NO. 96161-1

SUPREME COURT OF THE STATE OF WASHINGTON

BRANDON APELA AFOA,

Petitioner,

v.

DEPARTMENT OF LABOR AND INDUSTRIES,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The jury that decided Brandon Afoa's appeal followed the same procedures that juries have followed for over 90 years in workers' compensation appeals. This Court has rejected Afoa's constitutional arguments contesting this procedure. *State v. Clausen*, 65 Wash. 156, 210-11, 117 P. 1101 (1911), held that there is no right to a jury trial under article I, section 21 of the state constitution in workers' compensation appeals. *Clausen* also rejected the argument that only a jury can resolve a dispute when the amount of compensation is at issue.

As RCW 51.52.115 requires, the jury reviewed evidence introduced at the Board of Industrial Insurance Appeals. The trial court's compliance with RCW 51.52.115 creates no issue for review because the Legislature can shape the scope of appellate review. Under RCW 51.52.115, the jury sits as an appellate body in workers' compensation appeals, a fact that Afoa neglects when he argues that juries should take new evidence and observe witnesses to assess credibility. Appellate bodies do not take new evidence or scrutinize witness demeanor. They review the established record, as the jury did here.

The Court of Appeals' decision affirming this procedure applies well-established principles of appellate jurisdiction and stare decisis. Afoa shows no reason for review.

II. COUNTERSTATEMENT OF THE ISSUE

Discretionary review is not warranted but if the Court were to grant review, the following issue would be presented:

> In *Clausen*, this Court held that there is no constitutional right to a jury trial under article I, section 21 of the state constitution in workers' compensation appeals. Can Afoa still claim a constitutional violation of his right to a jury trial in his workers' compensation appeal when the trial court did not permit Afoa's sister to read her own testimony, allow the jury to ask her questions, or permit live testimony?

III. STATEMENT OF THE CASE

A. The Department Provides 16 Hours of Attendant Care Services to Afoa

In 2007, Brandon Afoa suffered severe injuries while working at Sea-Tac airport, resulting in paraplegia and a severe right arm injury. AR Afoa 20; AR Nutter 7.[1] He cannot move his legs and has no right hand function. AR Nutter 7, 14.

The Department provides in-home attendant care services to Afoa. AR Baker 86; *see* WAC 296-23-246(2); *see also* RCW 51.32.060(3). These include personal care services necessary to maintain a worker at home. WAC 296-23-246(1). The Department determines the maximum

[1] The portion of the administrative record (the certified appeal board record) that consists of witness testimony is cited as "AR" followed by the witness name and page number. Other portions are cited as "AR" followed by the page number that the Board applied when it prepared the record for superior court.

hours of authorized attendant care services based on an independent nursing assessment of the worker's care needs. *See* WAC 296-23-246(6).

Afoa's father Mataala Te'o and his sister Hannah Mulifai provide attendant care services. AR Te'o 9-12. Before April 2013, the Department paid for 16 hours of attendant care. AR Baker 94. The Department received a request to authorize 24 hours of attendant care. AR Baker 94.

In April 2013, a nursing consultant assessed Afoa at home to determine whether he needed additional hours of attendant care to keep him in his home. *See* WAC 296-23-246(6); AR Baker 74, 76, 78, 93-94. The nurse reviewed Afoa's medical and caregiver records, spoke to his caregivers, and observed the services they provided. *See* AR Baker 79-87.

The nurse recommended 16 hours of attendant care. AR Baker 86-87. She testified that she added up the specific amount of time it took for his caregivers to perform the tasks. AR Baker 87; *see also* AR Skoropinski 98, 119. The Department issued an order that denied coverage for a 24-hour attendant care. AR 18.

B. The Board Agreed that Afoa Needed 16 Hours of Attendant Care Services a Day

Afoa appealed the Department's order to the Board of Industrial Insurance Appeals. AR 18. At hearing, Afoa's father and sister testified about their services, how often they performed each service, and how long

each service took. AR Te'o 21-24; AR Mulifai 34-50. Afoa's doctor testified that Afoa needed 24 hours of home care. AR Nutter 52. The Board affirmed the Department's order. AR 3, 23.

