NO. 100605-5

SUPREME COURT OF THE STATE OF WASHINGTON

RONALD CORDOVA,

Petitioner,

v.

CITY OF SEATTLE and DEPARTMENT OF LABOR AND INDUSTRIES,

Respondents.

DEPARTMENT OF LABOR AND INDUSTRIES' ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

Paul Weideman
Assistant Attorney General
WSBA No. 42254
Office Id. No. 91018
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 389–3820

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Rules

Regulations

Other Authorities

I. INTRODUCTION

This case presents no issue of substantial public interest, as its unique facts are unlikely to recur. Tracy Cordova missed a statute of limitations deadline to file a workers' compensation death benefit claim, even though the Department of Labor& Industries (L&I) informed her—over two months before the deadline—to file a claim because it had no record of one. Instead, she filed the claim five months after the deadline. Her carelessness is not an issue of substantial public interest.

Cordova also shows no conflict with the Court of Appeals' application of the well-established rule in *Nelson v. Department of Labor & Industries*, 9 Wn.2d 621, 115 P.2d 1014 (1941). Under that rule, a workers' compensation claim must "reasonably direct[] [L&I's] attention to the fact that an injury with its particulars has been sustained and that compensation is claimed." *Nelson*, 9 Wn.2d at 629.

Unlike other surviving spouses who file workers' compensation death benefits claims with L&I, Cordova applied

to the Department of Retirement Systems (DRS) for a separate, one-time death benefit through her husband's retirement system, the Law Enforcement Officer and Fire Fighter Retirement System Act (LEOFF). But, as she concedes, when L&I told her attorney that it had no record of a workers' compensation claim and informed her that she must file a notice of accident to start a workers' compensation claim, she did not file that notice, though she still had time under the statute of limitations. *See* Pet. 7. Instead, she filed the claim five months late and argued that her DRS application was also a workers' compensation claim.

It turns out that this was a strategic choice. As she conceded at oral argument, she believes that every application for a one-time LEOFF death benefit is also a workers' compensation claim. Cordova's strategic choice to disregard L&I's explicit notice to file a claim and to rely instead on her DRS application as a workers' compensation claim is entirely unique to her. The Court should deny review.

II. ISSUES

1. A claim for workers' compensation benefits must "reasonably direct[]" L&I's attention to an injury and a claim for workers' compensation benefits. *Nelson*, 9 Wn.2d at 629. Cordova filed a claim with DRS for a one-time death benefit under her husband's retirement system. Was this a claim for workers' compensation when the application had the DRS logo, named DRS, and referred to DRS benefits?

2. Equitable estoppel against the government is disfavored but may apply if a party proves each of five elements by clear, cogent, and convincing evidence, including that the government acted inconsistently. L&I told Cordova's attorney that it had no record of a workers' compensation claim and asked her to send in a claim. Should L&I be estopped from enforcing the one year deadline for filing a workers' compensation claim under RCW 51.28.050?

III. STATEMENT OF THE CASE

A. Tracy Cordova Applied to DRS for a One-Time LEOFF Death Benefit

In April 2017, Ronald Cordova, a Seattle Police Department detective, died at home. AR 69.[1, 2] An officer's

[1] The Certified Appeal Board Record is cited as "AR."

[2] Cordova cites documents that were excluded from evidence, including a doctor's letter about the cause of death (AR 73, 114) and a medical release (AR 72, 113). Pet. 3-6, 15. The Board struck both documents from evidence after the City

surviving spouse may apply to DRS for a one-time special death benefit under the LEOFF retirement system if the officer dies in the course of employment. *See* RCW 41.26.048; WAC 415-02-710(5). L&I determines eligibility for the benefit. RCW 41.26.048(2); WAC 415-02-710(3).

