No. 100605-5

SUPREME COURT
OF THE STATE OF WASHINGTON

RONALD CORDOVA,

Petitioner,

v.

CITY OF SEATTLE and
DEPARTMENT OF LABOR AND INDUSTRIES,

Respondents.

CITY OF SEATTLE'S AMENDED ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This case arises from the death of Seattle Police Detective Ronald Cordova, who passed away at home on April 30, 2017. Following his death, Tracy Cordova, Ronald's surviving spouse, filed applications for two separate sets of benefits that are administered and paid by two separate entities. First, in May, 2017, Tracy Cordova filed an application with the Department of Retirement Systems for a one-time duty related death benefit pursuant to the LEOFF Retirement statute (Title 41 RCW). Then, in September, 2018, she filed an application with Ronald's employer, the City of Seattle, and the Department of Labor and Industries for industrial insurance benefits pursuant to the Industrial Insurance Act (Title 51 RCW).

The Department of Labor and Industries denied Tracy Cordova's industrial insurance claim as untimely. She then argued before the reviewing court that her claim with the Department of Retirement Systems should be construed as

timely notice of an industrial insurance claim to the Department of Labor and Industries and the City. However, it is undisputed that Tracy Cordova's application for industrial insurance benefits was not filed within the statute of limitations prescribed by Title 51 RCW. For the reasons described below, Respondent City of Seattle respectfully requests this Court decline Tracy Cordova's Petition for Review.

II. COUNTERSTATEMENT OF ISSUES FOR REVIEW

A. Did the Court of Appeals err by finding that Tracy Cordova failed to file a timely application for industrial insurance benefits pursuant to Title 51 RCW?

B. Did the Court of Appeals err by finding that Tracy Cordova's application for retirement benefits pursuant to Title 41 RCW did not amount to an application for industrial insurance benefits pursuant to Title 51 RCW?

C. Did the Court of Appeals err by finding that Tracy Cordova was not entitled to equitable relief?

III. COUNTERSTATEMENT OF THE CASE

A. As a Self-Insured Employer, the City of Seattle Administers and Funds Industrial Insurance Benefits for its Employees

The City of Seattle is a self-insured employer pursuant to the Industrial Insurance Act ("IIA"), Title 51 RCW. CP2 146[1]. The Department of Labor and Industries ("DLI") regulates a self-insured employer's administration of its industrial insurance claims, pursuant to the IIA. The City administers and pays all industrial insurance benefits for its employees. RCW 51.14.020(1). CP2 224. These benefits are funded in part by City of Seattle employee contributions. RCW 51.16.140.

[1] The Clerk's Papers prepared by the Superior Court consist of two files identified as: (1) "Petitioner's Clerk's Papers, Volume 1, Pages 1-223" and (2) "Certified Board Record, filed September 25, 2019." Citations herein to the Certified Board Record are abbreviated CP2 (Clerk's Papers, volume 2) and follow the pagination of the Board's record, located in the lower right corner of each page.

B. Within Days of Ronald Cordova's Death, Tracy Cordova Filed an Application with the Department of Retirement Systems for Retirement Benefits

Ronald Cordova passed away on April 30, 2017.[2] Prior to his death, he was employed as a Detective with the Seattle Police Department. CP2 148. As a law enforcement officer, Ronald was member of the Law Enforcement Officer and Firefighter's Retirement System ("LEOFF"). CP2 67. LEOFF is governed by RCW 41.26 and its benefits are administered by the Washington State Department of Retirement Systems ("DRS"). CP2 223. LEOFF benefits are paid from a distinct fund and members can accumulate service credits from multiple employers. RCW 41.26.040(3).

Upon a LEOFF member's death, a surviving spouse can apply for a one-time duty related death benefit payment. RCW 41.26.048. The application must be filed with DRS within one

[2] The cause of Ronald Cordova's death is not before this Court. CP2 49. However, the record reflects that he passed away at home. CP2 148.

year of the date of death. *Id.* Eligibility is determined by DLI on behalf of DRS. RCW 41.26.048(2). The City of Seattle has no jurisdiction to administer benefits paid from the LEOFF fund. CP2 223-224.

