



Washington Court of Appeals holds orders containing innocent errors to typical 60-day protest/appeal deadline

By Shawna G. Fruin ■ August 11, 2015

In its recent decision *Birrueta v. Department of Labor and Industries*,¹ the Washington Court of Appeals weighed in on one of the Washington State Industrial Insurance Act's most puzzlingly worded statutes, RCW 51.32.240, which addresses erroneous benefits:

- (a) Whenever any payment of benefits under this title is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by willful misrepresentation, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The department or self-insurer, as the case may be, must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived.²
- (b) Except as provided in subsections (3), (4), and (5) of this section, the department may only assess an overpayment of benefits because of adjudicator error when the order upon which the overpayment is based is not yet final as provided in RCW 51.52.050 and 51.52.060. "Adjudicator error" includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment. ...³

Prior to *Birrueta*, the Department of Labor and Industries and Board of Industrial Insurance Appeals interpreted the statute as allowing the Department to rectify orders containing innocent errors past the typical 60-day protest/appeal deadline for Department orders, pointing to the "must make claim for such repayment or recoupment within one year of the making of any such payment" provision.⁴ Those interpretations distinguished the innocent error of RCW 51.32.240(1)(a) from the "adjudicator error" from RCW 51.32.240(1)(b).

In *Birrueta*, however, the Court of Appeals overruled the administrative agencies' interpretations, at least in cases generally matching *Birrueta's* facts. There, based on an innocent error, the Department issued a wage order incorrectly stating Birrueta was married. The Department discovered the error some time after the wage order became final and corrected Birrueta's marital

Based on an innocent error, the Washington L&I issued a wage order incorrectly stating Birrueta was married; however, the Court of Appeals overruled the administrative agencies' interpretations

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Innocent errors still held to 60-day appeal deadline (continued)

status (and resulting pension payment) from that point forward. However, based on the “plain language” and legislative history of RCW 51.32.240, the Court of Appeals concluded that the final and binding wage order’s innocent mistake was an “adjudicator error” and therefore could no longer be corrected. Accordingly, *Birrueta* holds that when a wage order incorrectly states a worker’s familial status based on innocent error, the familial status (and resulting benefits payments) cannot be corrected after the wage order is final.

Unfortunately, in other circumstances, *Birrueta* still does not provide perfect guidance for when to apply the one-year deadline in RCW 51.32.240 versus its “not yet final” deadline. The Court of Appeals indicated that some orders, including “mere payment orders,” do not adjudicate the underlying facts – meaning the Court of Appeals’ reasoning is not as simple as applying the one-year deadline to payments made without orders, and the 60-day deadline to payments made pursuant to Department orders. The Court of Appeals also did not define “adjudicator” or explain how the erroneous benefit statute or *Birrueta* applies to self-insured claims.

Until we obtain further guidance from the appellate courts and/or legislature, please contact the attorneys of Reinisch Wilson Weier PC for the best application of *Birrueta* and RCW 51.32.240 to the specific facts of your case. ■

¹ *Birrueta v. Dep’t of Labor & Indus.*, No. 32210-6-III, 2015 WL 4136726 (Wash. Ct. App. July 9, 2015)

² RCW 51.32.240(1)(a)

³ RCW 51.32.240(1)(b)

⁴ RCW 51.52.050; RCW 51.32.240(1)(a)

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