FILED
COURT OF APPEALS
DIVISION II

2014 DEC -8 PM 3:43

STATE OF WASHINGTON
BY
DEPUTY

No. 46656-2-II

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

Kimberly G. Luvaas,

Appellant,

v.

Department of Labor & Industries,

Respondent.

BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

A. Assignment of Error

The superior court erred in entering its August 13, 2014 order which denied Ms. Luvaas's motion for summary judgment and granted Respondent's cross-motion for summary judgment.

B. Issue Pertaining to Assignment of Error

Whether the superior court erred in denying Ms. Luvaas's motion for summary judgment while granting Respondent's cross-motion for summary judgment when: in doing so failed to properly apply Washington State contract law principles to the valid and legally binding employment contract between Ms. Luvaas and the Department of Social and Health Services (DSHS); in doing so did not recognize that Ms. Luvaas was still an employee of DSHS on the date of her industrial injury of July 29, 2011 considering that the valid and legally binding employment contract between Ms. Luvaas and DSHS was still in effect; in doing so failed to both liberally construe Title 51, to include RCW 51.08.178, and/or resolve any doubts or questions regarding Title 51 in favor of the injured worker, Ms. Luvaas, as mandated by the legislature and required by statute and case law; in doing so incorrectly applied RCW 51.08.178 to the facts of this case; and, in doing so incorrectly found that Ms. Luvaas's monthly

wages from DSHS should not be included in the calculation of her timeloss compensation rate.

II. STATEMENT OF THE CASE

A. Factual Background

On July 29, 2011, Ms. Luvaas suffered an industrial injury after working at one of her two jobs, Out On A Limb Landscaping. *See* Board Transcript at 8-9[1].

Besides her part time job at Out On A Limb Landscaping, Ms. Luvaas worked full time for DSHS as a Care Provider. *See* id. at 12. To become a Care Provider with DSHS, Ms. Luvaas entered into an employment contract with DSHS, titled "Client Service Contract, Individual Provider." *See* Board Exhibit 2. Per the employment contract, Ms. Luvaas was to begin work as a Care Provider on July 1, 2009 and end on June 30, 2012. *See* id. The employment contract contained terms and conditions, which included requirements for modifying the contract,

[1] Unfortunately, only a fraction of the Clerk's Papers were independently numbered by the Clallam County Superior Court. Documents submitted by the parties at the superior court level are numbered in the bottom right hand corner and number 2 through 49, and are referenced in Appellant's Briefing as "Sup.Ct.Rec.". Following this section, records are Bates stamped 1 through 185, and is referenced in Appellant's Briefing as "CP". Following this section is the Board's Hearing Transcript which numbers 1 through 87, and will be referenced as "Board Transcript" in Appellant's Briefing. Following this section are exhibits that were admitted during the Board Hearing and number 1 through 6, and will be referenced as "Board Exhibits" in Appellant's Briefing.

terminating the contract, and waiving any supposed breaches of the contract. *See* id.

On July 5, 2011, Ms. Luvaas informed DSHS in writing of her intent to terminate the existing employment relationship between herself and DSHS. *See* Board Exhibit 3. Such termination for convenience required at least 30 days' written notice. *See* Board Exhibit 2. This written note from Ms. Luvaas to DSHS was received by DSHS on July 8, 2011. *See* Board Exhibit 3. In authoring this note, Ms. Luvaas took into consideration the days that she regularly did not work, which were weekends, and a weekend abutted the end of July immediately prior to switching over to August. *See* id.; *see* Board Transcript at 42-43, 47.

Ms. Luvaas was compensated by DSHS for the entire month of July 2011. *See* Board Exhibit 4, 5. DSHS made payment to Ms. Luvaas for the month of July 2011 on August 3, 2011. *See* Board Exhibit 4.