On May 4, 2017, Tracy Cordova filed a timely application for benefits to DRS for a "One-Time Duty-Related Death Benefit" under Title 41 RCW.[3] CP2 54. DRS is a separate agency from DLI, with separate roles and functions. Her application does not mention industrial insurance benefits or the IIA. CP1 24-25, CP2 67-70. Pursuant to RCW 41.26.048(2), DRS transmitted some documents regarding Ronald Cordova's death to DLI to adjudicate the DRS benefit application.[4] CP2 91. However, DRS claims have distinct claim numbers from industrial insurance claims regulated by DLI. *See*

[3] This lump sum benefit is not available under the IIA.

[4] Cordova alleges that "DRS did nothing with Cordova's application for more than six months." PFR at 5. However, this assertion is purely speculative. There is no testimony in the record regarding DRS's actions during that time period.

e.g., CP2 148, 224. Cordova's DRS claim was assigned Claim No. DRS-0202. CP2 224. The DRS application was not copied to the City of Seattle. CP1 24-25, CP2 67-70.

C. Cordova's Claim for Retirement Benefits was Denied

On December 5, 2017, DLI notified Cordova that Claim No. DRS-0202 was denied. CP2 116, 118. A cover letter stated: "The Department of Labor and Industries has received your application for death benefits through the Department of Retirement Systems." CP2 116. The accompanying order stated the application for death benefits "provided under RCW 41.26.048" was denied. CP2 118. The only claim number on these documents is "DRS-0202". CP2 118.

D. The Department of Labor and Industries Informed Cordova and Her Counsel That an Industrial Insurance Claim Had Not Been Filed

After Claim No. DRS-0202 was denied, Cordova hired an attorney, who protested the denial order on January 25, 2018. CP2 120. Counsel's protest letter refers to Claim No. DRS-0202 as a "Labor and Industries claim." CP2 120. On

February 6, 2018, DLI responded that it was unable to locate an industrial insurance claim and requested they file an application for benefits or an "accident report." CP2 122. Counsel responded by simply re-sending the January 25, 2018 protest letter, referencing only Claim No. DRS-0202. CP2 124.

On May 9, 2018, DLI affirmed the December 5, 2017 order denying Claim No. DRS-0202. CP2 130, 132. Cordova then appealed to the Board of Industrial Insurance Appeals ("BIIA"). The appeal was filed under Claim No. DRS-0202. CP2 49 and is now pending before Division 1 (Number 82845-2-I).

E. Seventeen Months After Ronald Cordova's Death, Tracy Cordova Filed an Application With the City of Seattle for Industrial Insurance Benefits

On September 25, 2018, the City received an application for industrial insurance benefits, which was assigned Claim No. SK-95557. CP2 148. The application was filed by Tracy Cordova on behalf of Ronald Cordova. *Id*. On the application, the date of injury was identified as April 30, 2017. *Id*. The

application for benefits was signed by Tracy Cordova on September 14, 2018. *Id*.

Also on September 25, 2018, the City received a Beneficiary Application for Claim Benefits regarding Claim No. SK-95557. CP2 150. The date of death was identified as April 30, 2017.[5] *Id*. The Beneficiary Application for Claim Benefits was signed by Tracy Cordova on September 14, 2018. *Id*. Neither document was received by DLI prior to September 27, 2018. CP2 152-153.

On October 30, 2018, DLI denied Claim No. SK-95557. CP2 291. The order states "no claim has been filed by said worker within one year after the day upon which the alleged injury occurred." *Id*. On October 31, 2018, DLI denied Cordova's Beneficiary Application for Claim Benefits under Claim No. SK-95557. CP2 291-292. This order states "at the time of the

[5] The application states that the injury was "due to unusual stress from his job." CP2 134. Workplace stress is not compensable under the IIA. WAC 296-14-300.

unrelated death claimant was not totally and permanently disabled as a result of this claim. Application for benefits is denied." CP2 292. Cordova appealed both orders to the BIIA. The BIIA, the Superior Court and the Court of Appeals, Division 1 upheld the denial of Claim SK-95557 as untimely. Cordova then petitioned this Court for review.

