

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

IN RE: DEAN S. PACULBA

DOCKET NO. 23 19209

CLAIM NO. BB-16514

DECISION AND ORDER

In 2021, Dean Paculba sustained an industrial injury to his left hand while working for the Housing Authority of Grant County (HAGC). At the time, HAGC provided Mr. Paculba with housing benefits and continued providing such housing for almost a year after his injury. In February 2022, the Department of Labor and Industries issued an order that computed Mr. Paculba's wage for time-loss rate calculation purposes. The Department failed to include the value of the housing provided by HAGC. Mr. Paculba didn't protest or appeal the wage order. In October 2022, HAGC ended Mr. Paculba's housing. He petitioned the Department for a wage adjustment. The Department denied the request, finding the wage order was final and binding. Mr. Paculba appealed and the parties submitted the case to the Board on stipulated facts. Our industrial appeals judge determined that res judicata did not bar Mr. Paculba from requesting an adjustment to the wage order based on a change of circumstances pursuant to RCW 51.28.040 and RCW 51.32.240(2). The Department petitioned for review and requested that the Board affirm the order denying the wage adjustment. We granted review to clarify that Mr. Paculba is entitled to a time-loss compensation rate adjustment under RCW 51.28.040 and that RCW 51.32.240(2) does not apply. The Department's April 11, 2023 order is **REVERSED AND REMANDED** to the Department to adjust Mr. Paculba's wage rate pursuant to RCW 51.28.040 to include the housing benefit he received from HAGC on the date of his injury.

DISCUSSION

On November 27, 2021, Dean Paculba sustained an industrial injury to his left hand while working for HAGC. As part of his employment, HAGC provided Mr. Paculba with a residential apartment. After the injury, the Department sent Mr. Paculba a letter requesting information to establish his gross monthly wage at the time of injury. In response, he returned the work status form and indicated he received an employer-provided housing benefit. The Department did not further investigate the housing benefit or its value despite receiving the work status form. On February 23, 2022, the Department issued a wage order that did not include the housing benefit, listing its value as "NONE."¹ Along with the wage order, the Department sent Mr. Paculba a letter directing him to inform the Department of any errors within 60 days, explaining that if the order did

¹ Ex. 9.

1 not include the value of a benefit, it meant that on the date of injury, the benefit was either not part of
2 his monthly earnings or not provided by the employer. The letter further directed Mr. Paculba to
3 inform the Department immediately if an employer-provided benefit changed or ended. Mr. Paculba
4 did not protest or appeal the wage order. In August 2022, HAGC informed Mr. Paculba that it was
5 terminating his housing benefit, which ultimately occurred on October 31, 2022.
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9 On October 28, 2022, the Department sent HAGC a letter with a blank wage information form
10 to ensure Mr. Paculba's benefit amount was correct. On December 12, 2022, HAGC received
11 another letter from the Department stating that Mr. Paculba had "a change in circumstances
12 warranting an increase"² in his compensation. HAGC then provided the Department with the value
13 of the housing benefit.
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16 On October 31, 2022, HAGC evicted Mr. Paculba from housing. On December 20, 2022,
17 HAGC provided the Department with the value of the housing benefit it previously provided
18 Mr. Paculba. On March 3, 2023, Mr. Paculba requested that the Department adjust his time-loss
19 compensation rate for the period of November 1, 2022, through January 26, 2023, based on the loss
20 of housing. On April 11, 2023, the Department denied his request. The Department found that there
21 was no change of circumstances and the February 23, 2022 wage order had become final and
22 binding. Mr. Paculba timely appealed the April 11, 2023 denial order.
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25 The purpose of time-loss compensation is to replace lost wages caused by the worker's
26 industrial injury. It does not include benefits provided by the employer during the disability period
27 because such benefits are not part of the worker's economic loss.³ Under RCW 51.28.040, an injured
28 worker is entitled to an increase in compensation when the worker has a change of circumstances.
29 However, under RCW 51.32.240(2), an injured worker does have the right to request a wage
30 adjustment within one year from the date of an erroneous payment if the incorrect wage calculation
31 occurred due to clerical error, mistake of identity, or innocent misrepresentation. An adjustment of
32 benefits under RCW 51.32.240 cannot occur if the error was due to the Department's failure to
33 consider information in the claim file or was based on an error in judgment.
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40 After careful consideration of the law and the facts, we hold that Mr. Paculba is not entitled to
41 a wage adjustment under RCW 51.32.240 because the Department's error in excluding the housing
42 benefit was adjudicative. The Department admitted it knew about the housing benefit before issuing
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46 ² Ex. 21.