C. The Superior Court Denied Afoa's Request to Allow His Sister to Read Her Own Testimony and to Allow the Jury to Ask Her Questions

Afoa appealed to superior court. CP 1. His trial brief stated that he "may also offer to have Ms. Mulifai read her own testimony transcript to the jury." CP 21. His trial brief did not state that he would ask any other witnesses to read their own testimony to the jury. *See* CP 15-22.

The Department moved in limine, arguing that allowing Afoa's sister to read her own testimony would be unduly prejudicial. CP 27-28. In his response, Afoa also asked that Mulifai answer questions that the jury might submit under CR 43(k), a rule that gives the trial court full discretion whether to submit jurors' questions to a witness:

> **(k) Juror Questions for Witnesses.** The court shall permit jurors to submit to the court written questions directed to witnesses. Counsel shall be given an opportunity to object to such questions in a manner that does not inform the jury that an objection was made. The court shall establish procedures for submitting, objecting to, and answering questions from jurors to witnesses. The court may rephrase or reword questions from jurors to witnesses. *The court may refuse on its own motion to allow a particular question from a juror to a witness.*

CR 43(k) (emphasis added). CP 36, 41-42. In Afoa's response, he did not

request that any other witnesses read their own testimony and answer jurors' questions. *See* CP 36-42.

The trial court granted the Department's motion in limine. In an oral ruling, the trial court explained:

> I'm not going to allow the actual witness to read the testimony in this case given the overall circumstances of this case, and especially, of course, Mr. Moore, you even wanted to allow the jury to ask questions of the witness, which is absolutely not appropriate under the rules, and not going to be allowed.
>
> So I'm not going to allow her to read the testimony.

RP 20; *see also* RP 23. The jury affirmed the Board's decision. CP 70-72.

D. The Superior Court Denied Afoa's Motion for a New Trial to Present Evidence That the Board Never Had an Opportunity to Consider

Afoa moved for a new trial, asking for the first time to present additional evidence to the jury that the Board had not considered. CP 50, 55. Specifically, he asked "to present live witness testimony of his caregivers and of the Department's witnesses, *with testimony not limited to that which was heard at the Board of Industrial Insurance Appeals*." CP 50, 55 (emphasis added). The trial court denied his motion.[2] CP 62-63.

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[2] The trial court instructed the jury that it could only consider evidence in the Board record and that the parties could not bring witnesses into court. CP 84. Because Afoa has not shown that he objected to this instruction, he has waived any challenge to this instruction. And, as explained below, because he can show no constitutional error, any attempt to challenge this instruction on appeal under RAP 2.5(a)(3) fails.

Afoa appealed. He argued that limiting the record in a workers' compensation appeal to the evidence presented at the Board violated his right to a jury trial under article I, section 21 of the state constitution and the separation of powers doctrine. *Afoa v. Dep't of Labor & Indus.*, 3 Wn. App. 2d 794, 796, 418 P.3d 190 (2018). The Court of Appeals, Division One, affirmed. *Id.* at 797.

IV. ARGUMENT

This Court should deny review because the Court of Appeals applied settled law and principles of appellate jurisdiction when it rejected Afoa's challenges to the procedures for workers' compensation appeals in superior court. *Clausen* held that there is no constitutional right to a jury trial under article I, section 21 of the state constitution in a workers' compensation appeal to superior court. 65 Wash. at 210-11. That holding, which this Court has subsequently affirmed, dispenses with Afoa's arguments that his jury right is constitutional and that the superior court's application of the procedures in RCW 51.52.115 hampered that right. The application of well-settled law does not warrant review.

And the state constitution authorizes the Legislature's decision in RCW 51.52.115 to limit the jury's review in workers' compensation appeals to the Board record. The state constitution gives the Legislature the power to shape appellate review. Const., art. IV, § 6; *Stewart v. Dep't*

of Emp't Sec., 191 Wn.2d 42, 52-53, 419 P.3d 838 (2018). When the superior court reviews an administrative decision, it acts in a limited appellate capacity. *Stewart*, 191 Wn.2d at 52. The Department has original jurisdiction to decide workers' compensation matters, and the Board, superior court, and appellate court have appellate jurisdiction only. *Kingery v. Dep't of Labor & Indus.*, 132 Wn.2d 162, 171, 937 P.2d 565 (1997); RCW 51.04.010. From an administrative proceeding, such as the Board proceeding, the Legislature is not constitutionally required to provide an appeal right, and it may shape the scope of any appellate review it provides. *See Williams v. Seattle Sch. Dist. No. 1*, 97 Wn.2d 215, 218, 643 P.2d 426 (1982); Const. art. IV, § 6 (appellate jurisdiction in the superior court exists "as may be prescribed by law").[3] From this backdrop it is apparent that the Legislature provided a jury trial for workers' compensation appeals out of policy concerns, not constitutional dictates.

