

NO. 75379-7-I

**COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON**

RENTON SCHOOL DISTRICT #403,

Appellant,

v.

DANIEL D. DOLPH AND THE DEPARTMENT OF LABOR AND
INDUSTRIES OF THE STATE OF WASHINGTON,

Respondents.

BRIEF OF APPELLANT

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DIVISION I
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TABLE OF CONTENTS

I. ASSIGNMENTS OF ERRORS 1

II. STATEMENT OF ISSUES..... 1

III. STATEMENT OF THE CASE2

 A. PROCEDURAL HISTORY2

 B. SUBSTANTIVE FACTS.....4

IV. ARGUMENT6

 A. The Department’s March 27, 2012 closing order became final and binding when the Respondent did not protest or appeal the order within 60 days of receipt pursuant to RCW 51.52.050(1) and RCW 51.52.060(1)(a).....7

 B. The Department complied with RCW 51.52.050(1) when it sent the March 27, 2012 closing order to the last known postal address as shown by the Department’s records..... 11

IV. CONCLUSION 14

TABLE OF AUTHORITIES

Cases

<i>Arriaga v. Dep't of Labor & Indus.</i> , 183 Wn. App. 817, 335 P.3d 977 (Div. III 2014).....	8
<i>Blackburn v. Dep't of Soc. & Health Servs.</i> , 186 Wn.2d 250, 375 P.3d 1076 (2016).....	6, 7
<i>Kustura v. Dep't of Labor & Indus.</i> , 142 Wn. App. 655, 175 P.3d 1117 (Div. I 2008)	8
<i>Robel v. Roundup Corp.</i> , 148 Wn.2d 35, 59 P.3d 611 (2002).....	7
<i>Rodriguez v. Dep't of Labor & Indus.</i> , 85 Wn.2d 949, 540 P.2d 1359 (1975).....	6, 9

Statutes

RCW 51.52.050	6, 7, 12
RCW 51.52.050(1).....	7, 8, 11
RCW 51.52.060	7, 8, 9
RCW 51.52.060(1)(a).....	7, 8

I. ASSIGNMENTS OF ERRORS

1. Finding of Fact 1.3 is in error because it implies that Ms. Reno's statement that Walthew Law Firm "did not represent Mr. Dolph and... the order had therefore not been communicated to him," was factually and/or legally correct.
2. Finding of Fact 1.4 is in error insofar as it implies that the Department's second mailing of the closing order on July 21, 2014 was legally significant or determinative in this case.
3. Finding of Fact 1.6 is in error insofar as it implies such a responsive "final order" would be valid, given the March 27, 2012 Department Order was itself final.
4. Conclusion of Law 2.2 is in error because the Respondent did not timely file a protest and request for reconsideration with the Department from the March 27, 2012 Department closing order, within the meaning of RCW 51.52.050.
5. Conclusion of Law 2.3 is in error because the Respondent's protest was untimely and the March 27, 2012 closing order had become final and binding; therefore RCW 51.52.050 and RCW 51.52.060 did not obligate the Department to issue any further orders pertaining to the March 27, 2012 closing order.
6. Conclusion of Law 2.4 is in error because the July 21, 2014 Department order was correct and should be affirmed.
7. For the aforementioned reasons, Judgments 3.1 and 3.2 should be reversed.

II. STATEMENT OF ISSUES

1. Under RCW 51.52.050, is the Department's March 27, 2012 closing order a final and binding order when Respondent's November 19, 2013 "protest" was filed more than 60 days after the Respondent received the March 27, 2012 closing order? (Assignments of Error 1, 2, 3, 4, 5, 6)

2. Under RCW 51.52.050(1), did the Department comply with the law when it sent the March 27, 2012 closing order to the last known postal address as shown by the records of the Department? (Assignments of Error 1, 2, 3)

III. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

On September 9, 2010, the Respondent filed an application for benefits with the Department of Labor and Industries (“Department”). The claim was allowed by Department order on October 20, 2010. A March 27, 2012 Department order later closed the claim, finding no permanent partial disability existed and no further medical treatment to be needed. About a year and a half later, on September 25, 2013, the Respondent filed an application to reopen his claim with the Department. Approximately two months later, on November 19, 2013, the Respondent filed a Protest and Request for Reconsideration (“P&RR”), with the Department, regarding the March 27, 2012 closing order. Thus, this claim departs down two different channels: one regarding the reopening application filed by the Respondent, the other regarding whether the March 27, 2012 Department closing order was final and binding.

The Respondent’s reopening application was initially denied by the Department order dated February 21, 2014. On March 21, 2014, a Department order was issued cancelling the February 21, 2014 order, after

the Respondent appealed to the Board of Industrial Insurance Appeals (“BIIA”). The appeal to the Board was denied on grounds that the Department had resumed jurisdiction for further consideration. The Renton School District timely appealed the cancelation of the reopening denial order issued on February 21, 2014. That appeal is still pending before the BIIA.

After the Respondent filed his P&RR regarding the closing order, the Department issued an order affirming the closing order on July 3, 2014. On July 9, 2014, the Claimant appealed the July 3, 2014 order to the BIIA. Nine days later, on July 18, 2014, the Department reassumed jurisdiction of the claim to reconsider the July 3, 2014 order. On July 21, 2014, the Department issued a new order to “correct and supersede” the July 3, 2014 order. This new order stated that the Department cannot reconsider the March 27, 2012 order because the Respondent’s protest was not received within the statutory 60 days following the closing order’s issuance. Thus, the March 27, 2012 order was deemed by the Department to have been final and binding.

The Respondent filed a P&RR of the July 21, 2014 order, but this was forwarded to the BIIA as a notice of appeal on October 15, 2014. The Board granted the appeal five days later. On September 21, 2015, the Board issued an order concluding that the Respondent had filed a timely

P&RR to the March 27, 2012 closing order, and that the July 21, 2014 Department order was incorrect. The Superior Court of King County affirmed the September 21, 2015 Board Decision and Order on May 20, 2016.

B. SUBSTANTIVE FACTS

The Department closed the Respondent's claim on March 27, 2012. Katheryn Jones, Claims Adjudicator for the Department, issued the closing order on that very day. Ms. Jones testified that the Department's records reflected that Mr. Dolph's last known address at the time the order was issued was the Walthew Law Firm's address. *See* Hearing Tr. at 50.¹ Ms. Jones testified further that the closing order was sent to the Walthew firm. Hearing Tr. at 43-44.

The Department records indicate that the Walthew Law Firm was the last known postal address listed for the Respondent, and this was the address to which the Department mailed the Respondent's copy of the closing order. Hearing Tr. at 50. The Walthew Law Firm mailed a letter to the Department, dated April 6, 2012, explaining that they did not represent the Respondent, as well as providing to the Department the Respondent's current mailing address.

¹ "Hearing Tr." refers to the April 30, 2015 hearing transcript contained in the Certified Appeal Board Record, Clerk's Papers Sub #10.

Wendie Stanfill, the administrator of the Respondent's claim for the self-insured employer (Hearing Tr. at 64), received the closing order from the Department on March 29, 2012 (*Id.* at 66). On July 31, 2012, Ms. Stanfill received a call from the Respondent, who was upset and abusive regarding the status of his claim. *Id.* Ms. Stanfill then advised the Respondent that his claim was closed, but he could file an application to reopen the claim. *Id.* The Respondent then asked for a copy of the closing order, which Ms. Stanfill mailed to his home address later that same day. Hearing Tr. at 67. At no point were the documents Ms. Stanfill mailed returned as undeliverable, nor did the Respondent ever indicate to Ms. Stanfill that he had failed to receive this copy of the closing order. *Id.* at 68.