47 ³ RCW 51.08.178.

1 the wage order, but failed to consider it. Moreover, the Department's mistake in not further
2 investigating the housing benefit prior to issuing the wage order was an error in judgment. Nothing
3 in the record established that a clerical error led to the improper exclusion of the housing benefit.
4 RCW 51.32.240 does not apply.
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6 But Mr. Paculba is entitled to a wage adjustment under RCW 51.28.040. HAGC provided
7 Mr. Paculba with housing on the date of his injury and terminated the benefit almost a year later.
8 Losing in-kind benefits during a period of disability constitutes a change of circumstances allowing
9 claimants to request a wage adjustment under RCW 51.28.040.⁴ Res judicata does not prevent
10 Mr. Paculba from receiving an adjusted wage rate because at the time the order was issued, he was
11 not entitled to include his housing benefits.⁵ This differs from cases where the claimant failed to
12 timely protest or appeal a wage order excluding benefits they were entitled to at the time the order
13 was issued,⁶ or where the claimant lost employer-provided benefits prior to the issuance of a final
14 wage order.⁷ In this appeal, the finality of the wage order is not relevant. Mr. Paculba did not have
15 standing to appeal the February 2022 wage order on the basis of housing benefits because he was
16 not aggrieved by it until after it became final and binding.⁸ He did not know his housing benefit would
17 end until HAGC sent an eviction notice in August 2022. Irrespective of the error on the face of the
18 wage order, Mr. Paculba experienced an actual change of circumstances when HAGC ended his
19 housing benefit. He is entitled to a wage adjustment under RCW 51.28.040. The Department's denial
20 order is incorrect.
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22 DECISION

23 In Docket No. 23 19209, the claimant, Dean S. Paculba, filed an appeal with the Board of
24 Industrial Insurance Appeals on June 5, 2023, from an order of the Department of Labor and
25 Industries dated April 11, 2023. In this order, the Department denied the request for a wage
26 adjustment. This order is incorrect and is reversed. This matter is remanded to the Department to
27 adjust Mr. Paculba's wage rate under RCW 51.28. 040 to include the employer-provided housing
28 benefit he received on the date of injury and to take such further action appropriate under the law
29 and facts.
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43 ⁴ *In re Fred Jones*, BIIA Dec., 02 11439 (2003).

44 ⁵ *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 815 (2001); *Gallo v. Dep't of Labor & Indus.*, 155 Wn.2d 470, 494
45 (2005).

46 ⁶ *In re Lee Richardson-Greenan*, BIIA Dec., 19 23798 (2023).

47 ⁷ *In re Rosalie Hyatt*, BIIA Dec., 02 13243 (2003).

⁸ *In re Margo Schmitz*, BIIA Dec., 97 5627 (1999).

