STATE OF WASHINGTON

BOARD OF INDUSTRIAL INSURANCE APPEALS

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July 11, 2005

Hearings Letter - Before

As the industrial appeals judge assigned to hear testimony in your appeal, I am writing to explain the issues and procedures we will use during the appeal process. We will also discuss the advantages of having an attorney help you. It is important to discuss these matters because your appeal will be set for hearing at a conference to be held on _____ at _____ a.m. in _____. You will be expected to name your witnesses and schedule time for their testimony.

Because you are the party who appealed the Department order dated _____, you have the burden of proof to establish that the order is incorrect. What this means is that your evidence will be presented first. Your evidence should show that the Department's order is incorrect. Your evidence must be more persuasive and convincing than the evidence presented by the parties who disagree with you.

You must prove that you appealed the Department's _____ order in a timely manner (within 60 days after you received the order). Timeliness must be addressed in order for the Board to have jurisdiction to decide your appeal. In other words, before you can present your case to prove that the Department order is incorrect, you must show that you met the deadline for filing your appeal.

In order to reopen your claim, you must prove that your work-related injuries or conditions objectively worsened between _____, (the date of the Department order you appealed), and _____, (the date the Department last denied your application to reopen your claim or the date the Department closed your claim). You must provide testimony of a physician or other medical witness in support of worsening of your condition.

The Department has rejected your claim because _____. If you feel you have suffered a work-related injury, you must prove that you sustained that injury as defined by the statutes of the Industrial Insurance laws of Washington State. RCW 51.08.100 reads: "'Injury' means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom." If you feel that you have sustained an occupational disease from the conditions of your employment you must prove that this disease falls within the definition found in

RCW 51.08.140," "'Occupational disease' means such disease or infection as arises naturally and proximately out of employment . . ." In either case, it is your responsibility to prove that you meet all the requirements listed in these statutes.

If you believe you need further treatment, you must show that your condition(s) related to your industrial injury or occupational disease is (are) not fixed and stable, but instead will improve through some specific form of treatment that is recommended by a doctor. If, on the other hand, you feel that your condition(s) related to your industrial injury is (are) fixed and/or further medical treatment will not help, but that you are entitled to a permanent partial disability award, you must prove the existence of this permanent partial disability by way of medical testimony. This testimony based at least in part on objective physical findings made by a doctor when he/she examines you.

If you believe that you have been and/or continue to be unable to work due to your condition(s) related to the industrial injury or occupational disease, you must prove that you have a bodily or mental impairment that prevents you from performing any gainful occupation on a reasonably continuous basis. Total disability is considered permanent whenever it is based upon conditions that are reasonably certain to continue throughout your life. You are totally disabled and unable to perform any gainful occupation when you cannot, with any degree of success, within the range of your normal capacities, training and educational experience, perform any continuous regular employment. You must show this inability to work through medical testimony. Testimony of a vocational counselor or other expert can help you.

The law of the state of Washington requires that your case for additional benefits must be based in part on medical testimony. This will almost certainly require that you present the testimony of a physician or other medical witness. Your doctor must appear in person and testify on your behalf at a hearing. Without an attorney to represent you, you will be responsible for making arrangements for your doctor to testify and also for paying any witness fees that he or she may charge.

Proceedings in front of the Board of Industrial Insurance Appeals are very similar to the procedures of a trial. An attorney familiar with these procedures will probably represent your opponent. In addition to deciding which witnesses you wish to call and what evidence you wish to present, you will be required to conduct an examination of your witnesses and be prepared to cross-examine the witnesses of opposing parties. The industrial appeals judge assigned to your case can help you examine your witnesses, but will not act as any of the parties' attorney. You and you alone are responsible for providing the testimony necessary to be successful in handling your appeal. The Board follows the rules of civil procedure and the rules of evidence as used by the superior courts in the state of Washington. These rules can be very technical; you must be very familiar with them in order to ensure that you receive all the information of the

opposing party's position prior to hearing and that all your testimony and evidence will be admitted at the hearings.

I strongly suggest that you talk to an attorney. There are several attorneys in the _____ area who specialize in workers' compensation matters. Your local phone book's yellow pages can be a good resource for locating an experienced attorney to handle your appeal. The local bar association is another place you can call for recommendations for an attorney to help you. Most attorneys will give you an initial interview without charge and, if they choose to handle your appeal, will have you sign a contingency fee arrangement. This means that, aside from costs, you will owe money only if you win your appeal, and even then the fee will be only a percentage of your increased award.

Before the hearing itself, the parties to the appeal are able to learn what the apposing party's evidence will be at the hearing. This process (called discovery) is regulated by complex rules with which all parties must comply.

I hope this letter has helped you understand the process as well as given you an idea on where to look in order to seek legal help. You should have received two pamphlets published by the Board. (Your Right to be Heard, Rules of Practice and Procedures). Please read them. They may seem complicated to you, but you may feel free to call and ask me questions about the contents of the material. I can be reached at the address on the front of the letter and at (360) 753-6823.

REMEMBER

- **YOU ARE ENCOURAGED TO TALK TO AN ATTORNEY**
- **YOU NEED TO PROVE THE DEPARTMENT ORDER WAS WRONG**
- **YOU NEED A DOCTOR TO TESTIFY ON YOUR BEHALF**
- **YOU NEED TO MAKE ARRANGEMENTS AND PAY FEES TO HAVE YOUR WITNESSES APPEAR**
- **THE HELP THE INDUSTRIAL APPEALS JUDGE CAN GIVE YOU IS LIMITED**

Sincerely,

Industrial Appeals Judge