IV. ARGUMENT

A. The Court of Appeals Correctly Concluded That Cordova Failed to File a Claim for Industrial Insurance Benefits Within the Statute of Limitations

1. The doctrine of "Liberal Construction" does not apply to issues of initial claim allowance pursuant to the Industrial Insurance Act.

Cordova argues that the Court of Appeals erred by not liberally construing the statute of limitations, such that her claim was not time-barred. Although liberal construction is the "guiding principle" in industrial insurance case law, workers are held to "strict proof" of their right to receive benefits. *Jenkins v. DLI*, 85 Wn. App. 7, 14, 931 P.2d 907 (1996);

Clausen v. DLI, 15 Wn.2d 62, 68, 129 P.2d 777 (1942); *In re Jullin*, 23 Wn.2d 1, 13, 158 P.2d 319, 160 P.2d 1023 (1945); *DeHaas v. Cascade Frozen Foods, Inc.*, 23 Wn.2d 754, 759, 162 P.2d 284 (1945). The doctrine of liberal construction does not apply to issues of initial claim allowance.

An application for benefits for an industrial injury must be filed within one year after the day upon which the injury occurred. RCW 51.28.050. A worker's timely filing for workers' compensation benefits is a jurisdictional limit on her right to receive compensation, and on the authority of DLI to accept that worker's claim. *Harman v. DLI*, 111 Wn. App. 920, 47 P.3d 169 (2002); *Wheaton v. DLI*, 40 Wn.2d 56, 240 P.2d 567 (1952). Allowance of an untimely filed worker's compensation claim would be "*void ab initio*." *Wilbur v. DLI*, 38 Wn. App. 553, 686 P.2d 509 (1984).

RCW 51.28.050 is a statute of non-claim. It imposes a limitation on the right to receive benefits. *Lane v. DLI*, 21 Wn.2d 420, 425–26, 151 P.2d 440 (1944). Neither the City, nor

DLI has the authority to waive the statute of limitations. *Wheaton, supra*.

The statute of limitations is strictly construed, and "substantial compliance" does not excuse the failure to file an application for benefits within the limitation period. *Continental Sports Corp. v. DLI*, 128 Wn.2d 594, 910 P.2d 1284 (1996); *City of Seattle v. PERC*, 116 Wn.2d 923, 809 P.2d 1377 (1991). In fact, this Court noted "it is impossible to substantially comply with a statutory time limit. Such a time limit is either complied with or it is not." *See City of Seattle v. PERC*, 116 Wn.2d at 928. Cordova presents no authority to overcome the well-established law on this point. Therefore, Cordova's liberal construction argument fails.

2. Eligibility for retirement benefits does not create a presumption of eligibility for industrial insurance benefits.

Cordova incorrectly asserts that LEOFF retirement benefits and industrial insurance benefits are "functionally identical." PFR at 28. First, eligibility requirements for both

benefits arise from different authorizing statutes. Eligibility for industrial insurance benefits is governed by the IIA. It arises from an injury sustained in the course of employment with a specific employer. RCW 51.32.010. Additional analysis is required to determine if the injury is compensable. RCW 51.08.100. By contrast, eligibility for LEOFF retirement benefits is based on employment as a Law Enforcement Officer as defined by RCW 41.26.030(19) and service credits can be accrued from multiple employers.

Further, the extent of benefits available under the IIA is much greater than a one-time duty-related death benefit under the LEOFF retirement statute. Under the IIA, a worker may be eligible for medical treatment, wage replacement benefits, permanent partial disability awards, vocational services, and pension benefits. *See* RCW 51.32.010, *et seq*.

Finally, the City is a self-insured employer that self-administers and solely funds the workers' compensation claims of its employees. RCW 51.14.170. It has no role in

administering or funding LEOFF retirement benefits, which are administered by DRS and funded by retirement contributions of law enforcement officers and firefighters throughout the State. CP2 223.