In May 2017, Cordova applied for the LEOFF benefit, on a DRS form called "One-Time Duty-Related Death Benefit." AR 67-70. The form had the DRS logo, named DRS on each page, and instructed the applicant to return the form to DRS. AR 67-70. The form did not refer to L&I or workers' compensation. AR 67-70.

---

objected to them on grounds of hearsay, authentication, and relevance (AR 50 n.5, 199-200), and the superior court considered them "only insofar as they were documents provided to DRS and passed along to LNI" and for no other purpose. CP 30-31. Cordova did not assign error to the superior court's ruling. Appellant's Br. 1. Therefore, that DRS and L&I received the letter and medical release is in evidence (CP 30-31), but the documents' substance is not. The Court should disregard Cordova's arguments that rely on excluded evidence.

On the DRS form, Cordova left blank a box asking her to "[b]riefly explain the reason you believe the death was caused by an injury sustained in the course of employment or an occupational disease or infection." AR 69. On the DRS form, Cordova did not "attest to" or "declare" "her belie[f] the death was caused by an injury sustained in the course of employment." Pet. 2-4 (alteration in original) (citing *Cordova v. Dep't of Lab. & Indus.*, No. 81947-0-I, slip op. at 2 (Wash. Ct. App. Nov. 22, 2021; AR 109-13). The sources she cites do not say this. *See* slip op. at 2; AR 69, 111. Leaving a box blank on a form is not an attestation or declaration.

In November 2017, a DRS employee emailed Cordova's application to an L&I pension adjudicator. AR 91, 116. The DRS employee also attached the death certificate, a medical release, "statements from other officers regarding the date of death," and a doctor's statement. AR 91.

B. L&I Notified Cordova That It Was Adjudicating the LEOFF Benefit but Had Not Received a Workers' Compensation Claim

At least three times before the one-year period for filing a workers' compensation claim ended, L&I informed Cordova that it was adjudicating her DRS death benefit application. AR 116, 118, 126. L&I never stated that it was processing a workers' compensation claim. AR 116, 118, 126.On December 5, 2017, L&I sent Cordova a letter confirming it had "received *your application for death benefits through the Department of Retirement Systems*." AR 116 (emphasis added). L&I stated that it determined LEOFF benefit eligibility: "The Department of Labor and Industries determines eligibility *for the death benefit you have filed for*, since the death must be either related to an injury, in the course of employment, or an occupational disease that arises naturally and proximately out of employment." AR 116 (emphasis added).

On the same day, L&I issued an order denying "*[t]he application for the death benefit provided under RCW*

41.26.048 . . . because the cause of death is not related to either an injury sustained in the course of employment or an occupational disease." AR 118 (emphasis added). The order displayed DRS claim number "DRS0202." AR 118.

On January 25, 2018, an attorney sent L&I a notice of representation letter. AR 120. The letter included a claim number of "DRS0202" and stated below that the attorney represented Cordova "with regard to the Labor and Industries claim referenced above." AR 120.

In February 2018, L&I responded, stating that it was "unable to locate a claim for this injured worker." AR 122. L&I requested that Cordova's attorney "add a current state fund claim number . . . and fax a report of accident to" L&I. AR 122. A "report of accident" in L&I parlance is an application for workers' compensation benefits. *See* RCW 51.28.010(1). When L&I sent this letter, more than two months remained for Cordova to file a workers' compensation claim. *See* RCW 51.28.050.

Cordova's attorney replied by resending his original letter with the DRS0202 claim number but added "Attn: Noreen" (the L&I pension adjudicator). AR 124. He also confirmed that Cordova protested the December 5, 2017 order denying her LEOFF benefit claim. AR 124.

C. L&I Denied Cordova's LEOFF Benefit Claim

In March 2018, L&I responded to Cordova's protest, stating that it would consider the LEOFF benefit further: "The Department of Labor and Industries has received the protest to the order . . . *denying the application for death benefits through the Department of Retirement Systems*. An order has been issued placing the order in abeyance pending a further decision." AR 126 (emphasis added).