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FINDINGS OF FACT

1. On October 10, 2023, an industrial appeals judge certified that the parties agreed to include the Jurisdictional History in the Board record solely for jurisdictional purposes.
2. Dean Paculba sustained an industrial injury on November 27, 2021. At the time of his injury, his employer provided him with a residential apartment.
3. On February 23, 2022, the Department issued a wage order that failed to include Mr. Paculba's employer-provided housing benefit, despite the fact that the Department knew of the benefit.
4. The Department failed to consider information in the claim file and failed to investigate the housing benefit before it issued the wage order.
5. Mr. Paculba did not protest or appeal the wage order, and it became final and binding 60 days after its issuance.
6. After the wage order became final and binding, Housing Authority of Grant County informed Mr. Paculba it was ending his housing benefit, which occurred on October 31, 2022.
7. Mr. Paculba's loss of his employer-provided housing benefit constituted a change of circumstances allowing him to request an adjustment to his wage calculation.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in this appeal.
2. Mr. Paculba was not entitled to inclusion of his employer-provided housing benefit in the wage calculation until the benefit ended.
3. Res judicata does not bar Mr. Paculba from requesting a wage adjustment.
4. Mr. Paculba's change of circumstances entitles him to an adjusted wage calculation under RCW 51.28.040.

- 1 5. The Department order dated April 11, 2023, is incorrect and is reversed.
2 This matter is remanded to the Department to adjust Mr. Paculba's wage
3 rate calculation under RCW 51.28.040 to include the housing benefit
4 provided by his employer on the date of injury. The adjustment shall be
5 effective 60 days prior to the date the Department received the application
6 for the adjustment of time-loss compensation.

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8 Dated: March 19, 2025.

9 BOARD OF INDUSTRIAL INSURANCE APPEALS

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11 HOLLY A. KESSLER, Chairperson

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13 ISABEL A. M. COLE, Member

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18 **DISSENT**

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20 I respectfully disagree that Mr. Paculba is entitled to a time-loss compensation rate adjustment
21 under RCW 51.28.040. The February 23, 2022 wage order and accompanying letter delineated the
22 factual basis of Mr. Paculba's wage calculation, including his hourly rate, days worked, marital status,
23 and healthcare benefit. If a party disagrees with an order they must timely appeal the order or it
24 becomes final. Parties must be able to rely on the finality of orders. Whether a party might have
25 been entitled to a benefit is not relevant if the order is not timely appealed. Upon receiving the wage
26 order, Mr. Paculba was legally required to file a timely protest or appeal to inform the Department
27 that it excluded his employer-provided housing benefit. The wage order clearly informed Mr. Paculba
28 that it would become final if not protested or appealed within 60 days. The accompanying letter
29 further instructed Mr. Paculba to carefully review the wage order to ensure there were no errors, and
30 that if he disagreed with any information in the order, he had 60 days to file a written protest otherwise
31 the order would become final. Despite those clear instructions, Mr. Paculba did not protest or appeal
32 the February 23, 2022 wage order. It became final and binding.⁹ Res judicata bars Mr. Paculba from
33 requesting an adjustment to his wage calculation now based on the incorrectly excluded housing
34 benefit value.¹⁰

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46 ⁹ RCW 51.52.050; RCW 51.52.060.

47 ¹⁰ *Marley v. Dept of Labor & Indus.*, 125 Wn.2d 533 (1994).

1 I would affirm the Department's April 11, 2023 order. Therefore, I dissent.
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3 Dated: March 19, 2025.

4 BOARD OF INDUSTRIAL INSURANCE APPEALS

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8 ROBERT A. BATTLES, Member
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**Addendum to Decision and Order
In re Dean S. Paculba
Docket No. 23 19209
Claim No. BB-16514**

Appearances

Claimant, Dean S. Paculba, by McPartland Law Offices, PLLC, per Bryce P. McPartland and Bryton A. Redal

Employer, Housing Authority of Grant County (did not appear)

Department of Labor and Industries, by Office of the Attorney General, per Tomas S. Caballero

Petition for Review

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The Department filed a timely Petition for Review of a Proposed Decision and Order issued on November 15, 2024, in which the industrial appeals judge reversed and remanded the Department order dated April 11, 2023. Mr. Paculba filed a response to the Petition for Review.

Exhibits

The stipulated exhibits are admitted and renumbered as Board Exhibits 1 through 28.