One court has found that the eligibility criteria for workers' compensation benefits and retirement benefits are not the same. *See Marler v. DRS*, 100 Wn. App. 494, 997 P.2d 996 (2000). The *Marler* court held that DRS was not bound by DLI's determination that an employee was not permanently and totally disabled because the standards for permanent total disability in a workers' compensation case and for total incapacity under PERS 1 were different. The *Marler* court made this finding even though the worker contended a reference to the IIA in the PERS statute created a presumption of benefit eligibility under that statute, (RCW 41.40). *Marler v. DRS*, 100 Wn. App. at 502 n.3.

Therefore, Cordova's argument that the eligibility requirements for benefits under the IIA and the LEOFF retirement statute are "functionally identical" fails.

3. The Court of Appeals correctly concluded that Cordova's DRS application was not an application for industrial insurance benefits.

It is undisputed that Cordova filed a timely application for retirement benefits to DRS. However, to qualify as an application for industrial insurance benefits, written information must be received by DLI or the self-insured employer which "reasonably directs its attention to the fact that an injury, with its particulars, has been sustained and that compensation is claimed." *Beels v. DLI*, 178 Wash. 301, 34 P.2d 917 (1934); *Nelson v. DLI*, 9 Wn.2d 621, 115 P.2d 1014 (1941); *Leschner v. DLI*, 27 Wn.2d 911, 185 P.2d 113 (1947).

The lack of a specific "authorizing statute" on the DRS application does not render it unclear or confusing. PFR at 17. It clearly identifies the benefits sought as a "One-Time Duty Related Death Benefit" and identifies Ronald Cordova as a

member of the LEOFF Retirement System. CP2 69. There is no reference to industrial insurance or workers' compensation benefits. CP2 67-70. The application was made with DRS and was not copied to the City or DLI. CP2 67-70. It was silent as to the circumstances of Ronald Cordova's death. CP2 69.

Cordova inaccurately describes the two application forms as "redundant." PFR at 18. Cordova's application for industrial insurance benefits was filed with the City and DLI. CP2 134. As stated above, the application is a "Self-Insurer Accident Report" and it identifies the City as the self-insured employer. CP2 134. Unlike the DRS application, it alleges that Cordova's death was "due to unusual stress from his job."[6] CP2 134.

Even though DLI makes determinations on behalf of DRS, Cordova cites to no authority stating that when an agency administers multiple benefits, an application for one benefit

[6] As noted above, workplace stress is not compensable under the IIA. WAC 296-14-300.

constitutes notice of an application for every other benefit that agency administers.

Further, the Opinion is consistent with prior authority. Notice of a worker seeking compensation in other forums is insufficient notice of an application for industrial insurance benefits. *See e.g.*, *Magee v. Rite Aid*, 144 Wn. App. 1, 182 P.3d 429 (2008). The Court correctly held that Cordova failed to prove how her DRS application differed "in any meaningful way from notice of Magee's injury in the form of a civil lawsuit seeking money damages" and that "neither notifies the insurer of a claim for Title 51 RCW benefits." Slip op. at 8-9.

Cordova also asserts that her counsel's January 25, 2018 letter to DLI constitutes notice of an industrial insurance claim because it contains the language "please be advised this office represents Tracy Cordova with regard to the Labor and Industries claim referenced above." CP2 120. However, the only claim referenced on this document is Claim No. DRS-0202. CP2 120, 200. Cordova cites to no authority supporting

her assertion that describing Claim DRS-0202 as a "Labor and Industries claim," somehow converts the document into an application for industrial insurance benefits.

Cordova points to the *Nelson* and *Beels* cases to support her argument that an application for retirement benefits should be construed as an application for industrial insurance benefits. However, both cases are factually distinguishable.