In May 2018, L&I affirmed its denial of the LEOFF benefit claim. AR 132. Cordova's appeal is pending at the Court of Appeals.[3]

---

[3] *Cordova v. Dep't of Lab. & Indus.*, No. 82845-2-I (Wash. Ct. App. filed July 6, 2021).

D. Cordova Applied for Workers' Compensation 17 Months After Her Husband's Death, and L&I Rejected the Claim as Untimely

In September 2018, Cordova filed an application for workers' compensation death benefits based on her husband's death. AR 150. L&I denied the claim as untimely under RCW 51.28.050, and the Board of Industrial Insurance Appeals and superior court affirmed on summary judgment. AR 4, 52; CP 23-40.

At the Court of Appeals, Cordova conceded her belief at oral argument that every application for a one-time LEOFF death benefit is also a workers' compensation claim:

> Q: So are you suggesting that whenever L&I receives a one-time death benefit request, I'm sorry, the Department of Retirement Systems receives a one-time death benefit request that they have an obligation at that time to assume that the party is also requesting Title 51 benefits?
>
> A: Not DRS, but I believe the employer, the answer is yes and with Labor and Industries, the answer is yes. This went to Labor and Industries.

> Q: Well, it went to the Pension Adjudication section of Labor and Industries.
>
> A: Yes, sir.
>
> Q: So you're suggesting that whenever the Pension Adjudication Section, whose job it is to investigate and determine eligibility on behalf of DRS for the one-time duty death-related benefit, should assume that every application they get is also requesting Title 51 benefits?
>
> A: Yes, sir. That's exactly what I'm saying.

Oral Argument at 3:29-4:24, *Cordova v. City of Seattle*, 20 Wn. App. 2d 139, 501 P.3d 601 (2021) (No. 81947-0-I), https://tvw.org/video/division-1-court-of-appeals-2021091148/?eventID=2021091148&startStreamAt=209 .

The Court of Appeals affirmed in a published decision. *Cordova*, 501 P.3d at 606. Applying *Nelson*'s standard, the Court held that the LEOFF benefit application was not a workers' compensation claim: "Her May 2017 application was titled 'One-Time Duty-Related Death Benefit' and bore either the DRS logo and/or 'Department of Retirement Systems' on

each page. It made no mention of workers' compensation benefits and sought only a LEOFF one-time death payout—a separate benefit from a different government agency. *Id.* at 604. The Court noted that, despite L&I's notice that it had no record of a claim, Cordova's "attorney made no effort to explain that [Cordova] was seeking both LEOFF and Title 51 RCW benefits." *Id.* at 605.

IV. REASONS WHY REVIEW SHOULD BE DENIED

Cordova meets none of RAP 13.4 criteria that she cites for review. Her decision to treat her LEOFF application as a workers' compensation claim was a unique strategic choice unique to her, not an issue of substantial public interest under RAP 13.4(b)(4). Also, unique to her, though L&I told her it had no record of a workers' compensation claim and asked her to file one (AR 122), her attorney "made no effort" to explain to L&I that she sought both LEOFF and workers' compensation benefits. *Cordova*, 501 P.3d at 605.

Cordova's strategic choice to treat her LEOFF application as a workers' compensation claim will not affect "thousands of Washington's public servants and their families" (Pet. 22). It is far more likely they will follow the usual statutory process to apply for workers' compensation and will respond to L&I if made aware they haven't applied.

Further, Cordova shows no conflict under RAP 13.4(b)(1)–(2). The Court of Appeals did not "ignore[] this Court's command" to liberally construe the Industrial Insurance Act (Pet. 11); instead, it cited the liberal construction doctrine and applied *Nelson*'s standard about what constitutes an "application" for workers' compensation benefits.

Cordova also cannot establish equitable estoppel. This is a meritless position when L&I informed her that she needed to apply for benefits.

