

## **Trangmar, George**

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### **[INJURY \(RCW 51.08.100\)](#)**

#### **Burden of Proof**

A worker failed to meet the burden of proof for establishing an industrial injury where all, except two, of the witnesses testifying about the injury had a direct financial interest in the outcome of the appeal or were friends and relatives of one of the parties. The two disinterested witnesses, although inconclusive about whether the job had concluded before the injury, raised a question about the worker's version of the incident. ...*In re George Trangmar*, BIIA Dec., 93 3287 (1994)

### **[NOTICE OF APPEAL \(RCW 51.52.050, RCW 51.52.060\)](#)**

#### **Timeliness**

Where the notice of appeal filed with the Board was untimely, but the worker had timely filed the same appeal with the Department, the appeal was timely and the Board considered the merits of the appeal. ...*In re George Trangmar*, BIIA Dec., 93 3287 (1994)

Scroll down for order.

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

1     **IN RE: GEORGE TRANGMAR**             )     **DOCKET NO. 93 3287**  
2   )  
3     **CLAIM NO. N-386788**                 )     **DECISION AND ORDER**  
4

5 APPEARANCES:

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7         Claimant, George Trangmar, Pro Se

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9         Employer, Patricia L. Gorman and Dan Gorman, dba  
10         Top Fashion Framing, by  
11         Alfred A. Bennett

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13         Department of Labor and Industries, by  
14         Office of the Attorney General, per  
15         Karen M. Williams, Assistant  
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17         This is an appeal filed by the employer, Patricia L. Gorman and Dan Gorman, dba Top Fashion  
18 Framing, on April 7, 1993, by mail to the Department of Labor and Industries, from orders of the  
19 Department of Labor and Industries dated March 8, 1993 and March 9, 1993, which allowed the claim  
20 for an injury occurring on June 15, 1992. **REVERSED AND REMANDED.**  
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23                             **PROCEDURAL AND EVIDENTIARY MATTERS**

24         Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
25 and decision on a timely Petition for Review filed by the employer, Patricia L. Gorman and Dan  
26 Gorman, dba Top Fashion Framing, to a Proposed Decision and Order issued on May 31, 1994, in  
27 which the orders of the Department dated March 8, 1993 and March 9, 1993, were affirmed.  
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29         The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no  
30 prejudicial error was committed and said rulings are hereby affirmed.  
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32         This appeal was consolidated with Docket 93 3585 for hearing and Proposed Decision and  
33 Order. While resolution of these appeals can be based on the same record, there are substantial  
34 differences. The parties to this appeal are different from the parties to Docket 93 3585, as are the  
35 issues presented, and the parties' respective burden of proof. Accordingly, we have de-consolidated  
36 these appeals and are issuing separate Decisions and Orders.  
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41                             **DECISION**

42         The documents filed on behalf of the employer, Top Fashion Framing, set forth a clearly stated  
43 intention to challenge each order issued by the Department allowing this claim and each order  
44 assessing penalties for failure to have secured payment of compensation as required by Title 51  
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1 RCW. Each of the Notices of Appeal identified both this claim number and the number of the Notice  
2 and Order of Assessment. Each also contained detailed and specific objection to the allowance of the  
3 claim and to the assessment of a penalty.  
4

5 With regard to this appeal, our only concern is whether the appeals have been filed in sufficient  
6 time to establish jurisdiction. In order to be timely, the appealing employer, Top Fashion Framing,  
7 must establish that the Notice of Appeal was filed within 60 days of the date that the orders allowing  
8 the claim were communicated. Catherine Mommsen, legal assistant to the employer's attorney,  
9 testified that the Notice of Appeal, marked and admitted as Exhibit 3, was mailed to the Department on  
10 April 7, 1993.  
11

12 The Notice of Appeal docketed herein was marked and admitted as Exhibit 5 during a  
13 timeliness hearing held on January 4, 1994. The record at that hearing establishes that Exhibit 5 was  
14 filed by being mailed, properly stamped and addressed, on July 2, 1993. This Notice of Appeal was  
15 filed more than 60 days after the date on which the orders allowing this claim were communicated to  
16 Top Fashion Framing, and is not timely. However the Notice of Appeal, filed by mailing to the  
17 Department on April 2, 1993, was timely and provides us with jurisdiction to consider this appeal.  
18