On August 27, 2012, the Respondent faxed a request to Ms. Stanfill "for the rest of my file" through the time of his claim closure. Ms. Stanfill copied the file, including another copy of the March 27, 2012 closing order, and mailed these documents to the Respondent on September 4, 2012. *Id.* at 68-71.

The Respondent testified that he received the March 27, 2012 closing order sometime in "September/October" of 2012. Hearing Tr. at 11. After receiving the Department closing order, the Respondent "tried contacting about a dozen attorneys." *Id.* Ms. Jones testified that no

protest or appeal was filed in 2012. Hearing Tr. at 50-51. The Respondent did not file his P&RR until November 19, 2013, more than a year after he received the March 27, 2012 closing order. Hearing Tr. at 51-52.

Unless otherwise cited, the facts contained in the Statement of the Case are evidenced by Appendices A - H.

IV. ARGUMENT

This appeal turns on the question of what constitutes “communicated” under RCW 51.52.050. The case law indicates that the analysis is to focus on the recipient of the communication, not the action of the Department. This statute is concerned about whether the claimant receives notice, actual or constructive. In short, it doesn’t matter who handed the closing order to the Respondent, nor that he understood it, only that he received that closing order. *See Rodriguez v. Dep't of Labor & Indus.*, 85 Wn.2d 949, 953, 540 P.2d 1359 (1975).

Findings of fact are reviewed for substantial evidence. *Blackburn v. Dep't of Soc. & Health Servs.*, 186 Wn.2d 250, 256, 375 P.3d 1076 (2016). The challenging party must establish that there was not sufficient evidence “to persuade a rational, fair-minded person of the truth of the finding.” *See id.* On appeal, conclusions of law are reviewed de

novo. *Id.* (citing *Robel v. Roundup Corp.*, 148 Wn.2d 35, 42, 59 P.3d 611 (2002)).

The Respondent was sent three copies of the Department closing order. The Superior Court held that it was not until the Respondent received the third and final copy that the closing order was “communicated” to the Respondent, thus beginning the 60-day allowance for protest of the closing order. The Superior Court decision is based on a mistaken understanding of RCW 51.52.050 and must be reversed.

The Department closing order was deemed “communicated” to the Respondent when the Respondent first received a copy of the closing order in September or October of 2012. The 60-day period for the Respondent to appeal the closing order began to run no later than October 31, 2012. The Respondent did not protest or appeal the March 27, 2012 order until November 19, 2013, well after the 60-day protest/appeal period that is articulated in RCW 51.52.060. It is for this reason that the March 27, 2012 Department closing order is final and binding, and the Superior Court’s erroneous ruling must be REVERSED.

- A. The Department’s March 27, 2012 closing order became final and binding when the Respondent did not protest or appeal the order within 60 days of receipt pursuant to RCW 51.52.050(1) and RCW 51.52.060(1)(a).**

The March 27, 2012 Department closing order was “communicated” to the Respondent no later than September or October of 2012. A Department order becomes final and binding if not protested or appealed within 60-days of the order being communicated to the parties. The Respondent did not appeal the March 27, 2012 Department closing order until November 19, 2013. The Respondent’s appeal was therefore untimely pursuant to RCW 51.52.060 and is barred by res judicata.

Both RCW 51.52.050(1) and RCW 51.52.060(1)(a) provide for a 60-day period after the Department’s communication of a closing order for parties to protest or appeal that order. “If a party fails to appeal within the 60-day time limit, the claim is deemed res judicata on the issues the order encompassed, and the failure to appeal an order ... turns the order into a final adjudication, precluding any reargument of the same claim.” *Arriaga v. Dep’t of Labor & Indus.*, 183 Wn. App. 817, 824, 335 P.3d 977 (Div. III 2014) (citing *Kustura v. Dep’t of Labor & Indus.*, 142 Wn. App. 655, 669, 175 P.3d 1117 (Div. I 2008)) (internal quotations omitted).

Further, there has historically been some confusion as to what “communicated” means in the context of RCW 51.52.060(1)(a). While the courts have not yet spoken directly to the facts in this case, existing case law strongly indicates that whether or not an order has been

“communicated” is an analysis that focuses on the *recipient* of the order, not the sender.

The Washington State Supreme Court has held that “the word ‘communicated’ contained in RCW 51.52.060 requires only that a copy of the order be received by the workman. Since appellant's notice of appeal was not filed within 60 days of the receipt of the closing order, the notice of appeal was not timely.” *Rodriguez v. Dep't of Labor & Indus.*, 85 Wn.2d 949, 953, 540 P.2d 1359 (1975).

Rodriguez involved an illiterate, Spanish speaking claimant who filed an appeal of a closing order after the 60-day period allowed for appeal. *See id.* at 950. The claimant argued that because he was unable to understand the order without assistance from an interpreter, the 60-day period was tolled until he had the order interpreted. *Id.* at 951. The Court disagreed, holding that the fact that the claimant had *received* a copy of the order was sufficient to begin the running of the 60-day period for appeal.

Here, the Respondent is literate and speaks English. And, unlike *Rodriguez*, the Respondent had *actual knowledge* that his claim was closed at or before the time he contacted Ms. Stanfill on July 31, 2012. During his conversation with Ms. Stanfill on July 31, 2012, the Respondent requested a copy of the Department closing order and

Ms. Stanfill sent the closing order to the Respondent that same day. The fact that the Respondent understood that his claim was closed was underscored by his abusive language and manner toward Ms. Stanfill during this July 2012 phone call. *See* Hearing Tr. at 66-67.

On August 27, 2012, the Respondent again contacted Ms. Stanfill, this time by fax. The Respondent requested copies of his claim file through “close.” Appendix H. The Respondent testified that he sent this fax at the behest of the Walthew Law Firm. Hearing Tr. at 16. Ms. Stanfill sent the requested documents to the Respondent, including *another* copy of the Respondent’s closing order, on September 4, 2012. Hearing Tr. at 70-72.

Critically and dispositively, the Respondent himself testified, under oath, to having received the March 27, 2012 Department closing order in September or October of 2012. It necessarily follows, by the Respondent’s own testimony, that the latest he would have received the closing order was on October 31, 2012. The Respondent did not file his P&RR until more than a year after this date, on November 19, 2013.

The Respondent’s appeal of the Department closing order came over a year after the order had become final and binding. The Respondent’s appeal was therefore untimely and barred by *res judicata*.

Thus, the Department order of July 21, 2014 was correct and the Superior Court judgment must be reversed.

B. The Department complied with RCW 51.52.050(1) when it sent the March 27, 2012 closing order to the last known postal address as shown by the Department's records.

The Department mailed a copy of the Respondent's closing order to the Walthew Law Firm on the day it was issued, March 27, 2012. Hearing Tr. at 43-44. At the time of issuing the March 27, 2012 closing order, the Walthew Law Firm's address was the last address of record with the Department. Hearing Tr. at 50. There is no admissible evidence in the record to show that the Department erred in its record keeping or in sending the closing order to the parties on the day the closing order was issued.

RCW 51.52.050(1) provides, in relevant part: "Whenever the department has made any order...Correspondence and notices must be addressed to such a person at his or her last known postal or electronic address *as shown by the records of the department.*" (Emphasis added).

