



When government agencies collide, who really decides?

By Scott P. Kennedy and Jennifer A. Krammer • November 25, 2014

Washington's Title 51 grants the Board of Industrial Insurance Appeals authority to review and alter decisions of the Department of Labor and Industries on appeal.¹ It also instructs the Board to publish a set of its most "significant decisions" from those appeals.² These decisions offer a useful resource for researching the Board's interpretations of Title 51.

What happens when the Department disagrees with one of the Board's significant decisions?

An example of such a conflict can be found in the context of Title 51's Second Injury Fund (SIF). The SIF relieves an employer of the cost of an injured worker's pension when that worker's permanent and total disability was the result of his or her most recent industrial condition combined with a "previous bodily disability."³ Once this relief takes effect in a particular case, the employer's obligation to pay time loss compensation ends, and the SIF begins paying the worker's pension benefits. Board precedent maintains that SIF relief takes effect on the date an eligible worker has attained fixity from both a medical and vocational standpoint.⁴

However, the Department frequently places eligible workers on the SIF pension rolls on a date that falls well after medical and vocational fixity, issuing orders in direct conflict with the Board's significant decisions. This represents an added cost for the employer, whose time loss costs may have been lower under the Board's interpretation. In this way, the Department has effectively developed and maintained a different interpretation of the law than that of the Board. And because the Washington State Court of Appeals has not had occasion to rule on the issue, the conflict may persist.

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Continued

¹ See generally RCW 51.52

² RCW 51.52.160

³ See RCW 51.16.120

⁴ See, e.g., *In re: Roger Neuman*, BIIA Dec. 97 7648 (1999); *In re: Frederick Cuendet*, BIIA Dec. 99 21825 (2001)



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Thus, there are times when an employer's rights, as established by the Board's significant decisions, are not given full effect by a Departmental order. In those situations, the employer may need to appeal the matter to obtain the benefit of Board precedent. Such matters may also settle at the Board level, providing the employer with substantial monetary relief. Given this, it is worthwhile for an employer review Departmental orders for any possible inconsistency with Board case law within the 60-day time limit for a Board appeal.

Please contact one of our Washington practice attorneys if you require assistance with this task. ■



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