IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

MICHAEL W. ALDRIDGE, Appellant, v. DEPARTMENT OF LABOR AND INDUSTRIES, STATE OF WASHINGTON, Respondent.	No. 38588-1-II UNPUBLISHED OPINION

Houghton, P.J. — Michael Aldridge appeals from a series of administrative decisions arising from his Department of Labor & Industries (L&I) time-loss compensation. He raises various arguments that do not persuade us. We affirm.

FACTS

Aldridge, while working as a Washington State Patrol Trooper, injured his lower back during a traffic stop in 2000. The Washington State Patrol (WSP) placed him on temporary disability after the injury because he was unable to work. He received his full salary for six months following the injury, and the WSP deducted his employee share of health care premiums from his paychecks as it had before the disabling injury. After those six months, he began receiving time-loss compensation through L&I.

The WSP continued to pay a portion of Aldridge's health care costs and sent him an invoice each month for his employee share. On February 15, 2002, L&I issued a notice of

decision determining his time-loss compensation.[1] As of February 2004, his share of the health care premiums was $80 per month. The amount increased to $108 in January 2005 and to $131 in January 2006.

Because of the increases in his employee share, Aldridge sought an adjustment to his time-loss compensation rate on December 16, 2005, January 1 and February 15, 2006. L&I denied the requests and issued an order and notice of decision on February 27. The notice stated in part that he failed to provide sufficient information to L&I to support a time-loss compensation change. He timely appealed to the Board of Industrial Appeals (BIIA). The BIIA determined that his increased health care premium costs did not constitute a change in circumstances requiring adjusting his time-loss compensation.

On May 31, 2006, L&I sent Aldridge a letter approving his vocational retraining plan, which he appealed on June 6. L&I responded that it could not "accept" the dispute because it was not timely received. Certified Appeal Board Record at 131. He appealed that denial to the BIIA. Before the BIIA heard the appeal, he provided additional documentation to L&I, which showed that it had incorrectly rejected the retraining plan dispute on timeliness grounds. L&I responded that the appeal was timely after all but, nonetheless, it did not consider the appeal a dispute because the issues Aldridge raised were outside its scope of review. The BIIA ultimately ruled on February 27, 2007, that L&I timely received his appeal and directed L&I to consider it.

L&I then sent Aldridge another letter on November 9, 2006, stating that he did not

[1] L&I set the compensation rate at $3,173.24 per month if the WSP continued to provide health care benefits and $3,475.96 per month if the WSP did not. Aldridge's wage at the time of injury was $4,572.00 per month plus $436.16 per month for health care benefits.

provide certain grade reports to his vocational counselor as required. The letter further advised him that failure to comply would result in a loss of vocational services. The letter directed him to submit his grade report or to show good cause for refusing to provide the information. He appealed the letter to the BIIA. The BIIA denied his appeal because the November 9 letter was not a final order, decision, or award subject to appeal. He moved to vacate the order, which the BIIA denied. On March 8, 2007, he appealed the BIIA's denial to the superior court.

On January 9, 2007, L&I sent Aldridge a third letter advising him that he was no longer eligible for time-loss compensation benefits because his retraining plan was complete. He submitted three separate requests appealing this decision. Because L&I did not respond in a timely fashion, he filed another appeal with the superior court on May 9. Before the superior court considered the matter, the BIIA responded to Aldridge's appeal requests and entered an order granting the appeal. The parties then reached an agreement on February 5, 2008, which, in part, remanded his January 9, 2007 letter to L&I for further consideration.

Despite L&I's agreement to consider Aldridge's January 9, 2007 letter, which essentially made the May 9 appeal moot, he refused to withdraw his appeal in the superior court. In that appeal, he sought review of the BIIA's (1) denial of his claim for change of circumstances relief based of increased health care costs; (2) denial of his appeal from L&I's November 9, 2006 letter because it was not a final order or decision; and (3) refusal to acknowledge or accept his appeal filed on March 8, 2007.

The trial court ruled in favor of L&I on all three issues. First, it affirmed the BIIA's decision to deny change in circumstances relief based on Aldridge's increased health care benefit

costs. Second, it found that the November 9, 2006, letter did not take action that aggrieved him. Third, the trial court found that it lacked subject matter jurisdiction on the March 3 appeal because the BIIA had not issued a final order in the letter and because Aldridge did not timely appeal from the BIIA's order on agreement of the parties issued February 5, 2008. He appeals.

ANALYSIS

Aldridge first contends that increased health care benefit costs that the WSP assessed him constitute a change in circumstances under RCW 51.28.040.[2] He asserts that the calculation of his wages[3] for determining loss-compensation should include his monthly contribution toward his health care benefits.