The Walthew Law Firm's address was the last address of record with the Department, and the Department mailed a copy of the closing order to the Walthew Law Firm on March 27, 2012. Hearing Tr. at 50. This was clearly proven by the uncontroverted testimony of Ms. Jones, adjudicator with the Department, as well as the letter sent to the

Department by Walthew Law Firm. The Department clearly carried out its statutory duties to effectuate service on the Respondent.

The Respondent will likely argue that the Walthew Law Firm did not represent him as he never signed a “contract” with Walthew (*see* Hearing Tr. at 8), so the Department was therefore responsible for “erroneously” having Walthew’s address as the last known address on record for the Respondent. The Respondent would be mistaken in his argument, however, because the Department acted according to the plain language of RCW 51.52.050, and there is simply not enough evidence in the record to fully understand Walthew Law Firm’s role regarding the present issues on appeal.

The Respondent testified that he “gave [Walthew Law Firm] permission [to review his file] in 2011 and again in 2013.” Hearing Tr. at 14. Yet, for some reason, the Walthew Law Firm directed the Respondent to fax Ms. Stanfill in 2012, and the Respondent did request documents from his claim file, including the Department closing order. When the Respondent “went back” to the Walthew Firm in 2013, he was informed that Walthew did not represent him, and a person at Walthew “kept telling me if I didn’t have that, an appeal notice of 60 days, whatever else came to me didn’t matter, but she wanted that. I mean, if that came, then to call her.” Hearing Tr. at 12.

In short, the Department received communications from the Respondent on one or more occasions, granting Walthew access to his records. The Respondent was in repeated contact with Walthew Law Firm, and had to be told explicitly by Walthew that they did not represent him in 2013.

Given the Respondent's own confusion regarding Walthew's representation, and the lack of any evidence showing the Department erred in its record keeping, the Department had been given no reason to second guess the address it had on record for the Respondent. The Department had every reason to believe its records were correct when it mailed the closing order to the Respondent by way of Walthew's address.

Any arguments by the Respondent alleging the Department to be culpable for the Respondent's slightly delayed acquisition of his closing order are untenable. The Department mailed the Respondent's closing order to the last address on record with the Department: Walthew Law Firm. Even if the Department were somehow held to have been in error, it would be harmless error on account of the Respondent's testimony that he received the closing order over a year prior to his protest and request for reconsideration.

V. CONCLUSION

For the reasons stated above, the Renton School District respectfully requests that the Court reverse the judgment of the Superior Court and find that the March 27, 2012 closing order became final and binding.

RESPECTFULLY SUBMITTED this 27 day of October, 2016.

A handwritten signature in black ink that reads "Ryan Miller". The signature is written in a cursive style with a large, looping initial "R" that overlaps the first part of the name.

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Fax: (206) 546-9613
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Attorney for Appellant, Renton
School District #403

Appendix A

JURISDICTIONAL HISTORY

Please review the Jurisdictional History and note any errors or additions. This is a summary of Department actions relevant to this appeal. The summary may not include every action taken by the Department. At the initial conference you will be asked to stipulate to the correctness of these facts for the purposes of establishing the Board's jurisdiction to hear the case and determine the issues to be resolved.

IN RE: DANIEL D. DOLPH

CLAIM NO: W-921206

DOCKET NO: 14 22520

Parties did not stipulate because an issue on appeal is whether the claimant's protest of the closing order was timely. Independently determined Board has authority to hear the

Jurisdictional Stipulation	
I certify that the parties have agreed to include this history in the Board record for jurisdictional purposes only.	
<input type="checkbox"/> As Amended	
<input checked="" type="checkbox"/> Claimant	_____
<input checked="" type="checkbox"/> Employer	_____
<input checked="" type="checkbox"/> Department	_____
<input checked="" type="checkbox"/> Other	_____
7/7/15 Date of Stipulation	<i>Seattle</i> Location of Stipulation
<i>[Signature]</i> Judge's Signature	
FOR BOARD USE ONLY	

DATE DOC/ ACTION	DOCUMENT NAME	ACTION/RESULT
9/9/10	AB	DOI 8/27/10, Head & Right Shoulder – Renton School District #403
10/20/10	DO	Worker sustained an injury or occupational disease while in the course of employment with SIE. Claim is allowed. Worker entitled to receive medical treatment and other benefits as appropriate under the industrial insurance laws. (DET)

10/22/10	DO	Worker's wage is set by taking into account the following: wage for the job of injury is based on \$18.16 per hour x 8 hours per day x 22 days per month; additional wage for job of injury include: health care benefits of \$679.72 per month, tips: none per month, bonuses: none per month, housing/board/fuel: none per month, worker's total gross wage \$3,875.88 per month, married, 2 children
3/27/12	DO	Time-loss benefits ended as paid through 2/29/12. Medical record shows treatment no longer necessary and there is no PPD. SIE will not pay for medical services or treatment after the closure date. Claim closed. (order sent to attorney, who doesn't represent claimant) (4/9/12 – order returned to DLI by attorney) (5/7/14 – re-mailed to claimant's address by DLI)
9/25/13	AA	
11/19/13	P & RR	Claimant (Parr/Atty) Any and all adverse decision and orders in my case which protest or appeal would be timely (filed by facsimile)
12/17/13	DO	On 9/25/13, department received your reopening application. There is a lack of clear or convincing evidence to support reopening or denial of the claim without an independent medical examination. Decision period is being extended an additional 60 days. Department will make a decision no later than 2/22/14.
2/21/14	DO	DLI received an application to reopen to reopen this claim. Medical record shows the condition caused by the injury has not objectively worsened since final claim closure. Application to reopen is denied and claim will remain closed.
2/24/14	NA (14 12212)	Claimant (Parr/Atty) DO 2/21/14 (e-file)
3/21/14 3/25/14 4/8/14	DO BD ODA (14 12212)	DO 2/21/14 is canceled. (APPEALABLE ONLY) <i>SIE received 3/21/14 order</i> DO 2/21/14 (canceled)
3/14	DO	DO 3/27/12 is held in abeyance

5/21/14	P & RR	Employer (Hall/Atty) DO 3/21/14
5/23/14	P & RR	Claimant (Parr/Atty) DO 3/27/12
6/5/14	NA (14 17011)	Employer (Hall/Atty) DO 3/21/14 (received by DLI on 5/21/14 as a protest and request for reconsideration and forwarded to the Board as a direct appeal)
6/11/14	BD OGA (14 17011)	(T) DO 3/21/14
6/11/14.mkp AMENDED 10/20/14.mkp		
7/3/14	DO	DO 3/27/12 is affirmed (APPEALABLE ONLY)
7/9/14	NA (14 18512)	Claimant (Parr/Atty) DO 7/7/14 [sic] (7/3/14) (e-file) (7/10/14 – amended appeal received correcting date of order on appeal to 7/3/14, by facsimile)
7/18/14	DO	In response to appeal to appeal to BIIA, DLI reassumes jurisdiction of this claim. DO 7/3/14 is being reconsidered.
7/21/14	DO	This order corrects and supersedes the order(s) of 7/3/14 DLI cannot reconsider the order dated 3/27/12 because the protest was not received within the 60 day time limitation. That order is final and binding. (APPEALABLE ONLY)
7/23/14	BD O (14 18512)	Order Returning Case To Department For Further Action
7/24/14	P & RR	Claimant (Parr/Atty) DO 7/21/14 (filed by facsimile)
10/15/14	NA (14 22520)	Claimant (Parr/Atty) DO 7/21/14 (Received at DLI on 7/24/14 as a P & RR and forwarded to BIIA as a Direct Appeal)
10/20/14	BD OGA (14 22520)	DO 7/21/14
10/20/14.mkp		