First, the *Nelson* Court did not address initial claim allowance. *Nelson v. DLI*, 9 Wn.2d 621, 115 P.2d 1014 (1941). It determined whether a new medical condition could be attributed to claims that had already been allowed by DLI. Nelson timely filed two workers' compensation claims, which DLI allowed, and then reopened upon receiving evidence of worsening. *Nelson v. DLI*, 9 Wn.2d at 623. The *Nelson* court found that "where the disabling effect of an injury is not known within one year of the date of the accident, and was later discovered, the claim for compensation is not barred by the statute of limitations." *Id.* at 634. The issue was whether DLI

had notice of a condition that could be attributed to existing industrial insurance claims, in addition to other conditions already covered under those claims. *Id.* at 628. However, in the instant case, the effect of the injury was instantly known to Cordova. In fact, Cordova filed her DRS application only five days after her husband's death. CP2 68, 70.

Second, although the *Nelson* document was not a formal pleading, that communication specifically indicated that Nelson suffered an injury to his back and neck and identified the already allowed industrial insurance claim to which he attributed the injury. *Id.* at 629. Finally, there was no question that Nelson was seeking industrial insurance benefits, as opposed to other benefits for which he may have been eligible.

Similarly, the *Beels* case is distinguishable from this matter. In *Beels*, a widow filed a timely application for survivor benefits under the IIA after her husband's death. The court held that her husband's failure to file an industrial insurance claim within one year of the date of his injury did not affect her right

to file a claim for survivor's benefits after his death. Her claim was based on a "new, original right arising from his death." *Beels v. DLI*, 178 Wash. 301 at 307. Like the *Nelson* case, there was no dispute in *Beels* that the benefits sought were pursuant to the IIA or that her application was timely filed. *Id.*

Accordingly, the Court of Appeals correctly concluded that a letter referencing a "Labor and Industries claim" does not provide notice of a claim for industrial insurance benefits.

B. The Court of Appeals Correctly Concluded That Cordova Was Not Entitled to Equitable Relief

Cordova argues that DLI and the City were equitably estopped from asserting the one-year statute of limitations. This argument also fails. Equitable estoppel only applies when three elements are present: (1) an admission, a statement, or an act inconsistent with a claim afterwards asserted; (2) action by the other party on the faith of such admission, statement or act; and (3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement or

act. *Saunders v. Lloyds of London*, 113 Wn.2d 330, 340, 779 P.2d 249 (1989); *Shafer v. State*, 83 Wn.2d 618, 625, 521 P.2d 509 (1974). Every element must be shown by clear, cogent, and convincing evidence. *Robinson v. City of Seattle*, 119 Wn2d. 34, 82, 830 P.2d, 318 (1992); *Mercer v. State*, 48 Wn. App. 496, 500, 739 P.2d 703 (1987). An appellate court reviews the authority of a trial court to fashion an equitable remedy for an abuse of discretion. *Rabey v. DLI*, 101 Wn. App. 390, 397, 3 P.3d 220 (2000).

Only under very limited circumstances may equitable estoppel excuse an untimely filing of a claim under RCW 51.28.050. *Wilbur v. DLI*, 38 Wn. App. 553, 686 P.2d 509 (1984); *Shafer v. State*, 83 Wn.2d 618, 521 P.2d 736 (1974). Courts have exercised this power in only two circumstances: (1) where a claimant's competency to understand orders, procedures and time limits affects the communication process, and (2) where DLI has committed misconduct. *Rabey v. DLI*,

101 Wn. App. 390 at 395; *Kingery v. DLI*, 132 Wn.2d 162, 937 P.2d 565 (1997).

1. There is no evidence in the record of Cordova's knowledge, belief, or competence.

In the Petition, Cordova asserts that she "believed [Detective Cordova's] death was work-related." However, the record contains no evidence from Cordova as to her beliefs, competence, or otherwise. CP 27. Cordova presented no evidence that DLI or the City made any statement upon which she relied, or which led her to delay in filing an industrial insurance claim. CP2 196-203.

Further, even if the record contained evidence of Cordova's beliefs, those beliefs are not reasonable. Nowhere on her DRS application does she reference industrial insurance benefits or Title 51 RCW. CP2 67-70. Every document identified by Cordova references Claim No. DRS-0202 and indicates that benefits sought were pursuant to RCW 41.26. *See e.g.*, CP2 116, 118, 120, 122, 124, 126, 128, 130, 132.

