Neff, James

BOARD

Equitable powers

The principles of equitable estoppel are applied only under the principle of stare decisis. Where there has been no determination by a court of final jurisdiction applying equitable estoppel to excuse an untimely filing under RCW 51.28.050, the Board will not apply the doctrine to a situation where the worker alleges that the Department employees improperly informed him of the requirements for filing an application for benefits. Additionally, the record failed to establish that the inaccurate statements caused injury to the worker, that the failure to timely apply for benefits was due to the worker's own mistake. *Citing In re State Roofing & Insulation,* BIIA Dec., 89 1770 (1991). ***….In re James Neff*, BIIA Dec., 92 2782 (1994) [***Editor's Note*: The Board's decision was appealed to superior court under Whatcom County Cause No. 94-2-01446-0. The Board has refined its interpretation of applying equity under stare decisis to explain that cases with similar facts are precedent and need not involve nearly identical facts in order to allow the Board to reach an equitable decision. In so doing the Board is not creating an equitable remedy, but following precedent. *In re Lyle Applegate*, BIIA Dec., 18 16730 (2019).]

TIMELINESS OF CLAIM (RCW 51.28.050; RCW 51.28.055)

Filing

Where there has been no determination by a court of final jurisdiction applying equitable estoppel to excuse an untimely filing under RCW 51.28.050, the Board will not apply the doctrine to a situation where the worker alleges that the Department employees improperly informed him of the requirements for filing an application for benefits. The Board noted that the facts failed to establish that the inaccurate statements caused injury to the worker, concluding that the failure to timely apply for benefits was due to the worker's own mistake. ***….In re James Neff*, BIIA Dec., 92 2782 (1994)** [*Editor's Note*: The Board's decision was appealed to superior court under Whatcom County Cause No. 94-2-01446-0.]

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: JAMES K. NEFF	)	**DOCKET NO. 92 2782**
	)	
CLAIM NO. M-635279	)	**DECISION AND ORDER**

APPEARANCES:

Claimant, James K. Neff, by
Edward Boyer, Attorney at Law

Employer, Bay Point Plumbing, by
Gary Jones, President, and Deborah Jones, Vice-President

Department of Labor and Industries, by
The Attorney General, per
Jeffrey W. Davis, Assistant

This is an appeal filed by the claimant, James K. Neff, on May 29, 1992, from an order of the Department of Labor and Industries dated May 5, 1992, which affirmed a Department order dated December 4, 1991 which rejected the claim on the grounds that at the time of injury the claimant was not in the course of employment. **REVERSED AND REMANDED**.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order issued on April 1, 1994 in which the order of the Department dated May 5, 1992 was reversed and this matter remanded to the Department of Labor and Industries with instructions to issue an order rejecting the claim because it was filed more than one year from the alleged injury.

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed and said rulings are hereby affirmed.

This matter was previously before this Board on a Petition for Review filed from a Proposed Decision and Order issued on March 31, 1993. The March 31, 1993, Proposed Decision and Order disposed of the issues raised in the appeal by granting the Department's Motion to Dismiss the Claimant's Appeal. No formal hearings were held regarding the issues raised by the claimant in his Notice of Appeal. We granted review and on June 9, 1993 issued a Decision and Order Vacating Proposed Decision and Order and Remanding the Appeal for Further Proceedings. In that order, we remanded the appeal to the hearing process to allow the parties an opportunity to present evidence.

We were especially concerned that the appealing party, Mr. James K. Neff, have an opportunity to present evidence concerning the theories of his case.

On remand to the hearing process, the industrial appeals judge conducted additional hearings in accordance with our directives and allowed the parties to present evidence regarding the issues raised by the parties. Following the hearing, the industrial appeals judge issued a Proposed Decision and Order dated April 1, 1994, which is currently under review. In the April 1, 1994 Proposed Decision and Order, the industrial appeals judge determined that the Department was not estopped from rejecting Mr. Neff's untimely application for benefits because of the actions of Department personnel. The industrial appeals judge found no legal basis to excuse Mr. Neff's late filing of his application for benefits and concluded that the application for benefits should be rejected.

Mr. Neff argues, in his Petition for Review, that the principles of equitable estoppel should apply to excuse the late filing of his application for benefits and that his claim for benefits should be accepted. Mr. Neff focuses on what he believes were misrepresentations of material fact made by employees of the Department of Labor and Industries. Mr. Neff argues that he relied to his detriment on the statements made by Department employees. He believes his reliance on the statement by the Department personnel caused him to fail to file the application for benefits within one year of the industrial injury as required by RCW 51.28.050.

While we agree with our industrial appeal judge's ultimate resolution of the issues presented in this appeal, we have granted review in order to clarify our position regarding the application of the principles of equitable estoppel in cases before this Board. We have previously set forth our position regarding the application of the principles of equitable estoppel in State Roofing & Insulation, Inc., BIIA Dec., 89 1770 (1991). As we held in State Roofing, this Board will only apply the principles of equitable estoppel under the principle of stare decisis. Subsequent to our decision in State Roofing we had the opportunity to further comment on the Board's application of the doctrine of equitable estoppel. In re William H. Pingree, Dckt. 91 0116 (May 19, 1992) we stated that:

> State Roofing, however, quite explicitly limits the Board's application of equitable estoppel to cases factually similar to cases which have been passed upon by courts of final jurisdiction. Under those circumstances, the Board can say with reasonable certainty that failure to apply equity at this level would only result in its application at a higher level.

Pingree at 5.