INDUSTRIAL INSURANCE AND CRIME VICTIM ABBREVIATION CODES

(T)	Subject to Proof of Timeliness
AA	Aggravation Application
AB	Application for Benefits
AP	Attending Physician
BD O	Board Order
BD OGA	Board Order Granting Appeal
BD ODA	Board Order Denying Appeal or Dismissing Appeal
BIIA	Board of Industrial Insurance Appeals
CLMT	Claimant
DET	Determinative
DIF/MFP	Department Imaging Fiche/Microfiche Page
DLI	Department of Labor and Industries
DO	Department Order
DOI/OD	Date of Injury/Occupational Disease
EAR	Employability Assessment Report
EROA	Employer's Report of Accident
Ind Ins	Industrial Insurance
INT	Interlocutory
LEP	Loss of Earning Power
NA	Notice of Appeal
OAP	Order on Agreement of Parties
ORION	Electronic Claims Record from the Dept
P & RR	Protest & Request for Reconsideration
PD & O	Proposed Decision and Order
PFR	Petition for Review
PPD	Permanent Partial Disability
SIE	Self-Insured Employer
SIO	Self-Insured Employer Order
TLC	Time-loss Compensation
VDRO	Vocational Dispute Resolution Office

Appendix B

FROM:
STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF INDUSTRIAL INSURANCE
SELF-INSURANCE SECTION
PO BOX 44892
OLYMPIA WA 98504-4892
FAX (360) 902-6900

MAILING DATE: 03/27/12
CLAIM ID : W921206
CLAIMANT : DANIEL DOLPH
EMPLOYER : RENTON SCHOOL DIST #
INJURY DATE : 8/27/10
SERVICE LOC :
UBI NUMBER : 177-004-353
ACCOUNT ID : 700258-00
RISK CLASS : 6104-01

WORK LOCATION ADDRESS:
NO ADDRESS REPORTED

DANIEL DOLPH
WALTHER LAW FIRM
PO BOX 34645
SEATTLE WA 98124-1645

ORDER AND NOTICE (SELF INSURING EMPLOYER)

*
* THIS ORDER BECOMES FINAL 60 DAYS FROM THE DATE IT IS COMMUNICATED *
* TO YOU UNLESS YOU DO ONE OF THE FOLLOWING: FILE A WRITTEN REQUEST *
* FOR RECONSIDERATION WITH THE DEPARTMENT OR FILE A WRITTEN APPEAL *
* WITH THE BOARD OF INDUSTRIAL INSURANCE APPEALS. IF YOU FILE FOR *
* RECONSIDERATION, YOU SHOULD INCLUDE THE REASONS YOU BELIEVE THIS *
* DECISION IS WRONG AND SEND IT TO: DEPARTMENT OF LABOR AND *
* INDUSTRIES, PO BOX 44892, OLYMPIA, WA 98504-4892. WE WILL REVIEW *
* YOUR REQUEST AND ISSUE A NEW ORDER. IF YOU FILE AN APPEAL, SEND *
* IT TO: BOARD OF INDUSTRIAL INSURANCE APPEALS, PO BOX 42401, *
* OLYMPIA WA 98504-2401 OR SUBMIT IT ON AN ELECTRONIC FORM FOUND AT *
* HTTP://WWW.BIIA.WA.GOV/. *
*

Time loss benefits are ended as paid through 02/29/12.

The medical record shows treatment is no longer necessary and there is no permanent partial disability. The self-insured employer will not pay for medical services or treatment after the closure date.

This claim is closed.

Board of
Industrial Insurance Appeals

In re: Dolph
Docket No. 1422520
Exhibit No. 3

ADM 4/30/15 REJ.
Date

Ex 3

MAILING DATE: 03/27/12
CLAIM ID : W921206
CLAIMANT : DANIEL DOLPH
EMPLOYER : RENTON SCHOOL DIST #
INJURY DATE : 8/27/10
SERVICE LOC :
UBI NUMBER : 177-004-353
ACCOUNT ID : 700258-00
RISK CLASS : 6104-01

WORK LOCATION ADDRESS:
NO ADDRESS REPORTED

KATHERYN JONES
SI CLAIMS ADJUDICATOR
SELF INSURANCE SECTION
PO BOX 44892
OLYMPIA, WA 98504-4892
(360) 902-6877
FAX #: (360) 902-6900

ORIG: CLAIMANT: DANIEL DOLPH
WALTHEW LAW FIRM, PO BOX 34645,
SEATTLE WA, 98124-1645
EMPLOYER: RENTON SCHOOL DIST #403
C/O EBERLE VIVIAN INCORPORATED, 1209 CENTRAL AVE S STE 120,
KENT WA, 98032
ATTENDING PHYSICIAN: HAQ ABID MD
PO BOX 34584, SEATTLE WA, 98124-1584
EMPLOYER'S ATTORNEY: -(COPY NOT SENT)

Appendix C

Dept. of Labor & Industries
Claims Section
PO Box 44291
Olympia WA 98504-4291

Dept. of Labor & Industries
Self Insurance
PO Box 44892
Olympia WA 98504-4892

APPLICATION TO REOPEN CLAIM

DUE TO WORSENING OF CONDITION

WORKER INFORMATION
Complete your portion in FULL

Claim number
0321704

Important: Only use this form if your medical condition has worsened, and your claim has been closed for more than 60 days. If time loss benefits are paid before a decision about reopening is made and your claim is not reopened, you will be required to repay those benefits. Please write your claim number above. You will receive information about your reopening application within 90 days of the Department's receipt of the reopening application. If you have had a new injury at work, complete a new Report of Industrial Injury or Occupational Disease form in lieu of this application.

1. Name (first, middle, last) DAVID DEAN DOLPH
2. Name changed since claim closed? Yes No 425 271 8759
3. Home phone no. 536 745010
4. Soc. Sec. No. (for ID only) 536 745010
If yes, list previous name

5. Present home address
1832 Aberdeen Ave NW
7. City Renton State WA ZIP 98056
6. Mailing address (if different than home address)
8. City _____ State _____ ZIP _____

9. Date of original injury 8/27/2010
10. Employer at time of original injury Renton School District

11. What are your present physical complaints?
Hand, neck, shoulder right, Right arm, Back and legs
12. Date claim closed _____
13. Date condition became worse after claim closure? _____
14. What parts of your body are affected by this injury/disease?
Head, neck, back, arms and legs

15. Full name of doctor treating you at time of claim closure
Dr. Michas, quit before it closed
16. Have you had any new injuries or illnesses since the date of claim closure? If yes, explain.
No
17. Did your condition worsen due to another injury or accident either on or off the job? Yes No If yes, explain.

18. Have you received any medical treatment for this condition since claim closure? Yes No
If yes, list name and address of treating doctor(s).

