

## **Brown, Joseph**

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### **AGGRAVATION (RCW 51.32.160)**

**Effect of abeyance order on "deemed granted" provisions (RCW 51.32.160)**

### **DEPARTMENT**

**Reassumption of jurisdiction (RCW 51.52.060)**

The prohibition contained in RCW 51.52.060(4) that precludes the Department from issuing an order holding in abeyance the terms of an order issued pursuant to RCW 51.32.160 does not apply when the Department has been requested to reconsider the order under the authority of RCW 51.52.050. ...*In re Joseph Brown*, BIIA Dec., 96 4577 (1996)

Scroll down for order.

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

**IN RE: JOSEPH C. BROWN** ) **DOCKET NO. 96 4577**  
 )  
**CLAIM NO. K-740706** ) **ORDER DENYING APPEAL**

An appeal was filed by the claimant on July 11, 1996, from an order issued by the Department of Labor and Industries on May 16, 1996. The order affirmed a Department order dated February 16, 1996. The February 16, 1996 order denied the claimant's application to reopen the claim which the Department received on February 14, 1996.

Our review of the Department record in this matter reveals that claimant's counsel filed a general protest with the Department of Labor and Industries on June 18, 1996. As such, it protested the Department order of May 16, 1996<sup>1</sup>. The May 16, 1996 order included only a statement of appeal rights and included no statement with regard to the right of any party to file a protest. We have held that even though an order contains no "protest" language, upon receipt of a protest of the order, the Department may elect to reconsider its order. *In re Donzella Gammon*, BIIA Dec., 70,041 (1985).

From a further review of the Department record in this matter, it appears that on July 9, 1996, the Department issued an order holding the terms of the May 16, 1996 order in abeyance pending further consideration and the entering of a further determinative order. We must therefore deny this appeal because the Department has elected to reconsider the May 16, 1996 order in response to the claimant's timely protest.

We wish to note that we are mindful of the limitations on the Department's authority to place the terms of orders in abeyance as contained in RCW 51.52.060(4)(b)(ii). That statute places limitations on the Department's authority to issue an order placing in abeyance the terms of an order entered in response to an application to reopen the claim. For such an order the Department may only place the terms of the order in abeyance for 90 days after receipt of the application to reopen. (The period may be extended an additional 60 days for good cause.) Because the order dated May 16, 1996 from which this appeal was taken denied an application to reopen filed on February 14, 1996, and because more than 90 days had passed since the filing of the application to reopen when the Department issued its July 9, 1996 order placing the terms of the February 16, 1996 order in abeyance, it might appear that the provision of RCW 51.52.060(4)(b)(ii) should apply to render the July 9, 1996 order legally ineffective. We believe, however, that the provisions of RCW 51.52.060(4) apply only to circumstances in which an abeyance order is issued in response to the filing of an appeal or the Department is acting on its own motion to further investigate the matter. The provisions of RCW 51.52.060(4) do not apply when a party has requested the Department to further consider the matter under the authority of RCW 51.52.050.

The Department's authority to issue the order placing the terms of the February 16, 1996 order in abeyance is grounded in RCW 51.52.050, which permits a party to protest an order of the Department. The provisions of RCW 51.52.060(4)(b)(ii) should not apply when a protest of the order has been filed, wherein a party before the Department is requesting the Department to reconsider the order. In circumstances such as herein, where a party has requested the

<sup>1</sup> We have never imposed any strict requirements on what may constitute a protest or request for reconsideration of a particular Department order. See, e.g., *In re Charles Wieghall*, BIIA Dec., 29,863 (1970) and *In re Mike Lambert*, Dckt. No. 91 0107 (January 29, 1991).

1 Department to further review the matter, the Department is not prevented from placing the terms of  
2 the order in abeyance in response to the timely protest.  
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4 The May 16, 1996 order from which this appeal was taken is not a final order of the  
5 Department. It is therefore ORDERED that the appeal be denied. This is without prejudice to the  
6 right of any party to appeal from any further order of the Department.  
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8 Dated this 20th day of August, 1996.  
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10 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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14 /s/ \_\_\_\_\_  
15 S. FREDERICK FELLER Chairperson  
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20 /s/ \_\_\_\_\_  
21 FRANK E. FENNERTY, JR. Member  
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25 /s/ \_\_\_\_\_  
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