right leg, and one on August 5,
5 1988 involving the left leg. We know of no legal rule requiring that a separate application for benefits
6 form must be filed for each separate alleged injury. Mr. Pierce claimed on the application that he had
7 injured "both legs."
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11 After consideration of the Proposed Decision and Order, the claimant's Petition for Review filed
12 thereto, and a careful review of the entire record before us, we are convinced that the Department had
13 sufficient notice on September 6, 1988, that the claimant was seeking benefits for the alleged
14 industrial injury that occurred on July 29, 1988, as well as the industrial injury that occurred on August
15 5, 1988.
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18 We hereby make the following Findings of Fact and Conclusions of Law:
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20 **FINDINGS OF FACT**
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- 22 1. On August 5, 1988, Charles Pierce sustained an injury to his left leg while
23 working for Browning Timber, Inc. The Department of Labor and Industries
24 received Mr. Pierce's application for benefits for his August 5, 1988
25 industrial injury on September 6, 1988. On October 13, 1988, the
26 Department issued an order allowing Mr. Pierce's application for benefits
27 for his August 5, 1988 industrial injury.
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29 **CONCLUSIONS OF LAW**
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- 31 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
32 and over the subject matter of this appeal.
33 2. On July 29, 1988, Charles Pierce sustained an alleged industrial injury to
34 his right leg as contemplated by RCW 51.08.100.
35 3. On September 6, 1988, Charles Pierce filed an application for benefits for
36 the alleged July 29, 1988 injury within the time requirement of RCW
37 51.28.050.
38 4. The order of the Department of Labor and Industries dated July 15, 1991,
39 which denied responsibility for a condition diagnosed as gastrocnemius
40 tear of the right calf muscle for the reason that it was sustained in an injury
41 of July 29, 1988, and which affirmed a prior order dated January 7, 1991,
42 which ended time-loss compensation as paid to November 12, 1988 and
43 closed Mr. Pierce's claim without further award for time-loss compensation
44 or permanent partial disability, is incorrect. The order of July 15, 1991 is
45 reversed and the matter is remanded to the Department of Labor and
46 Industries to accept the September 6, 1988 application for benefits for a
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1 gastrocnemius tear as a timely filing of an application for benefits for the
2 July 29, 1988 incident to his right leg, and to take such further action on
3 that application as is appropriate under the law and the facts.
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5 It is so ORDERED.

6 Dated this 6th day of January, 1993.

7 BOARD OF INDUSTRIAL INSURANCE APPEALS
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11 /s/
12 S. FREDERICK FELLER Chairperson
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15 /s/
16 FRANK E. FENNERTY, JR. Member
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19 /s/
20 PHILLIP T. BORK Member
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