A. The Court of Appeals' Application of Settled Law That Article I, Section 21 Does Not Apply in Workers' Compensation Appeals Is Not a Significant Question of Constitutional Law or a Matter of Substantial Public Interest

There is no significant question of constitutional law under RAP 13.4(b)(3) about whether Afoa has a constitutional right to a jury trial under article I, section 21. He does not, as *Clausen* and later cases

[3] Without a statutory right to appeal, a statutory or constitutional writ would be available. *Williams*, 97 Wn.2d at 218.

establish. Nor is there matter of substantial public interest under RAP 13.4(b)(4) because he establishes no right to live witnesses before a jury.

1. *Clausen* held there is no constitutional right to a jury trial under article I, section 21, and later cases affirmed this principle

The state constitution provides a right to a jury trial:

> The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

Const., art. I, § 21. But "the right of trial by jury is not limitless." *Davis v. Cox*, 183 Wn.2d 269, 289, 351 P.3d 862 (2015). Article I, section 21 guarantees those jury trial rights that existed when the constitution was adopted in 1889. *Bird v. Best Plumbing Grp., LLC*, 175 Wn.2d 756, 768, 287 P.3d 551 (2012). There is no right to a jury trial "in statutorily created actions without common law analogues." *Id.* at 769 (quoting *State v. State Credit Ass'n*, 33 Wn. App. 617, 621, 657 P.2d 327 (1983)).

Workers' compensation actions are statutorily created actions without common law analogues. Unlike a plaintiff in a common law tort claim, a workers' compensation claimant can receive benefits for a workplace injury even if nobody is at fault for the injury. *See* RCW 51.04.010; *Clausen,* 65 Wash. at 176-77. At common law, an injured

worker could only recover through tort. *See* RCW 51.04.010; *Floyd v. Dep't of Labor & Indus.*, 44 Wn.2d 560, 573, 269 P.2d 563 (1954); *Clausen,* 65 Wash. at 188-89. But the Legislature enacted the Industrial Insurance Act because it determined that common law tort remedies were "uncertain, slow, and inadequate." RCW 51.04.010; *see Clausen,* 65 Wash. at 169.

Clausen held that there is no constitutional right to a jury trial for workers' compensation appeals under article I, section 21. 65 Wash. at 208-11. There, the state auditor refused to issue a warrant to pay a bill under the recently enacted Industrial Insurance Act. *Id.* at 168. The auditor asserted that the Act's provision making jury trials discretionary violated article I, section 21 of the state constitution.[4] *Id.* at 175-76, 207. The auditor argued that a worker had a constitutional right to have a jury decide "the amount that may be recovered" from a work injury, just as a plaintiff would in a tort case. *Id.* at 207.

But *Clausen* soundly rejected the argument that workers had a constitutional right to a jury under the Act, the same argument that Afoa

[4] Under the original 1911 Act, in a worker's appeal of a Department order, the trial court had full discretion over whether to impanel a jury, except in some employer appeals. *See* Laws of 1911, ch. 74, §§ 9, 15, 16, 20. Juries were mandatory in those limited cases. Laws of 1911, ch. 74, §§ 9, 15, 16, 20. In 1939, the Legislature first provided a statutory right to jury trial on demand. Laws of 1939, ch. 184, §1; *Floyd,* 44 Wn.2d at 574.

makes here. As *Clausen* explained, the right to a trial by jury in civil cases "is incident only to causes of action recognized by law." 65 Wash. at 210. The Act eliminated the employee's negligence cause of action, as well as the employer's defense to such an action, and "merge[d] both in a statutory indemnity fixed and certain." *Clausen,* 65 Wash. at 210. This new statutory scheme did not implicate the right to trial by jury because that right depended on the cause of action of negligence, which no longer existed:

> If the power to do away with a cause of action in any case exists at all in the exercise of the police power of the state, then the right of trial by jury is thereafter no longer involved in such cases. The right of jury trial being incidental to the right of action, to destroy the one is to leave the other nothing upon which to operate.