A. Cordova's Unique Theory About Applying for Workers' Compensation Benefits Does Not

Warrant Review Under RAP 13.4(b)(4), as It Affects Only Her

Cordova did not heed L&I's notice to send a report of accident to start a workers' compensation claim. AR 122. She instead allowed the one-year statute of limitations to file a workers' compensation claim to run.

The Legislature created a clear process for survivors to apply for workers' compensation death benefits when "death results from the injury." RCW 51.32.050(1). Survivors must file an application with "[L&I] or [the] self-insurer as the case may be." RCW 51.28.030. And, under case law, the application must be a "writing filed with the department" that "reasonably directs its attention to the fact that an injury with its particulars has been sustained and that compensation is claimed." *Nelson*, 9 Wn.2d at 629. Survivors must file a claim within one year of the injury. RCW 51.28.050. These are basic filing requirements, not "filing technicalities" Pet. 1.

Many survivors have followed this procedure to obtain workers' compensation death benefits under RCW 51.32.050,

as a brief review of case law illuminates. *See, e.g.*, *Thorpe v. Dep't of Lab. & Indus.*, 145 Wash. 498, 499, 261 P. 85 (1927); *Dep't of Lab. & Indus. v. Shirley*, 171 Wn. App. 870, 877, 288 P.3d 390 (2012). But Cordova never did, though L&I informed her it was necessary. AR 122.

Cordova argues that the workers' compensation and LEOFF death benefits were "functionally identical benefits" and that the Court of Appeals "requires beneficiaries to file redundant forms." Pet. 18. Not so. Though L&I determines eligibility for both benefits, the benefits have different eligibility criteria and are paid by separate entities and from separate funds.

To assess eligibility, L&I needs distinct information for each benefit. Eligibility for the LEOFF special death benefit turns not just on "proof of a work-related death" (Pet. 18), but also on the decedent's status as a full-time, fully compensated LEOFF member meeting the relevant definition of "law enforcement officer" or "firefighter." *See* RCW 41.26.030,

.040; WAC 415-02-710(2). Under workers' compensation, any worker acting in the course of employment and not statutorily excluded may receive benefits. RCW 51.08.013; RCW 51.12.020.

The benefits differ in how they are paid as well. As a self-insured employer, the City of Seattle funds its employees' workers' compensation benefits. RCW 51.14.170. For state fund employers, L&I pays workers from funds that consist of employers' and employees' contributions. RCW 51.04.020(2); RCW 51.16.035, .140; RCW 51.44.010, .020. LEOFF benefits are paid from an actuarial reserve system, including member contributions. RCW 41.26.020.

In any case, survivors should choose what benefits to seek, not L&I. *Nelson* requires an objectively verifiable request for workers' compensation benefits that preserves workers' choice. Requiring a public agency to be a mind reader places the agency in "an untenable position." *Bonamy v. City of Seattle*, 92 Wn. App. 403, 409, 960 P.2d 447 (1998). Here, L&I

even explained how to file a workers' compensation claim if Cordova wished to do so.

Cordova posits, without evidence, that other survivors of deceased officers and firefighters will face her situation. Pet. 26. Much more likely is that they will follow the statutory procedure for filing a workers' compensation claim, which just requires basic information about an injury and can be filed on L&I's report of accident form. No evidence exists that others routinely disregard L&I's disavowal of a claim, as Cordova did. Even if there was any confusion, the Court of Appeals' decision puts to rest the notion that a survivor can ignore L&I or rely on a LEOFF application for workers' compensation.

B. Cordova Shows No Conflict With This Court's Decisions in *Nelson* or *Beels*

Cordova shows no conflict with *Nelson* to justify review under RAP 13.4(b)(1). Under *Nelson*, a writing is an application for workers' compensation benefits if it "reasonably directs [L&I's] attention to the fact that an injury with its particulars has been sustained and that compensation is

claimed." *Nelson*, 9 Wn.2d at 629. Necessarily, under this objective standard, it is L&I's perspective—not the worker's—that is relevant. Cordova's LEOFF application did not reasonably direct L&I to "an injury with its particulars" or to a claim for workers' compensation.