B. Procedural Background

Ms. Luvaas filed an application for benefits with the Department of Labor & Industries (Respondent) on or about December 7, 2011 due to the industrial injury she suffered on July 29, 2011. CP 31, 149. On May 4, 2012, the Department issued an order setting the "[w]age for job of injury based on monthly salary of $447.12." CP 22-23, 31. Ms. Luvaas filed a timely protest of the May 4, 2012 order with the Department on

May 16, 2012. CP 31. In response, the Department issued an order on May 21, 2012 which affirmed the May 4, 2012 wage order. CP 24, 31. Ms. Luvaas filed a timely appeal to the May 21, 2012 affirm order on June 21, 2012 based on the premise, *inter alia*, that her monthly wages from DSHS were not considered when calculating her timeloss compensation rate. CP 25. Ms. Luvaas's appeal was granted for consideration by the Board of Industrial Insurance Appeals (Board) on July 19, 2012. CP 30-31. Following hearings at the Board, the Industrial Appeals Judge issued a Proposed Decision and Order (PD&O) on August 9, 2013 which ultimately affirmed the Department's wage order of May 4, 2012. CP 11-20. Ms. Luvaas filed a timely Petition for Review (PFR) of the PD&O on September 5, 2013. CP 2-6. Ms. Luvaas's PFR was subsequently denied by the Board on September 26, 2013 which in turn made the PD&O a final decision and order of the Board. CP 1. In response, Ms. Luvaas filed a timely appeal to Clallam County Superior Court on October 16, 2013. Sup.Ct.Rec. 46-47. Ms. Luvaas filed a motion for summary judgment with the superior court on May 15, 2014. Sup.Ct.Rec. 34-45. Respondent submitted responsive briefing to the superior court, along with a cross-motion for summary judgment of their own, on June 6, 2014. Sup.Ct. Rec. 26-33. Ms. Luvaas submitted responsive briefing to the superior court on July 11, 2014. Sup.Ct. Rec. 18-25. Oral argument on the

competing motions for summary judgment was held at Clallam County Superior Court on the morning of August 8, 2014. Sup.Ct.Rec. 13. On August 13, 2014, the superior court denied Ms. Luvaas's motion for summary judgment and granted Respondent's cross-motion for summary judgment which ultimately affirmed the Department's wage order of May 4, 2012. Sup.Ct.Rec. 13-17. Ms. Luvaas submitted a Notice of Appeal to Court of Appeals on September 11, 2014, which was timely filed on September 12, 2014. Sup.Ct.Rec. 5-6. Ms. Luvaas filed the Designation of Clerk's Papers by the required deadline and further notified the Court that no Statement of Arrangements would be filed.

III. SUMMARY OF ARGUMENT

The trial court erred when it granted Respondent's motion for summary judgment and denied Ms. Luvaas's motion for summary judgment. Ms. Luvaas does not contend that there are genuine issues of material fact that bar a summary judgment determination. Ms. Luvaas contends that she, not Respondent, is entitled to judgment as a matter of law.

Ms. Luvaas and DSHS entered into a valid and legally binding employment contract that was in effect on the date of her industrial injury of July 29, 2011. Based on the objective manifestations of the contract,

which is the prescribed contract law theory in Washington State, Ms. Luvaas was still considered an employee of DSHS on the date of her industrial injury of July 29, 2011. In addition, Ms. Luvaas was actually paid for the entire month of July 2011 and DSHS issued this payment on August 3, 2011. Therefore, the monthly wages from all employment, to include her job of injury as well as DSHS, should be included in the calculation of her timeloss compensation rate.

Aside from the reasoning above, RCW 51.08.178(1) states in pertinent part that: "the monthly wages the worker was receiving from all employment at the time of injury shall be the basis upon which compensation is computed...." This phrase in the statute is clear and unambiguous. The legislature's mandate and intent with Title 51, the Industrial Insurance Act, is that it be liberally construed with any doubts being decided in favor of the injured worker, Ms. Luvaas. Based on the plain meaning of RCW 51.08.178(1), the monthly wages of all of Ms. Luvaas's employment should be used to calculate her timeloss compensation rate. Therefore, the monthly wages from both the job of injury and DSHS need to be considered.

IV. ARGUMENT

A. Standard for Review.

A party may appeal as a matter of right any superior court order "affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action." *See* Wash. R. App. P. 2.2.

