

RCW 51.52.050 Service of departmental action—Demand for repayment—Orders amending benefits—Reconsideration or appeal. (1)

Whenever the department has made any order, decision, or award, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with a copy thereof by mail, or if the worker, beneficiary, employer, or other person affected thereby chooses, the department may send correspondence and other legal notices by secure electronic means except for orders communicating the closure of a claim. In the event the department has made an order communicating the closure of a claim of a self-insured employer, the self-insured employer may serve the department order provided the self-insured employer does so using a separate, secure, and verifiable nonelectronic means of delivery and includes the department prescribed notice explaining the contents of the order and any protest or appeal rights. The service by the self-insured employer is a communication for the purposes of filing an appeal under RCW 51.52.060. Persons who choose to receive correspondence and other legal notices electronically shall be provided information to assist them in ensuring all electronic documents and communications are received. 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. Correspondence and notices sent electronically are considered received on the date sent by the department. The copy, in case the same is a final order, decision, or award, shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision, or award shall become final within sixty days from the date the order is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia. However, a department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker, shall state that such order or decision shall become final within twenty days from the date the order or decision is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia.

(2) (a) Whenever the department has taken any action or made any decision relating to any phase of the administration of this title the worker, beneficiary, employer, or other person aggrieved thereby may request reconsideration of the department, or may appeal to the board. In an appeal before the board, the appellant shall have the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal.

(b) An order by the department awarding benefits shall become effective and benefits due on the date issued. Subject to (b) (i) and (ii) of this subsection, if the department order is appealed the order shall not be stayed pending a final decision on the merits unless ordered by the board. Upon issuance of the order granting the appeal, the board will provide the worker with notice concerning the potential of an overpayment of benefits paid pending the outcome of the appeal and the requirements for interest on unpaid benefits pursuant to RCW 51.52.135. A worker may request that benefits cease pending appeal at

any time following the employer's motion for stay or the board's order granting appeal. The request must be submitted in writing to the employer, the board, and the department. Any employer may move for a stay of the order on appeal, in whole or in part. The motion must be filed within fifteen days of the order granting appeal. The board shall conduct an expedited review of the claim file provided by the department as it existed on the date of the department order. The board shall issue a final decision within twenty-five days of the filing of the motion for stay or the order granting appeal, whichever is later. The board's final decision may be appealed to superior court in accordance with RCW 51.52.110. The board shall grant a motion to stay if the moving party demonstrates that it is more likely than not to prevail on the facts as they existed at the time of the order on appeal. The board shall not consider the likelihood of recoupment of benefits as a basis to grant or deny a motion to stay. If a self-insured employer prevails on the merits, any benefits paid may be recouped pursuant to RCW 51.32.240.

(i) If upon reconsideration requested by a worker or medical provider, the department has ordered an increase in a permanent partial disability award from the amount reflected in an earlier order, the award reflected in the earlier order shall not be stayed pending a final decision on the merits. However, the increase is stayed without further action by the board pending a final decision on the merits.

(ii) If any party appeals an order establishing a worker's wages or the compensation rate at which a worker will be paid temporary or permanent total disability or loss of earning power benefits, the worker shall receive payment pending a final decision on the merits based on the following:

(A) When the employer is self-insured, the wage calculation or compensation rate the employer most recently submitted to the department; or

(B) When the employer is insured through the state fund, the highest wage amount or compensation rate uncontested by the parties.

Payment of benefits or consideration of wages at a rate that is higher than that specified in (b) (ii) (A) or (B) of this subsection is stayed without further action by the board pending a final decision on the merits.

(c) In an appeal from an order of the department that alleges willful misrepresentation, the department or self-insured employer shall initially introduce all evidence in its case in chief. Any such person aggrieved by the decision and order of the board may thereafter appeal to the superior court, as prescribed in this chapter. [2019 c 190 s 1; 2011 c 290 s 9; 2008 c 280 s 1; 2004 c 243 s 8; 1987 c 151 s 1; 1986 c 200 s 10; 1985 c 315 s 9; 1982 c 109 s 4; 1977 ex.s. c 350 s 75; 1975 1st ex.s. c 58 s 1; 1961 c 23 s 51.52.050. Prior: 1957 c 70 s 55; 1951 c 225 s 5; prior: (i) 1947 c 281 s 1, part; 1943 c 210 s 1, part; 1939 c 41 s 1, part; 1937 c 211 s 1, part; 1927 c 310 s 1, part; 1921 c 182 s 1, part; 1919 c 131 s 1, part; 1911 c 74 s 2, part; Rem. Supp. 1947 s 7674, part. (ii) 1947 c 247 s 1, part; 1911 c 74 s 20, part; Rem. Supp. 1947 s 7676e, part. (iii) 1949 c 219 s 6, part; 1943 c 280 s 1, part; 1931 c 90 s 1, part; 1929 c 132 s 6, part; 1927 c 310 s 8, part; 1911 c 74 s 20, part; Rem. Supp. 1949 s 7697, part. (iv) 1923 c 136 s 7, part; 1921 c 182 s 10, part; 1917 c 29 s 3, part; RRS s 7712, part. (v) 1917 c 29 s 11; RRS s 7720. (vi) 1939 c 50 s 1, part; 1927 c 310 s 9, part; 1921 c 182 s 12, part; 1919 c 129 s 5, part; 1917 c 28 s 15, part; RRS s 7724, part.]

Application—2008 c 280: "This act applies to orders issued on or after June 12, 2008." [2008 c 280 s 7.]

Adoption of rules—2004 c 243: See note following RCW 51.08.177.