Nothing in Cordova's LEOFF application to DRS directed L&I's attention to the injury's particulars. She left the space blank that asked about the injury (AR 69), and though DRS sent L&I statements from a doctor and co-workers with the alleged injury's details (AR 91), the substance of the doctor's statement was excluded as hearsay, and the co-workers' statements were stricken as irrelevant, unauthenticated, and inadmissible hearsay. CP 30-31. Cordova did not assign error to any of the superior court's evidentiary rulings. Appellant's Br. 1. So no admissible evidence backs Cordova's claims that the officers' statements "support[ed] Ms. Cordova's application to DRS" or described "the circumstances" of his death, besides the date. Pet. 5, 31 (citing

AR 91). Accordingly, there is insufficient evidence of the injury's particulars under *Nelson*.

Even more crucially under *Nelson*, the LEOFF application did not reasonably direct L&I that Cordova claimed workers' compensation. *Nelson* is distinguishable because the worker there sent a petition to L&I that described a new injury to the worker, but which L&I treated as solely relating to previously identified injuries on an existing workers' compensation claim. 9 Wn.2d at 624-25, 628-30. Here, in contrast, Cordova directed no document to L&I until the statute of limitations ran.

Cordova argues that the *Nelson* standard is not "onerous" (Pet. 12) and that the Court of Appeals "punishes" her "because she filed one form instead of two." Pet. 18. But it is not onerous to file an application that "reasonably directs [L&I's] attention to the fact that an injury with its particulars has been sustained and that compensation is claimed." *Nelson*, 9 Wn.2d at 629. Nor is it punishment to require a spouse to follow RCW

51.28.030—which requires that a spouse "shall make [an] application." Requiring an application specific to workers' compensation furthers the Legislature's intent in RCW 51.28.030.

Cordova's whole argument incorrectly assumes that the LEOFF death benefit is the same as the death benefit under the Industrial Insurance Act. Pet. 18. But as discussed above (*see supra* Part IV.A), this is not correct because the benefits have different eligibility criteria and are paid by different agencies using distinct funds, so when this argument crumbles away, Cordova would have to concede that she must file a workers' compensation claim.

Cordova asserts that the same evidence would be used to apply for either benefit (Pet. 18), but this ignores the distinct eligibility criteria and the fact that, under *Nelson*, L&I cannot adjudicate a claim for which it lacks notice. L&I does not have notice of a workers' compensation claim merely because it receives documents relevant to a claim, like a death certificate,

co-worker statements, or a doctor's letter. *Contra* Pet. 15-16. Such documents here did not "reasonably direct" L&I's attention to the fact that Cordova sought benefits apart from the LEOFF benefit, especially where L&I disavowed any claim. Notice to L&I is key to impose a requirement to act on a claim for benefits. *See Boyd v. City of Olympia*, 1 Wn. App. 2d 17, 30, 403 P.3d 956 (2017).

That no authorizing statute appeared on the DRS application does not matter. Pet. 17. In assessing whether L&I's attention was reasonably directed to a workers' compensation claim, it is relevant that the LEOFF application had the DRS logo, listed DRS on every page, identified LEOFF as the benefit source, required remittance to DRS, and asked for a "one-time duty-related death benefit" in cash. AR 67-70. Each of these facts reasonably directed L&I to believe that Cordova claimed a one-time lump-sum payment under LEOFF, not workers' compensation. Also, under workers' compensation law, survivors' death benefits are not a one-time benefit; they

are paid monthly, which is relevant to L&I's understanding of Cordova's request. *See* RCW 51.32.050(2)(a). It was not a "legal technicalit[y]" to discern the nature of Cordova's request. *Contra* Pet. 17.