This Board has noted that equitable estoppel may conceivably excuse an untimely filing of a claim under RCW 51.28.050. See In re Isaias Chavez, Dec'd, BIIA Dec., 85 2867 (1987), citing Wilbur v. Department of Labor & Indus., 38 Wn. App. 553, 686 P.2d 509 (1984) and Shafer v. State, 83 Wn.2d 618, 521 P.2d 736 (1974). However, absent a determination by a court of final jurisdiction applying equitable estoppel to excuse an untimely filing under RCW 51.28.050, we will not apply the doctrine in contravention of our own earlier ruling in State Roofing.

The Proposed Decision and Order correctly cites to Kramarevcky v. Department of Social & Health Services, 122 Wn.2d 738, ___ P.2d ___ (1993) for the proposition that equitable estoppel may be applied against the state. However, under our ruling in State Roofing we will not apply the doctrine of equitable estoppel against the state unless we can do so under the theory of stare decisis.

Mr. Neff argues that the principles of equitable estoppel should excuse his untimely filing of his application for benefits. Equitable estoppel is available as a remedy only where the following three elements are present: (1) an admission, a statement, or an act inconsistent with a claim afterwards asserted, (2) action by the other party on the faith of such admission, statement or act, and (3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement or act. Saunders v. Lloyds of London, 113 Wn.2d 330, 340, 779 P.2d 249 (1989). Every element must be shown by clear, cogent, and convincing evidence. Mercer v. State, 48 Wn. App. 496, 500, 739 P.2d 703 (1987). Mr. Neff argues that he relied to his detriment on misstatements by Department employees regarding the necessity of having a doctor sign his application for benefits before it could be accepted by the Department. Mr. Neff argues that the Department should not be allowed to benefit from its statements at his expense.

Mr. Neff has failed to present any authority from a court of final jurisdiction which would allow this Board to apply the principles of equitable estoppel through the doctrine of stare decisis on these facts. Unless the requirements set forth in State Roofing are met, we will not apply the doctrine of equitable estoppel.

While we decline to apply the principles of equitable estoppel, we concur with our industrial appeals judge that assuming that the Department employees improperly informed Mr. Neff of the requirements for filing an application for benefits, the facts in the record fail to establish that these statements caused any injury to Mr. Neff. The reason Mr. Neff failed to file his application within one year of the injury was his mistaken belief that the injury occurred in November of 1990. The record before us quite clearly establishes that the event to which Mr. Neff attributes his injury actually

occurred on September 7 or 8 of 1990. Thus, at the time Mr. Neff filed his application for benefits in November of 1991 he was under a mistaken belief that the filing was timely. However, this mistaken belief was not the result of the statements made by the Department employees!

We also concur with our industrial appeals judge's rejection of the claim of negligent misrepresentation. As our industrial appeals judge aptly noted, negligent misrepresentation is a tort. If Mr. Neff has any recourse against any party for negligent misrepresentation, it lies outside the scope of our jurisdiction. We also concur with our industrial appeals judge that the commission of a tort such as negligent misrepresentation cannot form the basis for granting equitable relief.

We also wish to note that our Decision and Order Vacating Proposed Decision and Order and Remanding the Appeal for Further Proceedings dated June 9, 1993 in this appeal was not a final order of this Board and should not be construed as anything more than a directive to return the case to the hearings process to allow the parties to obtain additional evidence and to advance their various legal theories.

After consideration of the Proposed Decision and Order and the Petition for Review filed thereto and a careful review of the entire record before us, we are persuaded that the Proposed Decision and Order is supported by the preponderance of the evidence and is correct as a matter of law.

FINDINGS OF FACT

1. On November 21, 1991, the claimant, James K. Neff, filed an application for benefits with the Department of Labor and Industries alleging that he sustained an industrial injury during the course of his employment with Bay Point Plumbing. On December 4, 1991, the Department issued an order rejecting the claim for the reason that the claimant was not injured during the course of his employment.

   On December 19, 1991, the claimant filed a Protest and Request for Reconsideration from the December 4, 1991 Department order. On May 5, 1992, the Department issued an order affirming the order dated December 4, 1991.

   On May 29, 1992, the claimant filed a Notice of Appeal with the Board of Industrial Insurance Appeals from the Department order dated May 5, 1992. On June 29, 1992, the Board issued an order granting the appeal, assigning Docket 92 2782 and ordering that further proceedings be held.

2. The claimant, James K. Neff, sustained an injury to his neck on September 7 or 8, 1990.

3. Mr. Neff filed an application for industrial insurance benefits for the injury of September 7 or 8, 1990 with the Department of Labor and Industries on November 21, 1991.

4. Mr. Neff did not rely on any act, statement or admission of the Department of Labor and Industries or its representative in filing his application for industrial insurance benefits on November 21, 1991 for any injury occurring on September 7 or 8, 1990.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction of the parties and subject matter of this appeal.

2. The claimant's application for benefits is invalid and his claim unenforceable because it was filed more than one year after the day upon which the injury occurred, pursuant to RCW 51.28.050.

3. Mr. Neff is not entitled to the remedy of equitable estoppel against the Department of Labor and Industries to excuse the filing of his application for benefits more than one year from the date of the injury as required by RCW 51.28.050.

4. The Department order dated May 5, 1992 which affirmed a Department order dated December 4, 1991 which rejected the claim because at the time of injury the claimant was not in the course of his employment is incorrect and is reversed and this matter is remanded to the Department of Labor and Industries with instructions to issue an order rejecting the claim because it was filed more than one year from the alleged injury.

It is so ORDERED.

Dated this 18th day of July, 1994.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
S. FREDERICK FELLER Chairperson

/s/_____
ROBERT L. McCALLISTER Member