REOPENINGS / AGGRAVATIONS

REFERENCE: RCW 51.32.160
WAC 296-14-400
Washington State Claims Adjudication Manual Pages G3-G11

The reopening period is now seven years (ten for eye claims) from the date the first closing order becomes final and binding, regardless of the date of injury.

A closing order is defined as: "An order based on factors which include medical recommendation, advice, or examination."

For the seven year limitation to apply to claims where first closure occurred on or after July 1, 1981, there must be medical documentation to support the claim closure.

Initial closing orders issued between July 1, 1981 and July 1, 1985, will be considered issued on July 1, 1985, for purposes of reopening.

To reopen claims within 60 days of the initial closure order, the Department must be notified that the closing order should be set aside if there is credible medical opinion that the accepted condition is not stable. The self-insurer then keeps control of the claim and processes it as before, including obtaining any necessary additional medical information. Once the Department has been notified, the claim is processed to closure again.

If an aggravation is in doubt, the Department can be asked to place the claim in abeyance, which allows the time for the necessary information to be obtained, and then forwarded to the Department to review for an additional order regarding the aggravation.

To reopen claims after the closing order has become final, the worker must return to a medical provider for an evaluation as to whether or not the accepted condition has worsened and for the completion of a reopening application. It is preferable that the worker returns to the physician who authored the closing order; however, the worker does have free choice of physicians.

The reopening application is submitted to the Department for adjudication. The self-insured employer is responsible for the payment of the visit in which the physician completed the application. There is a charge for the completion of the form and there may be a need for diagnostic tests. No other medical benefits or time loss benefits are paid until a final determination has been made.

The Department must, for all reopening applications filed on or after July 1, 1988, render a decision within 90 days of the date of receipt of the application, either by the Department or self-insurer, or the application will be deemed granted.

This 90 day period does not apply if the closing order on the clam is not final and binding.

Not final and binding means: The closure notice has been appealed; when there is a timely request for reconsideration of the Department's closing order; if another reopening application is received within 60 days after reopening is denied; and if this application would be considered a protest.

The Department may extend the time period for 60 additional days with good cause. Good cause shall include, but is not limited to:

1. Need for an independent medical examination;

2. Inability to schedule a necessary examination within the 90 day period;

3. Additional time needed to receive the evaluation report and render a decision;

4. Legitimate failure of the worker to attend the medical examination.

The Department must issue a 60 day extension order to actually extend the time period.

A Claims adjudicator should participate with the Department in this process. The adjudicator then has an impact and knowledge of the information that is being reviewed by the Department; can assist in obtaining this information; and, if necessary, assist in obtaining an independent medical evaluation.

The Department has a diary system for the applications to monitor the 90th day. This system cannot solely be relied upon, and requires that the adjudicator diary his own file to make sure that the 90th day does not expire. Being involved in the process allows the adjudicator to impact the final decision and, by being aware this is happening, provide the opportunity of planning strategy for management of the claim, if it does need to be reopened.

Aggravation is defined as: A worsening or increase in disability since the claim was last closed or was ordered to remain closed.

Certain criteria must be met to reopen claims.

First, medical opinion must be established, based on objective findings, that an aggravation of the injury has resulted in increased disability.

Second, there must be a causal relationship between the injury or disease and the subsequent disability as established by medical opinion.

Third, the medical opinion must show that the aggravation occurred between the terminal dates and the aggravation period. The first terminal date is the date the claim was closed or was ordered to remain closed. The second terminal date is the date of the order ruling on the reopening request.

The Department will issue an order either allowing or denying the reopening application. Either party must protest within 60 days if they are aggrieved.

If an injured worker has filed a claim subsequent to the seven year limitation, the Director of the Department of Labor and Industries has the discretion to review those applications and to grant them, if desired.

The criteria in this case allows the Director the discretion to grant or deny the applications, as well as to determine that only medical treatment is necessary, and also time loss and/or permanent partial disability.

The Department adjudicator will process the application which could include investigation and/or independent medical evaluation. The adjudicator will decide whether the claim will be opened for medical benefits only, using the same criteria as that which applies to claims having been closed for less than seven years.

The adjudicator must then decide whether time loss compensation and/or permanent partial disability benefits are at issue.

To qualify for time loss, the worker must satisfy one of the following criteria:

1. Worker requires inpatient surgery as defined by WAC's;

2. Worker has a life-threatening need for treatment;

3. The worker can benefit from a newly-approved medical procedure that would significantly improve the quality of life.

In addition, the worker must satisfy BOTH of the following criteria:

1. The worker has not voluntarily removed himself/herself from the work force;

2. The worker must be unable to work as a result of the industrial condition.

After making a determination, the adjudicator sends his recommendations to the Director for approval and the subsequent issuance of an order.

Once the order has been issued, it would be subject to appeal, as in any other claim.