19. Doctor Kaya Hasanoglu Phone number 425 251 9900
Address 330 S W 43rd St D
City Renton State WA ZIP+4 98057
20. Doctor Jesse Thompson Phone number 425 657 5060
Address 4011 Takot Rd S Ste 300
City Renton State WA ZIP+4 98055

21. Have you applied for or are you receiving? (check correct box(es))
Unemployment Public assistance
Sick leave Retirement benefits
Disability insurance
22. Are you working? If no, Retired Laid off
Yes No Why? Unable to work Quit
23. Last date worked 8/27/2010
Any other Industrial Insurance compensation? If checked, explain.
(i.e., Longshore harbor workers, Jones Act, Railroad)

24. Present or last employer
Renton School District
Address 300 SW 7th St Phone number 204 2300
City Renton State WA ZIP+4 98057
28. What other employers & job titles have you had since your claim was closed? None

25. Your job title and duties
Ground Keeper II
26. Type of business
Ground Keeper Lawns and Parks
27. How long have you worked for this employer?

Board of Industrial Insurance Appeals
In re: Dolph
Docket No. 1422520
Exhibit No. 2
 ADM 4/30/15 Date REJ

NOTE: Persons making false statements in obtaining industrial insurance benefits are subject to civil and criminal penalties. I declare that these statements are true to the best of my knowledge and belief. In signing this form, I permit doctors, hospitals, clinics or others with medical information to release my medical records to the Department of Labor & Industries and/or the Self Insured Employer.

Today's date 8/27/2013 Claimant's signature [Signature]

EX 2

Appendix D

FROM:
STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF INDUSTRIAL INSURANCE
SELF-INSURANCE SECTION
PO BOX 44892
OLYMPIA WA 98504-4892
FAX (360) 902-6900

MAILING DATE: 07/03/14
CLAIM ID : W921206
CLAIMANT : DANIEL DOLPH
EMPLOYER : RENTON SCHOOL DIST #
INJURY DATE : 8/27/10
SERVICE LOC :
UBI NUMBER : 177-004-353
ACCOUNT ID : 700258-00
RISK CLASS : 6104-01

WORK LOCATION ADDRESS:
NO ADDRESS REPORTED

DANIEL DOLPH
WASHINGTON LAW CENTER, PLLC
651 STRANDER BLVD STE 215
TUKWILA WA 98188-2953

ORDER AND NOTICE (SELF-INSURING EMPLOYER)

*
* ANY APPEAL FROM THIS ORDER MUST BE MADE IN WRITING TO THE BOARD. *
* OF INDUSTRIAL INSURANCE APPEALS, P.O. BOX 42401, OLYMPIA, WA *
* 98504-2401 OR SUBMIT IT ON AN ELECTRONIC FORM FOUND AT *
* HTTP://WWW.BIIA.WA.GOV/ WITHIN 60 DAYS AFTER YOU RECEIVE THIS *
* NOTICE, OR THE SAME SHALL BECOME FINAL. *
*

Labor and Industries has reconsidered the order and notice dated 03/27/12.
The order and notice has been determined to be correct and is affirmed.

MAILING DATE: 07/03/14
CLAIM ID : W921206
CLAIMANT : DANIEL DOLPH
EMPLOYER : RENTON SCHOOL DIST #
INJURY DATE : 8/27/10
SERVICE LOC :
UBI NUMBER : 177-004-353
ACCOUNT ID : 700258-00
RISK CLASS : 6104-01

WORK LOCATION ADDRESS:
NO ADDRESS REPORTED

KATHERYN JONES
CLAIMS ADJUDICATOR
SELF INSURANCE SECTION
PO BOX 44892
OLYMPIA, WA 98504-4892
(360) 902-6877
FAX #: (360) 902-6900

ORIG: CLAIMANT: DANIEL DOLPH
WASHINGTON LAW CENTER, PLLC, 651 STRANDER BLVD STE 215,
TUKWILA WA, 98188-2953
EMPLOYER: RENTON SCHOOL DIST #403
C/O EBERLE VIVIAN INCORPORATED, 206 RAILROAD AVE N,
KENT WA, 98032-4533
ATTENDING PHYSICIAN: THOMPSON JASON H MD
PROLIANCE ORTHOPEDIC ASSOC, 4011 TALBOT RD S STE 300,
RENTON WA, 98055-5791
EMPLOYER'S ATTORNEY: THOMAS G HALL
PO BOX 33990, SEATTLE WA, 98133-0990

Appendix E

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF INDUSTRIAL INSURANCE
PO BOX 44291
OLYMPIA, WA 98504-4291

MAILING DATE 07/21/2014
CLAIM NUMBER W921206
INJURY DATE 08/27/2010
CLAIMANT DOLPH DANIEL D

EMPLOYER HAZELWOOD ELEME
UBI NUMBER 177 004 353
ACCOUNT ID 700, 258-00
RISK CLASS 6104
SERVICE LOC

DANIEL DOLPH
% WASHINGTON LAW CENTER, PLLC
651 STRANDER BLVD STE 215
TUKWILA WA 98188-2953

NOTICE OF DECISION

This order corrects and supersedes the order(s) of 07/03/2014.

Labor and Industries cannot reconsider the order dated 03/27/2012 because the protest was not received within the 60 day time limitation. That order is final and binding.

Supervisor of Industrial Insurance
By Kelli Zimmerman
Si Claims Consultant
(360) 902-6894

MAILED TO: WRKER/ATTY - DANIEL DOLPH, % WASHINGTON LAW CENTER, PLLC
651 STRANDER BLVD STE 215, TUKWILA WA 98188-2953
EMPLOYER - RENTON SCHOOL DISTRICT #403, % EBERLE VIVIAN INCOR
206 RAILROAD AVE N, KENT WA 98032-4533
PROVIDER - THOMPSON JASON H MD
PROLIANCE ORTHOPEDIC ASSOC, 4011 TALBOT RD S STE 300, RENTO
MISC - THOMAS HALL AND ASSOCIATES
PO BOX 33990, SEATTLE WA 98133

| ANY APPEAL FROM THIS ORDER MUST BE MADE IN WRITING TO THE BOARD |
| OF INDUSTRIAL INSURANCE APPEALS, P.O. BOX 42401, OLYMPIA, WA |
| 98504-2401 OR SUBMIT IT ON AN ELECTRONIC FORM FOUND AT |
| HTTP://WWW.BIIA.WA.GOV/ WITHIN 60 DAYS AFTER YOU RECEIVE THIS |
NOTICE, OR THE SAME SHALL BECOME FINAL.

Appendix F

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

1 IN RE: DANIEL D. DOLPH) DOCKET NO. 14 22520
3)
4 CLAIM NO. W-921206) DECISION AND ORDER

5 APPEARANCES:
6

7 Claimant, Daniel D. Dolph, by
8 Washington Law Center, PLLC, per
9 Spencer D. Parr

10
11 Self-Insured Employer, Renton School District #403, by
12 Thomas G. Hall & Associates, per
13 Thomas G. Hall and Ryan Miller

14
15 Department of Labor and Industries, by
16 The Office of the Attorney General, per
17 Eric R. Leonard
18

19 The claimant, Daniel D. Dolph, filed a protest with the Department of Labor and Industries on
20 July 24, 2014. The Department forwarded it to the Board of Industrial Insurance Appeals as an
21 appeal. The claimant appeals a Department order dated July 21, 2014, in which the Department
22 determined it could not reconsider its March 27, 2012 order because Mr. Dolph's protest was not
23 filed within the 60-day time limitation; and determined that the March 27, 2012 order had become
24 final and binding. The Department order is **REVERSED AND REMANDED**.

