Significant Washington Board Decisions Refresher: **Reopenings**

By Sara Wong ■ October 19, 2021

Welcome to our Significant Board of Industrial Insurance Appeals Decisions Refresher series, which focuses on Board decisions that form the fundamentals of claims processing in Washington. The following is one of twelve blogs that will break down some of the most impactful Board significant decisions. Each blog will include key takeaways from referenced Board decisions that affect Washington workers' compensation rules and laws, and ultimately affect how you process your claims.

This week's refresher concerns significant Board decisions related to **reopenings**. To reopen a claim, a worker must show objective evidence of worsening of the industrially-related condition since the date of the last order closing the claim or denying a reopening application. (RCW 51.32.160).[1] [2] [3] Explore what that means in more detail below.

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Significant Decision # 1: *In re Marven Sandven*, BIIA Dec., 89 3338 (1990)

- Legal Issue: What is the legal standard for a reopening?
- Key Point: A worker must establish by a preponderance of the evidence that a condition causally related to an industrial injury has objectively worsened or become aggravated between the relevant terminal dates. [The first terminal date or "T1" is the date of claim closure or a prior order denying reopening, whichever is most recent. The second terminal date or "T2" is the date of the Department order granting or denying a reopening application.]

Significant Decision # 2: *In re Michael Bell*, BIIA Dec., 11 15598 (2012)

- Legal Issue: Are there time limits on a reopening?
- Key Point: Yes . . . sort of. If a worker submits a reopening application more than seven years from the date of closure and the Washington State Department of Labor and Industries director subsequently grants the reopening application, then the worker is usually only eligible to receive medical benefits. However, the director has the discretion to award full benefits.

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Refresher: Reopenings (continued)

Significant Decision #3: *In re Raymond Belden*, BIIA Dec., 12 14005 (2013)

- Legal Issue: How should we interpret the "deemed granted" rule in RCW 51.52.160? What is the legal impact if the following occurs within 90 days of a reopening application: The Department reopens a claim, the employer protests claim reopening, and the Department places the reopening order in abeyance, but does not issue a further determinative order?
- Key Point: The claim is reopened pursuant to the deemed granted rules. If the Department does not affirmatively deny a reopening application within 90 days (or extend the 90-day timeframe by 60 additional days for good cause), then a reopening application is deemed granted and an employer's only recourse is to appeal to the Board. This is regardless of any employer protest or Department order placing the reopening order into abeyance within the 90/150-day timeframe.

Significant Decision #4: *In re Wallace Hansen*, BIIA Dec., 90 1429 (1991)

- Legal Issue: Can a treating physician's chart notes constitute a reopening application?
- Key Point: Yes. A reopening application must be in writing, be individual in nature, and give the Department information regarding the reason for the application. A worker is not required to use any particular form to file a reopening application.

Significant Decision #5: *In re John Anderson*, BIIA Dec., 91 6315 (1992)

- Legal Issue: Are subjective complaints alone sufficient to warrant a reopening application?
- Key Point: No. A worker's subjective description of increased pain is not sufficient to establish a worsening or aggravation to support a reopening application. Instead, there must be objective findings to support a worker's complaints of increased pain and loss of function.

Reach out to the attorneys at Reinisch Wilson Weier if you have any questions about these significant decisions, about what constitutes an industrial injury, or any other workers' compensation matter. ■

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[1] *Karniss v. Dep't.*, 39 Wash.2d 898, 900–01 (1952).

[2] *In re Jimmy Storer*, BIIA Dec., 86 4436 (1988).

[3] *Tollycraft Yachts Corp. v. McCoy*, 122 Wash.2d 426 (1993).