Her attorney's letters also did not claim workers' compensation (or identify an injury) under the *Nelson* standard. *Contra* Pet. 16. Confusingly, they told L&I that he represented Cordova on "the Labor and Industries claim referenced above," though no L&I claim was listed above in his letter. AR 120. L&I responded that it had no record of any claim and told Cordova where to send a report of accident, which she did not do. AR 122. After receiving no workers' compensation application in response, L&I quite reasonably could have believed that Cordova's attorney referred to her DRS claim in his letter. And, indeed, L&I treated his correspondence as a notice of appearance and protest for the LEOFF claim. *See* AR 126.

Cordova argues that, after her attorney's letters, L&I could not have "remained ignorant" that she "sought compensation because her husband died from work induced stress." Pet. 16. But she identified no injury from "stress" in her DRS application (AR 69), and the doctor's opinion and co-workers' statements that she appears to rely on for this argument (Pet. 15-16) were excluded on various grounds, including hearsay, authentication, and relevance. CP 30-31.

Cordova also shows no conflict with *Beels v. Department of Labor & Industries*, 178 Wash. 301, 34 P.2d 917 (1934). *Contra* Pet. 14-15, 17. In *Beels*, unlike here, the surviving spouse applied for workers' compensation death benefits "on a form supplied by [L&I] for reports of accidents." 178 Wash. at 302. Though her husband never applied for workers' compensation benefits during his life, the Court allowed her claim as a "new, original right arising from his death." *Id.* at 307.

In both *Nelson* and *Beels*, the worker filed a writing with L&I (a petition in *Nelson*, a report of accident in *Beels*) that both described the work injury *and* claimed workers' compensation benefits. That meets the "reasonably directs" standard under *Nelson*.[4]

Cordova's DRS application did not meet the *Nelson* standard. Her situation is like *Magee v. Rite Aid*, 144 Wn. App. 1, 182 P.3d 429 (2008), as the Court of Appeals noted. There, the court, applying *Nelson*, found that a self-insurer did not have notice of a workers' compensation claim when it received information about a supervisor's conduct from a civil lawsuit. *Magee*, 144 Wn. App. at 10-11. Though Cordova tries to distinguish *Magee* because she had "multiple contacts" with

[4] This Court has never suggested that *Nelson*'s notice standard is "of limited utility." Pet. 24 (citing *Kovacs v. Dep't of Lab. & Indus.*, 186 Wn.2d 95, 99-100, 375 P.3d 669 (2016)). *Kovacs* just clarified dicta in *Nelson* about when the one-year period for filing claims begins to run. 186 Wn.2d at 100. That clarification has no impact here, as Cordova filed her claim five months late.

L&I (Pet. 21), which processes LEOFF benefit applications, that distinction does not undermine *Magee*'s rationale where the contacts (a DRS application and her attorney's letters) never notified L&I that Cordova sought workers' compensation. Simply because DRS, by law, sends LEOFF benefit applications to L&I for adjudication does not reasonably direct L&I that an applicant seeks workers' compensation benefits in addition to the LEOFF benefits referred to in the DRS application.[5]

C. Cordova Shows No Reason to Abrogate *Nelson*, Which Protects Worker Choice

Cordova's argument to "revisit" *Nelson* is internally inconsistent. Pet. 24-25. She argues that she met the standard by filing the DRS application, while also asking the Court to "revisit" it. Pet. 2-3, 15-17, 24-25.

---

[5] By explaining that L&I determines eligibility for the LEOFF benefit, RCW 41.26.048(2) and WAC 415-02-710(3) do not "give[] applicants the impression they can seek both benefits simply by filing an application with DRS." Pet. 19. They state only that L&I determines eligibility for the LEOFF benefit using RCW Title 51 standards.