Judicial review of matters arising under Title 51, the Industrial Insurance Act, are governed by RCW 51.52.110 and RCW 51.52.115. *See* Wash. Rev. Code Ann. §§ 51.52.110, 51.52.115 (West 2014). Judicial review at the superior court level is *de novo* and is based solely on the evidence that was on the record before the Board. *See* id. Superior court orders granting summary judgment are reviewed *de novo*, and the court of appeals "engag[es] in the same inquiry as the trial court." Schmitt v. Langenour, 162 Wash. App. 397, 404, 256 P.3d 1235, 1239 (Div. II 2011) (*citing* Kahn v. Salerno, 90 Wash. App. 110, 117, 951 P.2d 321 (Div. I 1998)).

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits ... show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law." Wash. Super. Ct. Civ. R. CR 56(c); *see* Wilson v. City of Seattle, 146

Wash. App. 737, 194 P.3d 997 (Div. I 1989). The facts and all reasonable inferences from those facts must be considered in the light most favorable to the nonmoving party. Id.

The moving party bears the initial burden of showing the absence of an issue of material fact. Young v. Key Pharm., Inc., 112 Wash.2d 216, 255, 770 P.2d 182 (1989). The nonmoving party may not rely on speculation or argumentative assertions that unresolved factual issues remain. Marshall v. Bally's Pacwest, Inc., 94 Wash. App. 372, 377, 972 P.2d 475 (Div. II 1999). In responding to a summary judgment, the nonmoving party's opposition must be based on, *inter alia*, personal knowledge and shall set forth such facts as would be admissible in evidence. *See* Blomster v. Nordstrom, 103 Wash. App. 252, 259-60, 11 P.3d 883 (Div. I 2000); *see* Lilly v. Lynch, 88 Wash. App. 306, 319-20, 945 P.2d 921 (Div. II 1998) (*citing* CR 56(e); McKee v. American Home Products Corp., 113 Wash.2d 701, 782 P.2d 1045 (1989); Doe v. Puget Sound Blood Ctr., 117 Wash.2d 772, 819 P.2d 370 (1991)). No consideration should be accorded to opposition that is not made on personal knowledge. *See* Loss v. DeBord, 67 Wash.2d 318, 321, 407 P.2d 421 (1965); *see* State v. Evans Campaign Committee, 86 Wash.2d 503, 506, 546 P.2d 75 (1976).

Ms. Luvaas is of the position that there are no genuine issues of material fact in this matter. This position is promoted by the fact that both parties filed motions for summary judgment at the trial court level. Based on the following, Ms. Luvaas is entitled to judgment as a matter of law.

Statutory construction issues are reviewed *de novo* by the court of appeals. Dellen Wood Products, Inc. v. Dep't of Labor & Indus., 179 Wash. App. 601, 615, 319 P.3d 847, *review denied*, 180 Wash.2d 1023, 328 P.3d 902 (Div. II 2014) (*citing* Cockle v. Dep't of Labor & Indus., 142 Wash.2d 801, 807, 16 P.3d 583 (2001)).

B. Ms. Luvaas and DSHS entered into a valid and legally binding employment contract that was still in effect on the date of her industrial injury of July 29, 2011 and therefore her monthly wages from her employment with DSHS should be considered in the calculation of her timeloss compensation rate.

Contract law principles apply to and govern employment contracts. *See* Nye v. University of Washington, 163 Wash. App. 875, 882-83, 260 P.3d 1000, 271 Ed. Law Rep. 1116, 18 Wage & Hour Cas. 2d (BNA) 356 (Div. 1 2011), *review denied*, 173 Wash. 2d 1018, 272 P.3d 247 (2012). "The law of contracts is the same whether the parties are two publishing giants fighting for market control or two individuals disputing the cost of appliance repair work." Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wash.2d 493, 495, 115 P.3d 262 (2005). Washington State Courts adhere to the objective manifestation theory of contracts. Id. at 503.

By following this particular contract theory, the courts "attempt to determine the parties' intent by focusing on the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties." Id. (*citing* Max L. Wells Trust v. Grand Cent. Sauna & Hot Tub Co. of Seattle, 62 Wash. App. 593, 602, 815 P.2d 284 (Div. I 1991). "[A] court must interpret [a contract] according to the intent of the parties as manifested by the words used [in the contract]." Wagner v. Wagner, 95 Wash.2d 94, 101, 621 P.2d 1279 (1980) (*citing* Patterson v. Bixby, 58 Wash.2d 454, 458, 364 P.2d 10 (1961)). Extrinsic evidence and the subjective intent of the parties are not relevant when the terms and conditions of the contract are clear from the actual words used in the contract. *See generally* Hearst Commc'ns, 154 Wash.2d at 493.