2. There is no evidence in the record of misconduct by DLI or the City.

Cordova also incorrectly asserts the Court of Appeals erred by finding there was no misconduct by DLI or the City. First, she argues the City's failure to report her husband's death to DLI under RCW 51.28.025 was misconduct. The IIA states that when an employer has "notice or knowledge" of an employee who has died "as the apparent result" of an industrial injury or occupational disease, it shall report the same to DLI. *See* RCW 51.28.025(1).

Cordova's argument has been soundly rejected. The statute only requires an employer to file a report with DLI for statistical purposes. *See Harman v. DLI*, 111 Wn. App. 920, 47 P.3d 169 (2002) (Employer's failure to report injury to DLI was not misconduct that estopped DLI from asserting the statute of limitations). Further, even an Employer's failure to comply with the IIA does not equate to a failure of DLI to inform a worker of their rights under a different section of the statute. *Harman v. DLI*, Wn. App. 920 at 926-27.

In addition, RCW 51.28.025 does not require an employer to file an industrial insurance claim for an employee. *Pate v. General Electric* Co., 43 Wn.2d 185, 260 P.2d 901 (1953); *Leschner v. DLI*, 27 Wn.2d 911, 185 P.2d 113 (1947). Therefore, the Court of Appeals correctly applied the law on this point.

Next, Cordova argues that DLI and the City failed to provide her with an application for benefits pursuant to RCW 51.28.010(1). Cordova asserts that "DLI undisputedly knew" that her husband had died, that "Ms. Cordova believed his death was work-related." and that "despite that knowledge, DLI never informed her of her rights". PFR at. 28-29.

First, the record contains no evidence of DLI's or the City's[7] knowledge as to Cordova's beliefs. Further, DLI specifically notified Cordova's attorney that it was unable to

[7] Cordova cites to a communication between DLI and DRS employees as evidence of the City's knowledge. However, this document contains no evidence of any communications made by the City. PFR at 31.

locate an industrial insurance claim and requested that he file an application for benefits. CP2 234-235. Her attorney failed to do so. Therefore, the Court of Appeals committed no error by holding that neither DLI nor the City had notice of an industrial insurance claim, or failed to notify her of her rights under the IIA.

3. Cordova and her counsel failed to diligently pursue her rights.

Cordova argues that because both DLI and the City should have assumed her intent seek multiple types of benefits, both should have advised her to file an industrial insurance claim. As indicated above, the record reveals DLI did exactly that.

On February 6, 2018 (three months before the statute of limitations pursuant to RCW 51.28.050 expired), DLI expressly communicated to Cordova that it was unable to locate an industrial insurance claim and specifically requested she file an application for benefits or an "accident report." CP2 226-227, 243-235.

It is undisputed that Cordova received this communication well within the one-year filing deadline prescribed by RCW 51.28.050. CP2 226. This communication completely undermines Cordova's arguments that no one advised her of her rights or that the City and/or DLI committed misconduct.

Further, the record contains no evidence that Cordova (or her attorney) made any effort to discern why DLI sent this communication. In response, Cordova's attorney simply re-sent his January 25, 2018 letter referencing Claim No. DRS-0202. CP2 49. Cordova cites to no authority requiring DLI or the City to send multiple reminders to ensure that they did not miss the deadline for the statute of limitations.

The doctrine of *laches* prevents a party from obtaining equitable relief. Equitable relief will not be granted when a worker has not diligently pursued their rights. *DLI v. Fields Corps.*, 112 Wn. App. 450, 459, 45 P.3d 1121 (2002). Courts have declined to expand equitable relief in similar industrial

insurance cases because "such a rule could only be in disregard of the universal maxim that ignorance of the law excuses no one." *Kingery v. DLI*, 132 Wn.2d 162 at 175; citing *Leschner v. DLI*, 27 Wn.2d 911 at 926. Therefore, DLI fulfilled any obligation to inquire as to Cordova's intent to file an industrial insurance claim. Cordova's failure to act can only be attributed to an oversight or ignorance of the law.