She also proposes no alternative test. If she's suggesting that L&I should process workers' compensation claims whenever it acquires documents that could sustain a claim, such a rule would eviscerate worker choice. Though Cordova uses "bureaucratic" as a pejorative (Pet. 25-26, 31), such a rule could lead to L&I unilaterally allowing or rejecting claims even if a worker doesn't want to file a claim.

Nelson's longevity is evidence of its soundness, not a sound reason to overrule it. *Contra* Pet. 23. That self-insurers and LEOFF benefits did not exist when the Court decided *Nelson* is immaterial. Pet. 23-24. The *Magee* concurrence that Cordova cites for support does not articulate any specific change to workers' compensation law after *Nelson* that would call its rationale into question. Pet. 24. Time alone does not make a rule go bad.

D. Review is Not Warranted Under RAP 13.4(b)(1) to Apply Liberal Construction Where Cordova Has Identified No Ambiguity

Cordova cites RAP 13.4(b)(1), but she shows no conflict between the Court of Appeals' opinion and this Court's application of the doctrine of liberal construction under RCW 51.12.010. The doctrine applies only when there is a statutory ambiguity, and she identifies none. RCW 51.12.010; *Harris v. Dep't of Lab. & Indus.*, 120 Wn.2d 461, 474, 843 P.2d 1056 (1993). The Court of Appeals did not "ignore[]" the doctrine; it cited and discussed the doctrine. Pet. 11; *Cordova*, 501 P.3d at 604.

E. Review is Not Warranted Under RAP 13.4(b)(1)-(2) on Equitable Estoppel Grounds when Cordova Cites No Conflicting Case

Cordova fails to cite any case from this Court (RAP 13.4(b)(1)) or the Court of Appeals (RAP 13.4(b)(2)) that conflicts with the Court of Appeals' equitable estoppel holding. Pet. 26-32. Review is unwarranted on this basis.

Rather than cite any conflicting decision (*see* Pet. 26-32), Cordova challenges the Court of Appeals' equitable estoppel rationale. That is no basis for review under RAP 13.4(b) but, in any case, equitable estoppel does not apply against L&I or the City.

Equitable estoppel against the government is disfavored. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 20, 43 P.3d 4 (2002). A party asserting estoppel against the government must prove each of five elements by clear, cogent, and convincing evidence. *Campbell v. Dep't of Soc. & Health Servs.*, 150 Wn.2d 881, 902, 83 P.3d 999 (2004). The five necessary elements, which Cordova does not cite or apply, are:

(1) An admission, act, or statement by the government that is inconsistent with a later claim;

(2) the asserting party acted in reasonable reliance on the admission, act, or statement;

(3) injury would result to the asserting party if the government was "permitted to repudiate or contradict the earlier admission, act, or statement";

(4) estoppel "is necessary to prevent a manifest injustice"; *and*

(5) granting of estoppel "must not impair the exercise of government functions."

Id.

Cordova can establish none of these elements. Neither L&I nor the City (even if it could bind L&I) told Cordova that she had filed a workers' compensation claim, only to later act inconsistently. In fact, L&I told her there was no record of a claim and asked her to file one. AR 122. This is fatal to her estoppel claim. Because there was no inconsistent admission, act, or statement, Cordova cannot show reliance or a resulting injury. Applying the well-established *Nelson* standard is fair and not manifestly unjust.

Cordova's estoppel claim appears rooted in more general equity principles. The Court of Appeals also applied more general equity principles here, citing a rule that, in industrial insurance cases, courts may grant equitable relief where a claimant's competency to understand is at issue and L&I committed misconduct. *Cordova*, 501 P.3d at 606 (citing *Rabey v. Dep't of Lab. & Indus.*, 101 Wn. App. 390, 395, 3 P.3d 217

(2000)). Cordova alleges that L&I and the City committed misconduct because "neither . . . complied with the legal duties they owed Ms. Cordova." Pet. 27. Even if true, she cites no case law that would show this would permit claim allowance. And the record does not support these claims. *Cordova*, 501 P.3d at 606.