Clausen, 65 Wash at 210-11. So *Clausen* rejected the auditor's constitutional challenge under article I, section 21—the same challenge Afoa brings here—noting that a statutory remedy now existed for workplace injuries. *Id.* at 175, 208-212.

This Court has reaffirmed *Clausen*'s article I, section 21 holding. In *State v. Mountain Timber Co.*, 75 Wash. 581, 583, 135 P. 645 (1913), *aff'd sub nom. Mountain Timber Co. v. Wash.*, 243 U.S. 219, 37 S. Ct. 260, 61 L. Ed. 685 (1917), this Court explained that the Act "abolished rights of actions and defenses, and in certain cases denied the right of trial

by jury." And, decades later, this Court again confirmed that the Legislature "had a right to abrogate the right to trial by jury as provided in the 1911 act." *Floyd*, 44 Wn.2d at 573; *see also Shea v. Olson*, 185 Wash. 143, 156, 53 P.2d 615 (1936) (tort case citing *Clausen* and *Mountain Timber* for the proposition that because statute at issue "abolished all right of recovery for negligence, there was nothing left to be tried by a jury.").

2. Because there is no constitutional right to a jury trial in workers' compensation appeals, there was no violation here

If the Legislature does not violate article I, section 21 if it declines to allow a jury in a workers' compensation appeal at all, there can be no violation if the Legislature adopts a statute that allows a jury to review the case on the Board record. In Afoa's case, the trial court followed RCW 51.52.115 and impaneled a jury, made a discretionary decision about who could read the testimony, and, consistent with RCW 51.52.115, did not allow the jury to ask questions or consider live testimony other than what the Board considered. Because Afoa had no constitutional right to a jury trial, the trial court did not hamper that right when it followed the procedures in RCW 51.52.115.

Clausen, *Mountain Timber*, and *Floyd* all support that parties have no constitutional right to a jury trial under article I, section 21 in any type of workers' compensation appeal. Afoa posits that *Clausen* and *Mountain*

Timber are narrow decisions that do not address appeals involving a "dispute over compensation." Pet. 10-11. He suggests it is a matter of "first impression" whether "an injured worker has a constitutional right to a jury trial" in a workers' compensation appeal that involves a "dispute as to the amount of compensation." Pet. 2. Afoa is mistaken.

He is mistaken because *Clausen* is clear that because the Legislature abolished the negligence cause of action for work injuries, parties do not have a constitutional right to a jury trial in a workers' compensation appeal. As *Clausen* states, the "right of trial by jury is . . . no longer involved" in cases, like workers' compensation appeals, where the Legislature has abolished the common law action. 65 Wash at 210-11. Afoa also ignores that the auditor in *Clausen* raised the precise argument he raises here: that "the amount that may be recovered" by the worker (or "the amount of compensation," in Afoa's phrasing, Pet. 2) is a factual issue that only a jury can decide. *Id.* at 207. *Clausen* rejected that argument since the Legislature abolished workers' common law negligence action, replacing it with the workers' compensation system. *Id.* at 207-08.

Clausen was right to reject that argument because a jury in a workers' compensation appeal can never decide the amount of damages. In a workers' compensation appeal, if a jury concludes that a worker is

entitled to compensation, the jury does not decide the amount of the benefit. The statute determines that amount. *See* RCW 51.32.060, .080, .090. Afoa equates "damages" with "compensation," but this is a false equivalence. Pet. 12. Unlike in a tort case, the jury in a workers' compensation case cannot assess the facts surrounding damages to arrive at an amount it believes would fairly compensate the worker for the worker's injuries.

Afoa seeks to circumvent precedent by suggesting that *Clausen* is limited to a bill dispute and *Mountain Timber* to employer premiums. Pet. 10-11. That narrow reading is incorrect. As *Clausen* recognizes, the Legislature either did away with the jury trial right when it abrogated the common law, or it did not. There is no constitutional right to a jury trial in any workers' compensation appeal. The right is statutory only, and it is undisputed that the trial court followed the statutory procedures here. RCW 51.52.115.