The duty to inform workers of their rights under the IIA does not diminish a worker's duty to timely file an application for benefits. *See Wilbur v. DLI,* 38 Wn. App. 553 at 568 (DLI was not estopped from denying a workers' compensation claim when a doctor failed to inform a worker of their rights under the IIA, the worker was expressly advised by their attorney of the one-year statute of limitations and a DLI employee allegedly told the worker their claim would not be accepted). One court has held that even when DLI failed to notify a worker of their rights under the IIA and the Employer failed to report an injury to DLI, the Superior Court abused its discretion when applying

equity to waive the statute of limitations because of a worker's subjective beliefs about the facts and ignorance of the law. *See Harman v. DLI*, 111 Wn. App. 920 at 927. Another court has found that "assistance in filing a claim" pursuant to RCW 51.28.010 and WAC 296-15-405 does not create a duty for the self-insured employer to notify the worker of the statute of limitations. *Baugh Enterprises, Inc., v. Dennis R. Bunger*, 127 Wn. App. 1049 (2005).[8] In the end, the ultimate responsibility for filing a timely claim rests solely with the worker. *Wilbur v. DLI*, 38 Wn. App. 553, 686 P.2d 509 (1984)*; Pate v. General Electric Company*, 43 Wn.2d 185, 260 P.2d 901 (1953).

Finally, equitable relief has never been used to waive the one-year filing requirement of the worker's initial application for benefits under Title 51 RCW. *Harman v. DLI*, 111 Wn.

[8] GR 14.1(a) states that unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court. However, they may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate.

App. 920 at 924. Because she failed to diligently pursue her rights, Cordova fails to establish that the Court of Appeals committed an error by denying her request for equitable relief.

C. The Opinion is Consistent With This Court's Application of the Law

In this matter, the Court of Appeals' opinion is consistent with this Court's prior authority. As described above, the *Nelson* and *Beels* cases can be distinguished on the facts. Contrary to Cordova's assertions, the Court did not ignore that authority. It found that the present case was factually aligned with the *Magee* case. Also, the Court correctly followed this Court's prior authority and declined to extend the doctrine of liberal construction to the issue of initial claim allowance. *See e.g., Jenkins v. DLI*, 85 Wn. App. 7, 14, 931 P.2d 907 (1996); *Clausen v. DLI*, 15 Wn.2d 62, 68, 129 P.2d 777 (1942); *Continental Sports Corp. v. DLI*, 128 Wn.2d 594, 910 P.2d 1284 (1996); *City of Seattle v. PERC*, 116 Wn.2d 923, 809 P.2d 1377 (1991).

Similarly, Cordova has cited to no authority to expand the application of the *Nelson* and *Beels* cases to DRS benefits under Title 41 RCW. While the concurring opinions in this case and in *Magee* may reflect Judge Dwyer's frustration regarding the outcomes, he clearly states the law was correctly applied in both cases.[9] Further, in the instant case, he agrees that Cordova's application for retirement benefits did not meet the *Nelson* standard for adequate notice of an industrial insurance claim. Slip op. at 3 (Dwyer, J., concurring and dissenting).

While Cordova insists this area of law is confusing, there is no evidence in the record as to what Cordova thought, assumed or intended, much less any confusion on her part. Even if Cordova and her attorney were confused, they took no steps to remedy that. The record speaks for itself. As detailed above, ignorance of the law or inattention to detail does not excuse a party from diligently pursuing their rights.

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[9] *Magee*, 144 Wn. App. 1 at 16 (Dwyer, J., concurring); Slip op. at 3 (Dwyer, J., concurring and dissenting).

V. CONCLUSION

For the reasons stated herein, the Court of Appeals made no error and Respondent City of Seattle respectfully asks this Court to deny Cordova's Petition for Review.

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Respectfully submitted February 18, 2022.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that today I filed this document via the Clerk's electronic portal filing system, which should cause it to be served by the Clerk on all parties, and emailed a courtesy copy of this document to:

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DATED, February 18, 2022 at Seattle, Washington.

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Comments:

City of Seattle's Amended Answer to Petition for Review

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