She says L&I committed misconduct because it did not notify her of her rights under RCW 51.28.010. Pet. 27-28. But this statute requires notification only when L&I receives notice of a workplace accident; no such notice was given. Yet L&I informed Cordova that she needed to file an accident report. AR 122. Even so, any such failure would not change the one-year statute of limitations. *Leschner v. Dep't of Lab. & Indus.*, 27 Wn.2d 911, 923-24, 185 P.2d 113 (1947) (L&I has "no power" to change the one-year statute of limitations, even when estoppel is alleged); *accord Wilbur v. Dep't of Lab. & Indus.*, 38 Wn. App. 553, 556-57, 686 P.2d 509 (1984) (doctor's failure

to perform statutory duty to inform worker of rights under the Industrial Insurance Act does not excuse late claim filing).

The City also did not commit misconduct, as its answer explains. Pet. 29-31; Ans. 22-24. Though Cordova now cites the City's duties under RCW 51.28.025, WAC 296-15-320, and WAC 296-15-405 (Pet. 30), Cordova did not argue that the City failed to comply with its duties under these statutes or regulations below, which is likely why the Court of Appeals did not address them. Pet. 29-30; *see* Appellant's Br. 17-25; Appellant's Reply Br. 11-19. And of course there is no authority that L&I would be bound by a third party's neglect. *See Leschner*, 27 Wn.2d at 915, 927-28 (a doctor's and employer's failure to notify L&I of a work injury does not estop L&I from enforcing the one-year statute of limitations).

Finally, L&I agrees with the City (Ans. 5 n.4) that Cordova's allegation that DRS "did nothing with [her] application for more than six months" is speculation. Pet. 5, 32. An email exchange shows that L&I's pension adjudicator asked

the DRS employee "if you already have started on it," but the record does not contain the response, if any. AR 91. This speculative claim does not support review.

V. CONCLUSION

The Court should deny review. Cordova does not show that her approach to filing for workers' compensation benefits would affect other workers. And she shows no conflict with any case that would warrant review.

This document contains 4977 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 29th day of March, 2022.

ROBERT W. FERGUSON
Attorney General

Paul Weideman, WSBA No. 42254
Assistant Attorney General
Office Id. No. 91018
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 389-3820

WASHINGTON ST. ATTORNEY GENERAL - LABOR & INDUSTRIES DIVISION - SEATTLE

March 29, 2022 - 3:07 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	100,605-5
Appellate Court Case Title:	Ronald Cordova v. City of Seattle, et al.
Superior Court Case Number:	19-2-08599-0

The following documents have been uploaded:

- 1006055_Answer_Reply_20220329145759SC186066_9113.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was 220329DeptAnswer.pdf
- 1006055_Cert_of_Service_20220329145759SC186066_5213.pdf
  This File Contains:
  Certificate of Service
  The Original File Name was 220329COS.pdf

A copy of the uploaded files will be sent to:

- amanda@hochberglaw.net
- andrienne@washingtonappeals.com
- anne.vold@seattle.gov
- bill@hochberglaw.net
- brian@causeywright.com
- dwl@sswc-law.com
- ian@washingtonappeals.com
- jana.weaver@seattle.gov
- lniseaeservice@atg.wa.gov
- mark@markcwagner.com
- reaksa@markcwagner.com
- valerie@washingtonappeals.com

Comments:

DEPT'S ANSWER TO PETITION FOR REVIEW CERTIFICATE OF SERVICE

Sender Name: Erlyn Gamad - Email: Erlyn.Gamad@atg.wa.gov
Filing on Behalf of: Paul Michael Weideman - Email: Paul.Weideman@atg.wa.gov (Alternate Email:)

Address:
800 Fifth Avenue, Ste. 2000
Seattle, WA, 98104
Phone: (206) 464-7740

Note: The Filing Id is 20220329145759SC186066