In interpreting a contract, a court cannot disregard the language used and contained therein, and cannot revise the contract under a theory of interpretation. Wagner, 95 Wash.2d at 101 (*comparing* Farmers Ins. Co. v. Miller, 87 Wash.2d 70, 73, 549 P.2d 9 (1976)). Courts interpret what was written in a contract, not what was intended to be written. Hearst Commc'ns, 154 Wash.2d at 504 (*citing* J.W. Seavey Hop Corp. of Portland v. Pollock, 20 Wash.2d 337, 348-49, 147 P.2d 310 (1944), *cited with approval in* Berg, 115 Wash.2d 657, 669, 801 P.2d 222 (1990)).

In this current matter, objective manifestation of the agreement are unmistakably ascertainable by reading the employment contract in its entirety that was mutually agreed to and signed by Ms. Luvaas and an authorized DSHS representative. Ms. Luvaas and DSHS entered into an employment contract on June 25, 2009, with a start date of July 1, 2009 and an end date of June 30, 2012. *See* Board Exhibit 2. This employment contract was a legally binding agreement between Ms. Luvaas and DSHS that contained enforceable terms and conditions. *See* id. On page eight of the agreement, there is a term and condition titled "Termination for Convenience." *See* id. This particular term and condition addresses how either Ms. Luvaas or DSHS can terminate the contract prior to the agreed upon end date of June 30, 2012 should either party wish, and states in pertinent part:

> The Contractor [Ms. Luvaas] may terminate this Contract for convenience by giving DSHS at least thirty (30) calendar days' written notice...."

See id. This is the only place in the entire contract that addresses the required steps to be taken should Ms. Luvaas wish to terminate the contract out of convenience to either party, aside from "Termination for Default" which does not apply in this situation. *See* id.

In looking at the sentence displayed above, it is important to look at the placement of the word "may." The word "may" is placed

immediately before the word "terminate." The word "may" is not placed right before the portion of the sentence instructing Ms. Luvaas on what steps need to be taken if she wishes to terminate the employment contract for convenience. If it was placed immediately before the portion of the sentence having to do with the 30 day notice then the condition could possibly be interpreted as giving Ms. Luvaas the option to give the 30 day notice, but this is not the case. With the placement of the word "may" right before the word "terminate," the sentence is read to the effect that Ms. Luvaas has the option to terminate the employment contract out of convenience but is not required to do so. If she does choose to exercise her option to terminate the contract for convenience per the aforementioned term and condition, then she would need to give 30 day notice in writing.

In this particular term and condition, the word "may" gives Ms. Luvaas the option to terminate for convenience or to let the contract terminate by other means. If, for example, the word was "shall" instead of "may" this would make it mandatory that Ms. Luvaas terminate the contract for convenience instead of any other way. This makes no sense when reading the contract as a whole considering there is a date certain, June 30, 2012, for the contract to end as well as another clause that addresses termination: "Termination for Default". The word "may"

applies to how Ms. Luvaas can terminate the contract. It does not apply to the 30 day written notice requirement.

When Ms. Luvaas decided to terminate her employment contract with DSHS prior to the end date of June 30, 2012, she abided by the applicable terms and conditions. As stated above, termination for convenience required 30 day written notice. Ms. Luvaas submitted a written note to DSHS on July 5, 2011. *See* Board Exhibit 3. This written note operated to begin the tolling of the 30 days' notice. This is the first time that Ms. Luvaas sent DSHS written notice that she wished to terminate the contract. There is no evidence in the record to the contrary. *See* Board Transcript at 17, 60, 77, 82. Ms. Travis and Mr. Gilliand, who both testified on behalf of Respondent, stated that they were not aware of any written notice of termination sent by Ms. Luvaas to DSHS prior to the written note of July 5, 2011. *See* id. at 60, 77, 82. The only evidence in the record of any written submission by Ms. Luvaas to DSHS stating she wished to terminate her contract is the July 5, 2011 note. *See* Board Exhibit 3. Therefore, the 30 days, of which she was still considered an employee of DSHS, should begin to run no later than July 5, 2011 which would subsequently encompass the industrial injury date of July 29, 2011.

