



# How should you determine whether a worker has left the workforce and is no longer entitled to time loss benefits?

By Eric T. Duncan and Jennifer A. Kramer • April 28, 2015

While many employers are aware that time loss compensation benefits are generally unavailable to workers who voluntarily retire from the workforce,<sup>1</sup> determining whether a worker has voluntarily retired can be challenging.

Fortunately, a recent Board of Industrial Insurance Appeals decision<sup>2</sup> has helped clarify this issue. In *Stephenson*, the Board held the time period relevant to determining whether a worker has voluntarily retired must be some period **prior** to the period for which time loss benefits are sought.

In *Stephenson* the claimant resigned from the employer of injury *before* her claim was closed in 2006. She then took a part-time job with a new employer, where she worked from the end of 2007, until she resigned on March 11, 2009. Thereafter, her only employment was from fall 2009 to winter 2011, when she provided intermittent babysitting services out of her home, which were not deemed gainful employment. The claim was then reopened effective January 10, 2012. The worker contended entitlement to time loss, but the Department determined that she had voluntarily removed herself from the workforce, thus rendering her ineligible for that benefit.

When deciding this issue, the Board determined that the proper period to examine spanned from the date the claimant was last gainfully employed (March 11, 2009) until the first date for which benefits were sought (January 10, 2012). The Board concluded that during this period, babysitting was not gainful employment and the claimant had not demonstrated a bona fide attempt to return to any gainful work.<sup>3</sup> Claimant was thus deemed to have voluntarily retired and not entitled to time loss benefits after reopening.

If you have questions about whether a worker has voluntarily retired from the workforce or is entitled to wage replacement benefits, please contact any of our Washington attorneys who would be happy to discuss this issue with you. ■



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<sup>1</sup> RCW 51.32.090(10).

<sup>2</sup> *In re Renee S. Stephenson*, Dckt. Nos. 13 22648 & 13 22949 (October 2014) (**tentative** Significant Decision).

<sup>3</sup> The Board applied WAC 296-14-100(1), which provides in part a worker is considered voluntarily retired if both of the following conditions are met:

- (a) The worker is not receiving income, salary or wages from any gainful employment; and
- (b) The worker has provided no evidence to show a bona fide attempt to return to work after retirement.