We may reverse an agency's adjudicative decision if, among other reasons, the agency erroneously applied the law. *Timberlane Mobile Home Park v. Wash. Human Rights Comm'n*, 122 Wn. App. 896, 900, 95 P.3d 1288 (2004). We review board legal conclusions de novo, and BIIA decisions are not binding on us. *Ochoa v. Dep't of Labor & Indus.*, 143 Wn.2d 422, 426, 20 P.3d 939 (2001). But we give BIIA interpretations of the Industrial Insurance Act, chapter 51.12 RCW, great weight. *Ochoa*, 143 Wn.2d at 426.

Both parties rely, in part, on *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 16 P.3d 583 (2001) for their arguments. *Cockle* requires that employer-paid health care premiums be

[2] RCW 51.28.040 states: "If change of circumstances warrants an increase or rearrangement of compensation, like application shall be made therefor. Where the application has been granted, compensation and other benefits if in order shall be allowed for periods of time up to sixty days prior to the receipt of such application."

[3] Under RCW 51.08.178, the term "wages" includes "the reasonable value of board, housing, fuel, or other consideration of like nature received from the employer as part of the contract of hire."

included calculating the injured employee's wages when determining time-loss compensation. 142 Wn.2d at 823. The *Cockle* Court held that the value of the health care benefit is equal to the monthly premium paid by the employer. 142 Wn.2d at 821. The Court, however, did not include the amount contributed by the employee to his or her health care benefits when determining the employee's wages. *Cockle*, 142 Wn.2d at 820-21. Rather, the Court specifically held that the reasonable value of a benefit, such as health care premiums, is measured by the amount "*actually* paid by an employer." *Cockle*, 142 Wn.2d at 820-21.

Here, L&I issued a notice of decision that provided for two separate time-loss compensation rates depending on whether the WSP continued to provide health care benefits to Aldridge. L&I's notice of decision comports with the *Cockle* Court's reasoning that time-loss compensation should reflect lost earning capacity and that an employee who retains his or her health care benefits has not lost that portion of his or her earning capacity. 142 Wn.2d at 814-15. After Aldridge's injury, the WSP continued to pay its share of his health care costs, equaling $436.16 per month; thus, his time-loss compensation reflected the WSP's continued health care premium payments.

Under *Cockle*, only the amount contributed by Aldridge's employer relates to the determination of the amount of health care coverage to include in his "wages." 142 Wn.2d at 820-21. Because the amount he personally contributed to his health care premiums do not relate to L&I's initial calculation of his "wages" for determining his time-loss compensation, any increase in the amount he is required to contribute also does not relate to it. Thus, we hold that an increase in the health care benefit amount assessed an employee during the time-loss benefit

period is not a change in circumstances under RCW 51.28.040.

Aldridge next contends that L&I prejudiced him when it provided the entire contents of his claim file, including jurisdictional history records, to the BIIA for his time-loss compensation appeal. He further asserts that the trial court should have reversed the BIIA's decision denying his appeal. He cites no supporting authority for his claim. Moreover, we note that RCW 51.52.070 requires L&I to transmit the entire file when an appeal is filed. Further, he fails to cite anything in the record showing prejudice. His argument fails.

Aldridge also argues that the trial court erred when it denied his appeal from the November 9, 2006 letter. He asserts that L&I's letter was an appealable final decision.

The trial court determined that L&I's letter did not take action that aggrieved Aldridge. The BIIA reviewed the letter's plain language, noting its clear advisory nature because it did not impose penalties or alter his vocational training plan. And RCW 51.32.110 requires L&I to provide notice in advance of any decision to terminate vocational benefits. The letter did so; it did not take action and his argument fails.

Finally, Aldridge contends that the trial court erred when it refused to consider his appeal from the January 9, 2007 letter for lack of subject matter jurisdiction. He filed his appeal in superior court before the BIIA responded to his appeal. The BIIA considered the appeal and the parties resolved the underlying dispute before the trial court considered it.[4] He now asserts that BIIA's determination and the parties' agreement is void. He claims that once he filed the appeal in the trial court, the BIIA lost jurisdiction. We disagree.

[4] Aldridge does not appeal the parties' resolution of this underlying dispute.

Aldridge cites no supporting authority for this assertion. Rather, the trial court could consider only appeals from a final order, decision, or award. The January 9, 2007 letter was not a final order, decision, or award and his argument fails. RCW 51.52.060; RCW 51.52.110.

ATTORNEY FEES

Aldridge requests attorney fees and costs on appeal under RCW 51.52.130. As we affirm, we decline to award him fees and costs.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Houghton, P.J.

We concur:

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Bridgewater, J.

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Hunt, J.