In her written notice, Ms. Luvaas references the date of July 28, 2011. *See* id. During her testimony, Ms. Luvaas shed light on the reason

this particular date was included with her notice of termination. *See* Board Transcript at 43, 47. Ms. Luvaas testified that she listed the July 28, 2011 date because she took weekends off and it was the date right up against the weekend before switching over to the month of August. *See* id. Admittedly, both of Respondent's witnesses didn't know the significance of the July 28, 2011 date and didn't inquire of Ms. Luvaas why she listed that date in her written notice to terminate the employment contract. *See* id. at 64, 84.

Regardless, the fact that Ms. Luvaas listed July 28, 2011 in her written notice to terminate the employment contract is irrelevant and of no consequence to the interpretation of the objective manifestations of the employment contract. On page three of the agreement, there is a term and condition titled "Amendment." *See* Board Exhibit 2. This particular term and condition addresses contract modification, and states:

> This Contract may only be modified by a written amendment signed by both parties ... [and] [o]nly personnel authorized to bind each of the parties may sign an amendment.

See id. This is the only place in the entire contract that addresses the requirements to modify the employment contract. *See* id. In regards to the contract between Ms. Luvaas and DSHS, the inclusion of the July 28, 2011 date can only be considered an attempt to supposedly modify the

contract; an attempt that fails per the one and only applicable term and condition that addresses how contract modification is to take place. Neither Ms. Luvaas nor DSHS entered into a written and signed agreement to amend the standing employment contract between the two. *See* Board Transcript at 18, 81. There is absolutely no evidence in the record to give credence to the idea that Ms. Luvaas and DSHS modified the contract per the applicable term and condition stated above. Therefore, the supposed modification attempt fails and termination for convenience still requires 30 day written notice which began to run on July 5, 2011 at the earliest.

Further, it cannot be argued that DSHS, by staying silent regarding the July 28, 2011 date, waived a supposed "breach" of the contract by Ms. Luvaas. On page six of the agreement, there is a term and condition titled "Waiver." *See* Board Exhibit 2. This particular term and condition addresses how DSHS is to waive any aspect of the employment contract, if they choose to do so, and states:

> Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of the Contract. Only the DSHS Chief Administrative Officer or designee has the authority to waive any term or condition of this Contract on behalf of DSHS.

See id. This is the only place in the entire contract that addresses how DSHS is to waive certain terms and conditions, if they choose to do so, and how these waivers effect the employment contract going forward. *See* id. There is absolutely no evidence in the record that a designated authority from DSHS waived a supposed "breach" by Ms. Luvaas of the employment contract and therefore the 30 day written notice requirement to terminate for convenience was still in effect.

When looking at the objective manifestations contained in the employment contract, which include the terms and conditions mentioned above, the intent of Ms. Luvaas and DSHS is made very clear regarding employment and what must occur, and by who, if the employment contract is to end prior to the contract end date. Ms. Luvaas had a valid and legally binding employment contract with DSHS in place on the date of her industrial injury which subsequently and technically means that she was still an employee of DSHS on July 29, 2011. Therefore, the monthly wages Ms. Luvaas earned from her employment with DSHS should be considered and included in her timeloss compensation rate pursuant to RCW 51.08.178. *See* § 51.08.178.

C. Ms. Luvaas's wages from DSHS should be included in the calculation of her timeloss compensation rate per the plain meaning of RCW 51.08.178.

Aside from the argument and reasoning set forth above, Ms. Luvaas's wages from both her job of injury as well as DSHS should be used in calculating her timeloss compensation rate based strictly on the plain meaning of RCW 51.08.178. RCW 51.08.178 states, in pertinent part, that "the monthly wages the worker was receiving from all employment at the time of injury shall be the basis upon which compensation is computed...." *See* § 51.08.178(1). Aside from the argument set forth in the previous section, this case poses a question of statutory construction and interpretation. The Courts will not interpret an "unambiguous statute where plain words do not require construction[,]" and "[i]nstead [will] discern a statute's plain meaning from the ordinary meaning of the language at issue, the context of the statutory provision, related provisions, and the statutory scheme as a 'whole'." Dellen Wood Products, 179 Wash. App. at 615 (*citing* Davis v. Dep't of Licensing, 137 Wash.2d 957, 963, 977 P.2d 554 (1999); *citing* State v. Engel, 166 Wash.2d 572, 578, 210 P.3d 1007 (2009)). "The primary objective of statutory construction is to carry out the Legislature's intent." Double D Hop Ranch, et. al. v. Sanchez, 133 Wash.2d 793, 798, 947 P.2d 727 (1997) (*citing* Rozner v. City of Bellevue, 116 Wash.2d 342, 347, 804