3. The Court of Appeals' decision is consistent with this court's *Sofie* and *Dacres* Decisions

There is no conflict between the Court of Appeals' decision and this Court's decisions in *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 771 P.2d 711 (1989), and *Dacres v. Oregon Railway & Navigation Co.*, 1 Wash. 525, 20 P. 601 (1889), contrary to Afoa's arguments. Pet. 12. Both

cases are different for two reasons: they involved the superior court's original jurisdiction and they involved common law causes of action. By contrast, a workers' compensation appeal involves the superior court's appellate jurisdiction and is not a common law cause of action, but a statutorily created one. There is no conflict.

Sofie did not recognize a constitutional right to a jury in a workers' compensation case. It held that the Legislature could not cap noneconomic damages in tort cases because juries determine damages. *Sofie*, Wn.2d at 638. *Sofie* expressly distinguished its holding from the Industrial Insurance Act context because the Legislature had abolished the common law cause of action for workplace injuries. *Id.* at 651.

There is also no conflict with *Dacres*. Pet. 9-10. *Dacres* involved a common law action for damages (for animals killed or maimed by railroads), so the Legislature could not enact a statute taking the damages determination away from the jury. 1 Wash. at 527, 529. But this case does not involve the common law; the Legislature has abolished the common law and adopted a statutory scheme that gives injured workers "sure and certain relief . . . regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation." RCW 51.04.010; *Clausen,* 65 Wash. at 177-78. *Dacres* does not conflict.

4. An agency can limit a jury's review to the agency record in special proceedings without violating article I, section 21

Afoa's failure to acknowledge that the state constitution allows the Legislature to shape appellate review leads to another error: he is wrong that the Legislature cannot create special proceedings with procedures different from civil trials. *Contra* Pet. 17. The Legislature did not allow live testimony in workers' compensation appeals because the jury sits as an appellate body. His arguments about "special proceedings" create no reason for review.

The superior court civil rules do not apply to "special proceedings" if statutes that govern special proceedings are inconsistent with the civil rules. The civil rules govern the procedure in all civil suits in superior court, "whether cognizable as cases at law or in equity *with the exceptions stated in rule 81*." CR 1 (emphasis added). Under CR 81, the civil rules govern "all civil proceedings" except "where inconsistent with rules or statutes applicable to special proceedings." CR 81(a).

Workers' compensation cases are "special proceedings," as this Court recognized in *Putman v. Wenatchee Valley Medical Center, P.S.*, 166 Wn.2d 974, 216 P.3d 374 (2009). Special proceedings under CR 81 include "those where the legislature has exercised its police power and entirely changed the remedies available (such as the workers'

compensation system)." *Putman*, 166 Wn.2d at 982; *see also Scheib v. Crosby*, 160 Wn. App. 345, 352, 249 P.3d 184 (2011). Because the Legislature created a new proceeding by enacting the Industrial Insurance Act in 1911, workers' compensation appeals are special proceedings.

The Court of Appeals correctly applied *Putman* and concluded that a workers' compensation appeal is a special proceeding. *Afoa*, 3 Wn. App. at 810-11. Afoa cites CR 81(b) to argue that his jury trial rights cannot be abrogated by labeling them "special proceedings." Pet. 17. But this argument both ignores *Putman* and fails to read CR 81(a) and CR 81(b) in harmony. CR 81(b) states: "*Subject to the provisions of section (a) of this rule*, these rules supersede all procedural statutes and other rules that may be in conflict." (Emphasis added). So the civil rules supersede all procedural statutes, subject to the provisions of CR 81(a), which says that the civil rules do not apply "where inconsistent with rules or statutes applicable to special proceedings." Because workers' compensation appeals are special proceedings, the Legislature's procedures in RCW 51.52.115 apply.

The Court of Appeals correctly applied *Putman* here, and its holding applies only to workers' compensation appeals. Afoa exaggerates the Court's holding, raising the specter that the Legislature could abolish all jury trials and replace them with "special proceedings." Pet. 19. His

hypothetical misses the mark because article I, section 21 guarantees those jury trial rights that existed when the constitution was adopted in 1889. *Bird*, 175 Wn.2d at 768. The Court of Appeals' correct application of *Putman* does not raise a matter of substantial public interest.