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28 **SUMMARY AND PROCEDURAL AND EVIDENTIARY MATTERS**
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30 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for
31 review and decision. The claimant filed a timely Petition for Review of a Proposed Decision and
32 Order issued on August 3, 2015, in which the industrial appeals judge affirmed the Department
33 order dated July 21, 2014. On September 4, 2015, the self-insured employer filed a Response to
34 the Claimant's Petition for Review. On September 9, 2015, the claimant filed a Response to the
35 Employer's Response to Claimant's Petition for Review. On September 11, 2015, the self-insured
36 employer filed an Amended Response to Claimant's Motion for Rehearing and Petition for Review.
37

38 Our industrial appeals judge determined Mr. Dolph failed to file a Protest and Request for
39 Reconsideration with the Department within 60 days of the date the March 27, 2012 order was
40 communicated to him. The industrial appeals judge concluded this order was communicated by
41 Mr. Dolph's claims manager at Eberle Vivian, the third-party claims administrator for the self-insured
42 employer, the Renton School District No. 403 (the School District). Our industrial appeals judge
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1 determined the claims manager mailed Mr. Dolph a copy of this order twice: once on July 31, 2012,
3 and on September 4, 2012. Because Mr. Dolph failed to file a protest with the Department within
4 60 days of receipt of these two copies of the order, she concluded the March 27, 2012 order had
5 become final.
6

7 We disagree. The March 27, 2012 order was not mailed by the Department to Mr. Dolph
8 until May 6, 2014. Based on the provisions of RCW 51.52.050(1), Mr. Dolph's protest from this
9 order, mailed to the Department on May 23, 2014, was timely. Mr. Dolph's receipt of these copies
10 would not constitute communication of the March 27, 2012 closing order because it was not mailed
11 to him by the Department in compliance with the relevant statutory requirements. We remand this
12 claim to the Department to issue a further order in response to his timely protest.
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16 The Board has reviewed the evidentiary rulings in the record of proceedings. Our industrial
17 appeals judge erred by sustaining the objections on page 38, line 13, and on page 71, line 2 of the
18 April 30, 2015 transcript in the Proposed Decision and Order. Her original rulings during the April
19 30, 2015 hearing were correct and both objections should have been overruled. With these
20 exceptions, we find our judge committed no prejudicial error in her remaining rulings and they are
21 affirmed.
22
23

24 DECISION

25 **Factual Basis**

26 Our decision is based on the following facts. Mr. Dolph worked for the School District as a
27 grounds maintenance worker. He is married to Sandra Dolph, who is an executive assistant to the
28 School District's superintendent. As of the date of his testimony, Mr. Dolph had lived at the same
29 address for 15 years. The Department had his correct home address at all times relevant to this
30 appeal.
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35 Although there is no medical testimony in our record, Mr. and Mrs. Dolph's testimony that he
36 sustained a concussion due to a serious head injury is undisputed. On August 27, 2010, a roll bar
37 on a riding mower Mr. Dolph was operating collapsed, striking him on his head. He testified he
38 passed out twice after he was struck. The accident was taken seriously: emergency medical
39 technicians from an ambulance company and a fire department were summoned to the scene. We
40 know nothing specific about the medical treatment Mr. Dolph received in his claim. However, we
41 know he obtained benefits, including time-loss compensation benefits and treatment, through early
42 2012. On March 27, 2012, the Department issued an order closing the claim with time-loss
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1 compensation benefits as paid through February 29, 2012, and without an award for permanent
3 partial disability. This order was never sent to Mr. Dolph at his home address. Prior to March 27,
4 2012, Mr. Dolph had attempted to obtain legal representation from the Walthew Law Firm. In turn,
5 the Walthew firm sent the Department a release that allowed it to access the claim file, but it never
6 notified the Department that it was representing Mr. Dolph. The Department nonetheless mailed
7 the March 27, 2012 order to Mr. Dolph at the Walthew firm's address. On April 6, 2012, Celia
8 Reno, a paralegal employed by the Walthew firm, mailed a letter to Katheryn Jones, the
9 Department's claims manager, to let her know the Walthew firm was not representing Mr. Dolph.
10 She asked Ms. Jones to re-mail the order to Mr. Dolph at his home address, noting the order had
11 not been communicated to him. The Department received the request in a letter from the Walthew
12 Law Firm on April 9, 2012.

13 Ms. Jones acknowledged receiving Ms. Reno's letter shortly after it was mailed. She did not
14 promptly re-mail the order to Mr. Dolph's home address as Ms. Reno had requested. Ms. Jones
15 testified that should have been done by a clerical worker at the Department rather than her. She
16 acknowledged the Department did not mail a copy of this order to Mr. Dolph at his home address
17 until May 6, 2014.

18 In the meantime, Mr. Dolph's claims manager Wendie Stanfill, of Eberle Vivian stated
19 Mr. Dolph telephoned her on July 31, 2012, to inquire about the status of his claim. This was a
20 difficult call because Mr. Dolph was angry and upset that his treatment and time-loss compensation
21 benefits had ended. During this call, Ms. Stanfill told him the claim was closed, as stated in the
22 March 27, 2012 order. At Mr. Dolph's request, she sent him a copy of this order. Ms. Stanfill also
23 told him he could obtain treatment by returning to his doctor and having him file an aggravation
24 application. She did not tell Mr. Dolph he could still file an appeal from the closing order within
25 60 days of the date she mailed it to him. Essentially, Ms. Stanfill sent Mr. Dolph a courtesy copy of
26 the order. Mr. Dolph denied he ever received the courtesy copy of the order.

27 Mr. Dolph telephoned Ms. Stanfill again around August 27, 2012. He wanted to get copies of
28 his claim file from a specific date until it was closed so that he could submit travel reimbursement
29 requests for his medical appointments. He apparently needed to review the file to check on the
30 dates of his appointments, which he needed to complete a reimbursement form. Ms. Stanfill sent
31 him the portion of the file he had requested shortly after she received the written request he faxed
32 her that day. The documents Ms. Stanfill mailed him included the March 27, 2012 closing order.

1 Mr. Dolph acknowledged he received a copy of this order in September 2012, probably very early in
3 the month.

4 After receiving these documents, Mr. Dolph still did not understand he could file an appeal
5 from the March 27, 2012 order. He testified he contacted numerous attorneys to try to obtain legal
6 assistance, and was unsuccessful until he finally obtained representation from the Washington Law
7 Center, his current representatives. His attorney, Spencer Parr, sent the Department a Notice of
8 Representation that included a form protest to any adverse orders. The Department received this
9 notice on November 19, 2013.
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13 In the meantime, following Ms. Stanfill's advice, Mr. Dolph filed an application to reopen his
14 claim with the Department on September 25, 2013. The Department denied this application on
15 February 21, 2014. After Mr. Dolph protested this order, the Department issued a March 21, 2014
16 order canceling the February 21, 2014 order. The School District filed an appeal with this Board
17 from the March 21, 2014 order, which was assigned Docket. No. 14 17011. The School District
18 seeks to have the February 21, 2014 order denying the aggravation application reinstated. The
19 appeal is scheduled for a hearing on October 7, 2015.
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24 On May 6, 2014, the Department remailed the March 27, 2014 closing order to Mr. Dolph at
25 his home address. Because Mr. Parr had already notified the Department he was representing
26 Mr. Dolph, the March 27, 2014 order should have been mailed to Mr. Parr at his address. However,
27 Mr. Parr, in an oral motion for summary judgment and in his Petition for Review, argues Mr. Dolph
28 received the closing order soon after it was remailed to him on May 6, 2014. Mr. Parr filed a
29 specific Protest and Request for Reconsideration from the March 27, 2014 order with the
30 Department on May 23, 2014. There is no evidence the Department ever mailed a copy of the
31 March 27, 2014 order to Mr. Parr.
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36 Our summary of the facts establishes the Department did not mail a copy of the March 27,
37 2012 closing order to Mr. Dolph until May 6, 2014. His attorney, Mr. Parr, filed a protest from this
38 order within 60 days of the date he received it. Although Mr. Dolph had previously been sent a
39 copy of the order by Ms. Stanfill, his Eberle Vivian claims manager, he did not understand he could
40 still file an appeal or a protest from it when he received it from her, because Ms. Stanfill told him his
41 claim was closed and he should file a reopening application to obtain further treatment.
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1 A third-party claims manager's mailing of a closing order to an injured worker cannot be
3 considered valid service of the order because this does **not** comply with the requirements of
4 RCW 51.52.050(1), which states:

