

## **Hauser, Leroy**

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### **NOTICE OF APPEAL (RCW 51.52.050, RCW 51.52.060)**

#### **Timeliness**

If an appeal is not timely, the Board must dismiss the appeal rather than affirm the appealed order. ....*In re Leroy Hauser*, BIIA Dec., 94 4636 (1995)

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS

STATE OF WASHINGTON

1  
2 **IN RE: LEROY R. HAUSER ) DOCKET NOS. 94 4636 & 94**  
3 **5243 )**  
4 )  
5 **CLAIM NO. N-768274 ) DECISION AND ORDER**  
6 )  
7 )

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8 APPEARANCES:

9  
10 Claimant, Leroy R. Hauser  
11 Pro Se  
12  
13 Employer, Waconi Training Center,  
14 None  
15  
16 Department of Labor and Industries, by  
17 Office of the Attorney General, per  
18 Daniel W. Johnson, Assistant  
19

20 Docket 94 4636 is an appeal filed by the claimant, Leroy R.  
21 Hauser, on August 2, 1994, from an order of the Department of Labor and  
22 Industries dated May 23, 1994, which closed the claim with an award for  
23 permanent partial disability equal to 7.5 percent of complete hearing  
24 loss in the right ear. **DISMISSED.**

25 Docket 94 5243 is an appeal filed by the claimant, Leroy R.  
26 Hauser, on August 2, 1994, from an order of the Department of Labor and  
27 Industries dated May 20, 1994, which allowed the claim for an  
28 industrial injury sustained on October 1, 1993, for right sensorial  
29 hearing loss, and denied responsibility for left sensorial hearing  
30 loss. **DISMISSED.**

31 **PROCEDURAL AND EVIDENTIARY MATTERS**

32 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before  
33 the Board for review and decision on a timely Petition for Review filed  
34 by the claimant to a Proposed Decision and Order issued on January 11,  
35 1995, in which the orders of the Department dated May 20, 1994, and

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1 May 23, 1994, were affirmed.

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

5 **DECISION**

6 The only issues before the Board in these appeals are whether the  
7 claimant filed timely appeals of the Department orders dated May 20,  
8 1994, and May 23, 1994. We agree with our industrial appeals judge's  
9 determination that the appeals were not timely filed, and we agree with  
10 his conclusion that the Board lacks jurisdiction over the subject  
11 matter of these appeals as a result. We granted review to issue an  
12 order dismissing these appeals because the Board does not have  
13 jurisdiction to affirm the Department orders.

14 When the Department issues a determinative order, the law permits  
15 an aggrieved party to either file a protest and request for  
16 reconsideration with the Department or an appeal with the Board. RCW  
17 51.52.050. The aggrieved party (the claimant in this case) must take  
18 such action within 60 days of the date the Department order was  
19 communicated. RCW 51.52.050; RCW 51.52.060. The Department order  
20 becomes a final and binding order if the aggrieved party does not file  
21 a protest or an appeal within the 60-day time period prescribed by law.

22 For the Board to hear and decide the merits of an appeal, it must  
23 appear from the record that the Board has jurisdiction to hear the  
24 case. The 60-day period for filing a protest or an appeal of a  
25 Department order is jurisdictional and the Board has no authority to  
26 waive its application. Lewis v. Department of Labor & Indus., 46 Wn.2d

02/27/95

1 391 (1955).

2 In these appeals, the claimant candidly admitted that he did not  
3 file his appeals within 60 days of the date they were communicated to  
4 him. His excuse for not filing his appeals in a timely manner was that  
5 he was waiting for "appeal papers" from Ear Tech, the company he  
6 obtained hearing aids from. From the claimant's testimony, we can  
7 reasonably infer that he felt that these papers were necessary to file  
8 his appeals.

9 The timely filing of an appeal is a statutorily imposed  
10 jurisdictional limitation upon the claimant's ability to get relief  
11 from a Department order and upon the Board's authority to hear an  
12 appeal. Regrettably, there is simply no legal precedent for excusing  
13 the claimant from performing his statutory duty to file timely appeals.