P.2d 24 (1991)); *see also* Dellen Wood Products, 179 Wash. App. at 615 (*citing* Cockle, 142 Wash.2d at 801).

In workers' compensation matters under Title 51, the legislature has made their intent, as well as the statutory scheme, very clear. According to the Washington State Supreme Court, "[t]he legislature has mandated that Title 51 RCW be 'liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries ... occurring in the course of employment.'" Dep't of Labor & Indus. v. Granger, 159 Wash.2d 752, 757, 153 P.3d 839 (2007) (*quoting* § 51.12.010). The purpose of Title 51, the Industrial Insurance Act, is to provide sure and certain relief to injured workers. Dellen Wood Products, 179 Wash. App. at 615 (*quoting* § 51.04.010). "[W]here reasonable minds can differ over what [RCW 51.08.178(1)] mean[s], in keeping with the legislation's fundamental purpose, the benefit of the doubt belongs to the injured worker...." Cockle, 142 Wash.2d at 811; *see also* Double D Hop Ranch, 133, Wash.2d at 798 (*citing* Rozner, 116 Wash.2d at 342).

This particular question appears to be an issue of first impression. There does not appear to be case law on point that specifically addresses the phrase found in RCW 51.08.178(1): "the monthly wages the worker was receiving from all employment at the time of injury shall be the basis upon which compensation is computed...." *See* § 51.08.178(1). This

particular phrase is not vague and does not require any guesswork. The terminology used is clear and unambiguous. Had the legislature intended RCW 51.08.178(1) to be narrowly construed to limit timeloss compensation to only the very date and time of an industrial injury they could have done so. If this was their intent, RCW 51.08.178 would have been drafted with more specificity and without the word "monthly" directly in front of the word "wages". *See* id. The legislature did not do so. The plain reading of RCW 51.08.178(1), and the legislature's inclusion of the word "monthly", only allows for two different interpretations of the phrase in question, but both having the same outcome in this matter. With an industrial injury date of July 29, 2011, one could take into account Ms. Luvaas's monthly wages from all employment for the month of July 2011. Or, alternatively, one could count a month back from July 29, 2011, which would include the last couple of days in June 2011, and determine what was earned from all employment for that period of time. Either way, there is but one outcome. The monthly wages that Ms. Luvaas was receiving from all employment at the time of her injury of July 29, 2011 would include the wages she earned while in the employ of DSHS.

More so, it should be pointed out that Ms. Luvaas was, in fact, paid for the entire month of July 2011. *See* Board Exhibit 4, 5. DSHS made

payment to Ms. Luvaas, for the period of July 1, 2011 through July 31, 2011, on August 3, 2011. *See* id. Ms. Luvaas's monthly wages from DSHS were still due and owing to her on July 29, 2011.

Ms. Luvaas's monthly wages from both her job of injury as well as DSHS should be used to calculate her timeloss compensation rate for her industrial injury of July 29, 2011. To find otherwise would be to go against the legislature's mandate and intent that Title 51 be liberally construed in favor of Ms. Luvaas and that her suffering and economic loss be reduced to a minimum.

V. CONCLUSION

For the foregoing reasons, Ms. Luvaas respectfully requests that this Court reverse the superior court order granting summary judgment for Respondent while denying summary judgment for Ms. Luvaas and remand this matter to the trial court for entry of an order in favor of Ms. Luvaas with instruction to include Ms. Luvaas's wages from DSHS in the calculation of her timeloss compensation rate.

RESPECTFULLY SUBMITTED this 8th day of December, 2014.

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Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of December, 2014, I served the foregoing document upon all parties of record in this proceeding to each party or his attorney or authorized representative listed below via ABC Legal Messenger:

DOCUMENT: Brief of Appellant

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