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6 Whenever the department has made any order, decision, or award, it
7 shall promptly serve the worker, beneficiary, employer, or other person
8 affected thereby, with a copy thereof by mail, or if the worker,
9 beneficiary, employer, or other person affected thereby chooses, the
10 department may send correspondence and other legal notices by secure
11 electronic means except for orders communicating the closure of a
12 claim. . . . Correspondence and notices sent electronically are
13 considered received on the date sent by the department. The copy, in
14 case the same is a final order, decision, or award, shall bear on the
15 same side of the same page on which is found the amount of the award,
16 a statement, set in black faced type of at least ten point body or size,
17 that such final order, decision, or award shall become final within sixty
18 days from the date the order is communicated to the parties unless a
19 written request for reconsideration is filed with the department of labor
20 and industries, Olympia, or an appeal is filed with the board of industrial
21 insurance appeals, Olympia.

22 Orders closing claims must specifically be communicated by mail by the Department.
23

24
25 In several significant decisions that are directly on point, the Board has strictly construed the
26 provisions of RCW 51.52.050(1) that require the Department to mail copies of orders to the affected
27 workers. In the *In re Mollie McMillon* significant decision, the Department mailed a copy of an order
28 closing the claim to the self-insured employer, Boeing, but not to the claimant. Boeing filed an
29 appeal from the order to the Board, and the claimant's attorney participated in the appeal. After a
30 Board order was entered affirming the Department's closing order, a copy of the Department order
31 was finally mailed to the claimant. She next proceeded to file her own appeal from the closing
32 order with the Board. The Board held Ms. McMillon could proceed with her appeal, even though
33 she and her attorney were aware of the order's contents, because the Department had not
34 previously complied with the provisions of this statute.¹

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39 Two subsequent significant decisions reiterate our holding that a Department order is not
40 communicated until it has actually been mailed by the Department, even if a party has prior
41 knowledge of the order's existence. In the *In re Elmer Doney* decision, there was no evidence an
42 order denying an aggravation application had been mailed to the affected parties. After a
43 subsequent aggravation application was denied, Mr. Doney argued the order denying his prior
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1 *In re Mollie McMillon*, BIIA Dec., 22,173 (1966).

1 reopening application never became final because it had not been communicated to him. The
3 Department argued he had notice of the denial of his reopening application because a letter sent to
4 his physician referred to the order, and he had been sent a copy of that letter. The Board held
5 reference to an order in subsequent correspondence is insufficient; "to meet the statutory
6 requirements providing the claimant with written notice of his rights to request reconsideration or to
7 appeal."² The Board stated that communication of a Department order is only satisfied by proof of
8 mailing of the actual order, since that alone would establish a presumption the order was received.
9 In another decision, when the Department failed to mail an employer a copy of an order, the Board
10 held that even though the employer knew of the order's existence, and also saw the order when he
11 was deposed, the order was never communicated to him.³ Once again, the Board concluded the
12 requirements of RCW 51.52.050 had not been met because the Department had not mailed the
13 order to the employer.
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19 Finally, the Board has held that an order is not properly communicated to a worker who
20 receives a Department order, and thereby has knowledge of its contents, if the worker is
21 represented by an attorney and the Department failed to mail it to his counsel. Because the
22 attorney's address in such cases is the worker's last known address, an order mailed to the
23 worker's home address is not been properly communicated to him.⁴ In the *In re David Herring*
24 appeal, in 1978 the Department sent orders to a worker but not to his attorney. Mr. Herring was
25 allowed to proceed with appeals of these orders filed in 1980, even though he had received the
26 orders and had knowledge of their contents. The Board held the Department's failure to comply
27 with the requirement in RCW 51.52.050 to mail the orders to the worker's current address, namely
28 the address of his attorney, meant they had not been legally communicated to him.
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34 The holdings in these cases are directly relevant here. Although Mr. Dolph's third-party
35 claims manager had mailed him at least one copy of the March 27, 2012 closing order by
36 September 2012, his current protest must be found timely based on these decisions. This protest
37 was filed within 60 days of the date the Department mailed this order to Mr. Dolph. The statutory
38 requirements for Department personnel to mail closing orders to injured workers exist so that the
39 terms of claim closure are effectively and promptly communicated to them, along with their appeal
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² *In re Elmer Doney*, BIIA Dec., 86 2762, at 3 (1987).

³ *In re Larry Lunyou*, BIIA Dec., 87 0638 (1988).

⁴ *In re David Herring*, BIIA Dec., 57,831 (1981).

1 rights in case they disagree.⁵ The Department's failure to send Mr. Dolph a copy of the closing
3 order to his correct address in 2012 was not cured by Ms. Stanfill's mailing him a copy of this order.
4 She had an interest in keeping this claim closed. She mailed Mr. Dolph a courtesy copy of the
5 closing order to confirm it was already closed. Mailing the order in this fashion clearly did not
6 adequately communicate Mr. Dolph's appeal rights to him.
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9 The Department's decision in 2014 to re-mail a copy of the March 2012 closing order to
10 Mr. Dolph's home address does not technically comply with the service requirement in
11 RCW 51.52.050. In 2013, Mr. Parr notified the Department that he was representing Mr. Dolph.
12 Based on our holdings in the *David Herring* decision discussed above and the *Daniel Bazan*⁶
13 significant decision, we could require the Department to re-mail a copy of this closing order to
14 Mr. Dolph at his last known address at Mr. Parr's office. Mr. Dolph's attorney has urged us to
15 determine the closing order was communicated to his client when it was re-mailed to him in 2014.
16 Given that Mr. Dolph protested the order within 60 days of his receipt, there is no issue whether it
17 was properly communicated. We reverse the July 21, 2014 order and remand this claim to the
18 Department to issue a further order in response to Mr. Dolph's timely protest of the 2012 closing
19 order. We note our decision in this appeal is specific to the facts before us and in no way overrules
20 our prior holdings in *Herring* and *Bazan* requiring proper communication of a closing order to a
21 worker's last known address.
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28 Finally, we are cognizant that hearings in Docket No. 14 17011, the School District's appeal
29 from the March 21, 2014 order canceling an order in which Mr. Dolph's aggravation application was
30 denied, are pending. Although that appeal is not before us, we wish to advise the parties of the
31 relevant precedent we would follow in making a decision regarding this appeal. Based on our
32 holding that the order closing Mr. Dolph's claim has not become final, the Department's March 21,
33 2014 order appears correct. The Department cannot adjudicate whether Mr. Dolph's claim should
34 be reopened until after it is closed. Because Mr. Dolph's claim has never been previously closed,
35 without a final closing order there is no valid comparison point for determining whether his condition
36 has worsened (that is, there is no initial terminal date). As the Board has noted, "[i]t is well settled
37 that the Department may not adjudicate an application to reopen a claim . . . until there is a final
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⁵ We recognize a self-insured employer has the right to issue a closing order in certain circumstances, as provided by RCW 51.32.055, but this statutory exception is not relevant here.