14 The result does not change even though Mr. Hauser may have believed  
15 that he needed the "appeal papers" prepared by Ear Tech to file his  
16 appeals. Mr. Hauser could have and, in retrospect, should have  
17 notified this agency of his desire to appeal as indicated on the  
18 Department orders. Ear Tech apparently undertook a voluntary role in  
19 assisting Mr. Hauser in preparing the appeal form, but the lateness of  
20 the appeal is exclusively the responsibility of Mr. Hauser. The  
21 inescapable fact is that Mr. Hauser failed in his duty to perfect his  
22 appeal rights until it was too late for the Board to do anything but  
23 dismiss his appeals.

24 After consideration of the Proposed Decision and Order and the  
25 claimant's Petition for Review, and a careful review of the entire  
26 record before us, we are persuaded that the claimant's appeals of the

1 Department orders dated May 20, 1994, and May 23, 1994, must be  
2 dismissed because the Board does not have jurisdiction to decide the  
3 merits of these appeals by Ear Tech.

4 **FINDINGS OF FACT**

- 5 1. On October 7, 1993, the claimant filed a claim  
6 for bilateral hearing loss incurred by him on  
7 October 1, 1993, while in the course of  
8 employment with Waconi Training Center.  
9
- 10 2. On May 20, 1994, the Department issued an  
11 order which allowed a claim for right  
12 sensorial hearing loss and denied  
13 responsibility for left sensorial hearing  
14 loss.  
15
- 16 3. On May 26, 1994, the claimant received, read  
17 and understood the May 20, 1994 order.  
18
- 19 4. On May 23, 1994, the Department issued an  
20 order that closed the claim with an award of  
21 permanent partial disability of 7.5 percent of  
22 complete hearing loss in one ear.  
23
- 24 5. The claimant received, read and understood the  
25 May 23, 1994 order on May 24, 1994.  
26
- 27 6. The claimant contacted Ear Tech, a private  
28 company, to seek assistance with an appeal  
29 from the May 20, 1994, and May 23, 1994,  
30 orders. An employee of Ear Tech stated she  
31 would send him documents necessary for an  
32 appeal.  
33
- 34 7. The claimant received a document entitled  
35 "Notice of Appeal" from Ear Tech on, or about,  
36 August 1, 1994.  
37
- 38 8. The claimant filed notices of appeal from the  
39 Department orders of May 20, 1994 and May 23,  
40 1994 by placing them in the regular mails on  
41 August 1, 1994.  
42
- 43 9. The Board received the claimant's notices of  
44 appeal on August 2, 1994.  
45

46 The Board assigned the appeal from the order  
47 of May 20, 1994, Docket 94 5243, and the  
48 appeal from the order of May 23, 1994, Docket

1 94 4636. On September 1, 1994, the Board  
2 issued orders granting the appeals subject to  
3 proof of timeliness in Docket 94 4636 and  
4 Docket 94 5243.  
5

6 **CONCLUSIONS OF LAW**  
7

- 8 1. The claimant did not file a timely appeal from  
9 the May 20, 1994 Department order within 60  
10 days of the date the order was communicated to  
11 him, as required by RCW 51.52.050, and RCW  
12 51.52.060.  
13  
14 2. The claimant did not file a timely appeal from  
15 the May 23, 1994 Department order within 60  
16 days of the date the order was communicated to  
17 him, as required by RCW 51.52.050, and RCW  
18 51.52.060.  
19  
20 3. The Board does not have jurisdiction over the  
21 subject matter in these appeals.  
22  
23 4. The claimant's appeal in Docket 94 4636 is  
24 dismissed.  
25  
26 5. The claimant's appeal in Docket 94 5243 is  
27 dismissed.  
28

29 It is so ORDERED.  
30

31 Dated this 27th day of February, 1995.  
32

33 BOARD OF INDUSTRIAL INSURANCE APPEALS  
34

35  
36 /s/ \_\_\_\_\_  
37 S. FREDERICK FELLER Chairperson  
38

39  
40 /s/ \_\_\_\_\_  
41 FRANK E. FENNERTY, JR. Member  
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43  
44 /s/ \_\_\_\_\_  
45 ROBERT L. McCALLISTER Member  
46  
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