B. Because the Superior Court Has Appellate Jurisdiction in Workers' Compensation Appeals, There is No Conflict with This Court's Cases About Jury Credibility Determinations in Original Actions

Because juries in workers' compensation appeals sit as appellate bodies, there is also no conflict between the Court of Appeals' decision and cases discussing a jury's ability to assess witness credibility. Pet. 14.

The Legislature may prescribe rules for judicial review of agency decisions. *Stewart*, 191 Wn.2d at 53. The Department has original jurisdiction to decide workers' compensation matters, and the Board, superior court, and appellate court have appellate jurisdiction only. *Kingery*, 132 Wn.2d at 171; RCW 51.04.010. Consistent with bedrock principles of appellate review, the Legislature limited review on appeal to the record below. RCW 51.52.115. That comports with article IV, section 6 of the state constitution and does not conflict with the cases Afoa cites about jurors' ability to assess credibility.

Afoa cites several cases about the need for jurors to assess witness credibility. Pet. 14-16 (citing *State v. Demery*, 144 Wn.2d 753, 762, 30

P.3d 1278 (2001); *Herriman v. May*, 142 Wn. App. 226, 234, 174 P.3d 156 (2007); *Kinsman v. Englander*, 140 Wn. App. 835, 843-44, 167 P.3d 622 (2007); *In re Marriage of Swaka*, 179 Wn. App. 549, 554, 319 P.3d 69 (2014)). But none of these cases involves workers' compensation appeals in which the jury sits in an appellate capacity and reviews the Board record. These cases all involve the superior courts' original jurisdiction and so they do not apply.

Reading transcripts to the jury, as RCW 51.52.115 contemplates, complies with constitutional requirements. The Court of Appeals has rejected a constitutional challenge in the procedural due process context to the same procedure Afoa attacks here: reading the transcripts to the jury. In *Buffelen Woodworking v. Cook*, 28 Wn. App. 501, 502-03, 507, 625 P.2d 703 (1981), the Court held that this procedure did not violate due process. The Court thus rejected the argument, much like Afoa's, that a jury must have the benefit of live testimony when a case turns on credibility. *Id.* at 505-07; *see also Zavala v. Twin City Foods*, 185 Wn. App. 838, 869, 343 P.3d 761 (2015) (rejecting the argument that the superior court cannot assess credibility in a workers' compensation appeal because it has not "watched and heard the witnesses.").

C. Allowing Parties to Present New Evidence to the Jury Would Harm Workers

The remedy that Afoa seeks in his particular case would harm injured workers in many other cases. If, despite the dictates of RCW 51.52.115, parties were not limited to the Board record when they presented their case to the jury, parties with more financial resources would have an incentive to bolster their chances on appeal by paying for additional expert testimony to make their case stronger. In most cases, the Department or self-insured employer has more financial resources to pay for expert medical testimony.

Under Afoa's theory, the more well-heeled party would be in a better position to present new evidence on appeal. RCW 51.52.115 instead treats the parties fairly by requiring them to put on their case at the Board. This system has existed for decades, and it benefits workers because it means that they do not have to pay for witnesses at the Board and then at superior court, but provides a second chance to prevail under a de novo review of the Board's record.

V. CONCLUSION

The trial court followed RCW 51.52.115 and allowed Afoa to present his case to the jury. The Court of Appeals' decision applying settled law creates no matter of substantial public interest or a substantial

question of constitutional law. Nor did it conflict with any decision of this Court or the Court of Appeals. It did not violate the state constitution when it declined to allow any form of live testimony as the jury may consider only the same evidence as the Board.

RESPECTFULLY SUBMITTED this 8th day of October, 2018.

ROBERT W. FERGUSON
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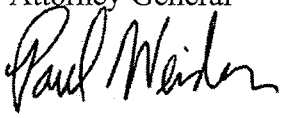

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No. 96161-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

BRANDON APELA AFOA, Petitioner, v. DEPARTMENT OF LABOR AND INDUSTRIES, Respondent.	DECLARATION OF SERVICE

DATED at Seattle, Washington:

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, I filed and served the Department's Answer to Petition for Review to counsel for all parties on the record as follows:

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DATED this 8th day of October, 2018.

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