

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 IN RE: JOEY A. HANCOCK) DOCKET NOS. 09 24841 & 09 24842
2 CLAIM NO. P-600587) DECISION AND ORDER

3 APPEARANCES:

4
5 Claimant, Joey A. Hancock, by
6 Williams, Wyckoff & Ostrander, PLLC, per
7 Wayne L. Williams

8 Employer, Olympia By-Products Co., Inc., by
9 Washington State Farm Bureau

10 Department of Labor and Industries, by
11 The Office of the Attorney General, per
12 Sarah E. Kortokrax, Assistant

13 In Docket No. 09 24841, the claimant, Joey A. Hancock, filed an appeal with the Board of
14 Industrial Insurance Appeals on December 8, 2009, from an order of the Department of Labor and
15 Industries dated November 4, 2009. In this order, the Department suspended vocational benefits.
16 The claimant also appealed the November 4, 2009 order, in which the Department terminated
17 time-loss compensation benefits as paid through November 3, 2009, and held the claim open. The
18 Department order is **REVERSED AND REMANDED**.

19 In Docket No. 09 24842, the claimant, Joey A. Hancock, filed an appeal with the Board of
20 Industrial Insurance Appeals on December 8, 2009, from an order of the Department of Labor and
21 Industries dated November 5, 2009. In this order, the Department terminated vocational services.
22 The Department order is **REVERSED AND REMANDED**.

DECISION

23 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for
24 review and decision. The claimant filed a timely Petition for Review of a Proposed Decision and
25 Order issued on October 14, 2010, in which the industrial appeals judge affirmed the orders of the
26 Department dated November 4, 2009, and November 5, 2009. On December 20, 1020, the
27 Department filed a response to the claimant's Petition for Review.

28 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
29 no prejudicial error was committed. The rulings are affirmed. We grant review to address
30 Mr. Hancock's lack of cooperation with vocational services. While we agree with our industrial
31 appeals judge's determination that Mr. Hancock did not fully cooperate with his vocational retraining
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1 plan, we believe that his mental health condition rendered him incapable of full participation. We
2 agree that Mr. Hancock's opiate addiction and alcohol dependence were significant barriers to his
3 retraining efforts. It is significant that the opiate addiction was caused by the industrial injury, but it
4 is also significant that Mr. Hancock made little effort to overcome his substance abuse problem.
5 Nonetheless, Mr. Hancock suffered an intervening major depression, which was proximately
6 caused, in part, by his low back injury. Mr. Hancock's depression became so severe that his
7 attending physician, Dr. Leyton Jump, felt he was incapable of making decisions. This would
8 logically include the decision to overcome addiction, as well as the decision to cooperate fully with
9 the vocational plan.

10 The applicable statutory provision, RCW 51.32.110(2), reads as follows:

11 (2) If the worker refuses to submit to medical examination, or obstructs the same,
12 or, if any injured worker shall persist in unsanitary or injurious practices which tend to
13 imperil or retard his or her recovery, or shall refuse to submit to such medical or
14 surgical treatment as is reasonably essential to his or her recovery or refuse or
15 obstruct evaluation or examination for the purpose of vocational rehabilitation or does
16 not cooperate in reasonable efforts at such rehabilitation, the department or the
17 self-insurer upon approval by the department, with notice to the worker may suspend
18 any further action on any claim of such worker so long as such refusal, obstruction,
19 noncooperation, or practice continues and reduce, suspend, or deny any
20 compensation for such period: PROVIDED, That the department or the self-insurer
shall not suspend any further action on any claim of a worker or reduce, suspend, or
deny any compensation if a worker has good cause for refusing to submit to or to
obstruct any examination, evaluation, treatment or practice requested by the
department or required under this section.

21 In assessing whether Mr. Hancock had good cause for his failure to cooperate, we have also
22 looked at the feasibility of the vocational plan from its inception. Dr. Jump expressed some doubt
23 as to whether Mr. Hancock would be capable of completing the courses in the retraining program.
24 It is clear that the vocational retraining course may not have been a practical choice given
25 Mr. Hancock's ongoing problems with addiction. However, the major depression caused him to be
26 unable to cooperate or recover, regardless of his motivation. Because he was not capable of
27 cooperating from a mental health perspective, he had "good cause" for failing to cooperate with the
28 vocational process. Pursuant to RCW 51.32.110(2), Mr. Hancock's benefits should be reinstated.
29 We therefore reverse both orders on appeal and remand the claim for reinstatement of benefits as
30 indicated.

31 **FINDINGS OF FACT**

- 32 1. On December 12, 1997, the claimant, Joey A. Hancock, filed an Application for Benefits with the Department Labor and Industries in

1 which he alleged that he suffered an occupational disease on
2 December 4, 1997, while in the course of his employment with Olympia
3 By-Products Company. On September 15, 1998, the Department
4 issued an order in which it allowed the claim. On November 4, 2009,
5 the Department issued an order in which it ended time-loss
6 compensation benefits as paid through November 3, 2009, and held the
7 claim open for further action. On November 5, 2009, the Department
8 issued an order in which it suspended the claimant's vocational benefits
9 for failure to cooperate.

10 On December 8, 2009, the claimant filed a Notice of Appeal with the
11 Board of Industrial Insurance Appeals from the Department order dated
12 November 4, 2009. On December 28, 2009, the Board issued an Order
13 Granting Appeal under Docket No. 09 24841, and agreed to hear the
14 appeal.

15 On December 8, 2009, the claimant filed a Notice of Appeal with the
16 Board of Industrial Insurance Appeals from the Department order dated
17 November 5, 2009. On December 28, 2009, the Board issued an Order
18 Granting Appeal under Docket No. 09 24842, and agreed to hear the
19 appeal.

- 20 2. On December 4, 1997, the claimant sustained an occupational disease
21 to his low back while in the course of his employment with Olympia
22 By-Products Company.
- 23 3. On June 30, 2009, the Department mailed a letter to the claimant
24 advising that benefits may be suspended if he failed or refused to
25 respond to the letter within thirty days, or failed to provide good cause
26 for failing to cooperate with vocational rehabilitation.
- 27 4. On July 13, 2009, the claimant responded to the Department's June 30,
28 2009 letter.
- 29 5. The claimant suffered a major depression, and opiate addiction that
30 were proximately caused by the December 4, 1997 occupational
31 disease. These conditions prevented Mr. Hancock from making sound
32 decisions. These conditions also constituted good cause for the
claimant's failure to cooperate with vocational services.


CONCLUSIONS OF LAW


1. The Board of Industrial Insurance Appeals has jurisdiction over the parties to and the subject matter of these appeals.
2. The Department provided adequate notice of the intent to suspend benefits and provided the claimant an opportunity to present good cause as contemplated by WAC 296-14-410.
3. The claimant had good cause for any failure to cooperate with vocational rehabilitation within the meaning of RCW 51.32.110.
4. In Docket No. 09 24841, the Department of Labor and Industries order dated November 4, 2009, is incorrect and is reversed.

- 1 5. In Docket No. 09 24842, the Department of Labor and Industries order
2 dated November 5, 2009, is incorrect and is reversed.
3 6. The claim is remanded with direction to provide further benefits as
4 indicated by the law and the facts.

5 Dated: January 24, 2011.

6 BOARD OF INDUSTRIAL INSURANCE APPEALS

7 
8 DAVID E. THREEDY Chairperson

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10 FRANK E. FENNERTY, JR. Member
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