19 As the appealing party, the employer, Top Fashion Framing, is under the burden of proceeding  
20 initially to present a prima facie case in support of rejection of the claim. RCW 51.52.050; WAC 263-  
21 12-115(2)(a) and (c). This the employer has done through the testimony of several lay witnesses who  
22 were fellow workers of the claimant, Mr. Trangmar. Daniel P. Gorman, Daniel Dai Gorman, his son,  
23 and James Lee Arionus testified that the job on which Mr. Trangmar claimed to have been injured was  
24 completed prior to June 15, 1992, and that they had been told by Mr. Trangmar that his injuries  
25 occurred on a weekend while riding a motorcycle. While this testimony was controverted and hotly  
26 contested by Mr. Trangmar, standing alone it provides a prima facie basis for rejection of the claim.  
27 Presentation of a prima facie case has shifted the burden of proof to Mr. Trangmar to establish  
28 entitlement to benefits by a preponderance of the evidence. Olympia Brewing v. Department of Labor  
29 & Indus., 34 Wn.2d 498 (1949).  
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31 Mr. Trangmar has failed to meet this burden and has not established entitlement to benefits by  
32 the necessary preponderance of the evidence. With two exceptions, all of the witnesses who testified  
33 about the alleged injury had a direct financial interest in the outcome of the appeal or were friends or  
34 relatives of one of the parties. The two disinterested witnesses were presented by the employer and  
35 proved to be inconclusive as to whether the framing job had been completed prior to the date of injury  
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1 claimed by Mr. Trangmar. Terry Wollam, the general contractor who hired Top Fashion Framing for  
2 the job on which Mr. Trangmar worked, was unable to state positively when the framing was  
3 completed other than a general period during mid June of 1992. Barry Bender, a real estate  
4 appraiser, inspected the job site for a bank. His testimony established that framing was 85 to 90  
5 percent completed on June 2, 1992, but did not establish when the framing was 100 percent  
6 completed.  
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10 Although the employer's evidence does not conclusively refute Mr. Trangmar's contentions, it  
11 does raise question about Mr. Trangmar's accounts of the alleged injury. Both Mr. Trangmar and the  
12 Gormans have strong financial incentives to testify in the manner that they did; however, Mr. Trangmar  
13 ultimately bears the burden of proof. Although the issue is close, we find the employer's witnesses as  
14 a group more believable than those presented by the claimant. Even if we found the witnesses  
15 presented by the parties equally credible, we would still have to find against Mr. Trangmar as he bears  
16 the burden of proving entitlement to benefits.  
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20 After consideration of the Proposed Decision and Order, the Petition for Review filed thereto on  
21 behalf of the employer, and a careful review of the entire record before us, we are persuaded that the  
22 Department orders dated March 8, 1993 and March 9, 1993, are incorrect and must be reversed. The  
23 claim is remanded to the Department to issue an order rejecting the claim for the reason that George  
24 Trangmar did not sustain an injury during the course of his employment with Top Fashion Framing.  
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### 28 **FINDINGS OF FACT**

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- 30 1. In June 1992, the Department of Labor and Industries received an  
31 application for benefits from George Trangmar alleging that he sustained  
32 an injury to his low back during the course of his employment with Top  
33 Fashion Framing on June 15, 1992.

34 On March 8, 1993 and on March 9, 1993, the Department issued orders  
35 allowing Mr. Trangmar's claim. On April 2, 1993, Top Fashion Framing  
36 filed a Notice of Appeal from the Department orders dated March 8, 1993  
37 and March 9, 1993, by mailing the notice to the Department properly  
38 stamped and addressed. On July 7, 1993, the Board of Industrial  
39 Insurance Appeals received Top Fashion Framing's Notice of Appeal from  
40 the Department orders dated March 8, 1993 and March 9, 1993.

- 41 2. Top Fashion Framing filed Notices of Appeal from the Department orders  
42 dated March 8, 1993 and March 9, 1993, on April 7, 1993, by mail within  
43 60 days from the date the orders were communicated to the employer.
- 44 3. George Trangmar did not sustain an injury on June 15, 1992, or on any  
45 other date during the course of his employment with Top Fashion  
46 Framing.  
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1 4. George Trangmar has no condition which is proximally related to the  
2 alleged incident of June 15, 1992.

3 **CONCLUSIONS OF LAW**

- 4  
5 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties  
6 and subject matter of this appeal.  
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8 2. George Trangmar did not sustain an industrial injury during the course of  
9 employment with Top Fashion Framing within the meaning of RCW  
10 51.08.100 on June 15, 1992, or on any other date.  
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12 3. The orders of the Department of Labor and Industries dated March 8,  
13 1993 and March 9, 1993, which allowed Mr. Trangmar's claim for an  
14 industrial injury, are incorrect and are reversed. This claim is remanded to  
15 the Department to issue an order rejecting the claim.

16 It is so ORDERED.

17 Dated this 1st day of December, 1994.

18 BOARD OF INDUSTRIAL INSURANCE APPEALS

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21 /s/ \_\_\_\_\_  
22 S. FREDERICK FELLER Chairperson

23  
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25 /s/ \_\_\_\_\_  
26 ROBERT L. McCALLISTER Member