⁶ *In re Daniel Bazan*, BIIA Dec., 92 5953 (1994).

1 closing order."⁷ This holding is consistent with black letter law, ever since the Washington Supreme
3 Court's 1939 decision in *Reid v. Department of Labor & Indus.*⁸ Of course, if an order affirming the
4 March 2012 closing order becomes final, the Department would be required to make a substantive
5 decision regarding Mr. Dolph's 2013 reopening application. We advise our judge to promptly
6 schedule a phone conference in advance of the October 7, 2015 hearing date in the companion
7 appeal, so the parties can discuss how they wish to proceed in light of our decision in this appeal.
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10 FINDINGS OF FACT

- 11 1. On July 7, 2015, an industrial appeals judge certified that the
12 Jurisdictional History in the Board record establishes the Board's
13 jurisdiction to decide the appeal.
- 14 2. Daniel D. Dolph sustained an industrial injury on August 27, 2010, when
15 the roll bar on a riding lawn mower he was using while working for
16 Renton School District No. 403 dropped and hit him on the head. He
17 filed a workers' compensation claim for the injury, and the Department
18 allowed the claim in an October 20, 2010 order.
- 19 3. On March 27, 2012, the Department issued an order closing the claim
20 with time-loss compensation benefits as paid through February 29,
21 2012, without any permanent partial disability award. The Department
22 did not mail this order to Mr. Dolph at his home address, but instead sent
23 it to an address for the Walthew Law Firm. This firm had never sent the
24 Department a notice that it was representing Mr. Dolph, requesting a
25 change in address. On April 9, 2012, the Department received a letter
26 from Celia Reno, a paralegal at the Walthew Firm, stating the firm did
27 not represent Mr. Dolph and noting the order had therefore had not been
28 communicated to him. Ms. Reno asked the Department to remail the
29 address to Mr. Dolph at his home address.
- 30 4. The Department did not remail the March 27, 2012 order to Mr. Dolph
31 until May 6, 2014.
- 32 5. On May 23, 2014, Spencer Parr, the attorney representing Mr. Dolph,
33 filed a Protest and Request for Reconsideration from the March 27, 2012
34 order with the Department.
- 35 6. The Department has not issued a final order in response to Mr. Parr's
36 protest of the March 27, 2012 order.

37 CONCLUSIONS OF LAW

- 38 1. The Board of Industrial Insurance Appeals has jurisdiction over the
39 parties and subject matter in this appeal.

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⁷ *In re Jorge Perez-Rodriguez*, BIIA Dec., 06 18718, at 7 (2008).

⁸ 1 Wn.2d 430 (1939).

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2. Mr. Dolph filed a timely Protest and Request for Reconsideration with the Department from the March 27, 2012 Department order within the meaning of RCW 51.52.050.
3. By the terms of the March 27, 2012 order, the Department's receipt of Mr. Dolph's timely protest obligated it to issue a further appealable order under RCW 51.52.050 and RCW 51.52.060.⁹
4. The Department order dated July 21, 2014 is incorrect and is reversed. This matter is remanded to the Department to issue a final order in response to Mr. Dolph's timely protest of the March 27, 2012 order.

Dated: September 21, 2015.

BOARD OF INDUSTRIAL INSURANCE APPEALS



DAVID E. THREEDY Chairperson



FRANK E. FENNERTY, JR. Member

⁹ *In re Santos Alonzo*, BIIA Dec., 56,833 (1981).

Appendix G

The
WALTHEW
LAW FIRM

April 6, 2012

Department of Labor and Industries
Self-Insured Section
PO Box 44892
Olympia, WA 98504-4892

Attn: Katheryn Jones
Claims Manager

Re: Daniel Dolph
Claim No. W-921206

Patrick C. Cook
Michael J. Costello
Christopher M. Eagan, *of counsel*
Robert J. Heller
Kathleen Keenan Kindred
Kylee MacIntyre Redman
Christopher Sharpe, *of counsel*
Robert H. Thompson
Thomas A. Thompson
Jonathan K. Winemiller
Charles F. Warner, *retired*
John F. WaltheW (1986)

Marilyn R. McAdoo, *Administrator*

Dear Ms. Jones:

We are in receipt of the Department's order dated March 27, 2012, in the above-entitled matter. This firm does not represent Mr. Dolph. We did request on-line access to review the claim, but no change of address was submitted.

I am enclosing a copy of the March 27, 2012 order. Please change your records to reflect that the WaltheW Law Firm does not represent Mr. Dolph. Please send the March 27, 2012, order to Mr. Dolph at his last known address which is as follows as this order has not been communicated to him.

Daniel Dolph
1832 Aberdeen Avenue NE
Renton, WA 98056

Thank you for your assistance.

Very truly yours,

WALTHEW, THOMPSON, KINDRED,
COSTELLO & WINEMILLER, P.S.

Barbara Mehlentlicher

By Celia Reno,
Paralegal

Board of
Industrial Insurance Appeals

In re: Dolph
Docket No. 1422520
Exhibit No. 4

ADM

4/30/15
Date

REJ.

CR:bgm
Enclosure

WaltheW, Thompson, Kindred,
Costello & Winemiller, P.S.

EX 4

Appendix H

if it did not come thru. we need your signature to release the records
Thank you
WS

Aug 27 12:09:44a

Dolph

425-271-8759

p.1

Ex 1

8-27-2012
To Wendi Stanbill

Dear Dolph

Could you send me the
rest of my file from
- 1/1/2011 to close.

Board of
Industrial Insurance Appeals
In re: **Dolph**
Docket No. 1422520
Exhibit No. 1
 ADM 04/30/15 REJ.
Date

NO. 75379-7-I

**COURT OF APPEALS FOR DIVISION I
OF THE STATE OF WASHINGTON**

RENTON SCHOOL DISTRICT #403,

Appellant,

v.

DANIEL D. DOLPH and THE
DEPARTMENT OF LABOR AND
INDUSTRIES OF THE STATE OF
WASHINGTON,

Respondents.

CERTIFICATE OF
SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served the Brief of Appellant and this Certificate of Service in the below-described manner:

Via legal messenger:

Mr. Richard D. Johnson
Court Administrator/Clerk
Court of Appeals, Division I
One Union Square
600 University St.
Seattle, WA 98101-1176

Via agreed electronic service and US Mail, first-class, postage-prepaid:

Alden Byrd
Washington Law Center
651 Strander Blvd, Ste 215

2015 OCT 27 PM 3:16
COURT OF APPEALS
DIVISION I
STATE OF WASHINGTON

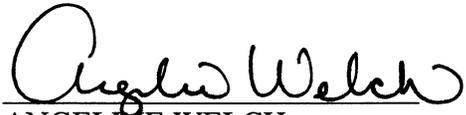


ORIGINAL

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Eric R. Leonard
Assistant Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
ericl@atg.wa.gov

Signed this 27th day of October, 2016, in Shoreline, Washington by:



ANGELINE WELCH
PARALEGAL
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