No. 100605-5

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 81947-0-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

RONALD CORDOVA,

Petitioner,

v.

CITY OF SEATTLE and
DEPARTMENT OF LABOR AND INDUSTRIES,

Respondent.

PETITION FOR REVIEW

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A. Introduction.

Title 51 RCW must be "liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment." RCW 51.12.010. Consistent with this mandate, this Court has stressed that "[i]t was intended that the working people themselves could make and file these claims." *Nelson v. Dep't. of Lab. & Indus.*, 9 Wn.2d 621, 629, 115 P.2d 1014 (1941) (quoted source omitted). The Court of Appeals disregarded the plain intent of Title 51 RCW in affirming the denial of workers' compensation benefits to Tracy Cordova, the widow of police detective Ronald Cordova, because, after filing a request for benefits with one state agency she did not file a separate request with another. This Court should accept review and hold that benefits may not be denied based on filing technicalities when the applicant has made plain their intent to seek benefits based on a work-related injury.

B. Court of Appeals Decision.

Petitioner seeks review of the Court of Appeals' November 22, 2021, decision affirming the trial court's order on summary judgment that affirmed the decision of the Board of Industrial Insurance Appeals (BIIA) denying Ms. Cordova's application for workers' compensation benefits as untimely, attached as Appendix A to this petition and cited as "Op. ___." The Court of Appeals granted timely motions for publication on December 29, 2021. (Appendix B)

C. Issue Presented for Review.

An application for workers' compensation benefits is sufficient so long as "the writing filed with the [Department of Labor and Industries] 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. Does an applicant reasonably direct the Department of Labor and Industries' (DLI) attention to the

fact an injury has occurred and that benefits are being claimed by filing an application for benefits with the Department of Retirement Systems (DRS) attesting to their "belie[f] [a] death was caused by an injury sustained in the course of employment" that DRS must, under state law, forward to DLI?

D. Statement of the Case.

On April 30, 2017, Ronald Cordova, a detective with the Seattle Police Department, suffered a subarachnoid hemorrhage from a ruptured cerebral aneurysm and died in his home at the age of 46. (Op. 1-2) Det. Cordova's physician believed "[j]ob related stress contributed to" the fatal injury. (BR 114)

When a law enforcement officer dies from a job-related injury, a beneficiary may be entitled to two statutory benefits: a special death benefit under the Law Enforcement Officer and Fire Fighter Retirement System Act (LEOFF) and workers' compensation benefits under

Title 51 RCW. Upon receiving an application for the LEOFF benefit, DRS must forward the application to DLI for a "determination of eligibility . . . consistent with Title 51 RCW." RCW 41.26.048(2); *see also* WAC 415-02-710(2) (DLI "will determine eligibility" for the LEOFF benefit "consistent with Title 51 RCW"). The two benefits are thus functionally identical: both compensate a beneficiary based on a determination from DLI that the death of a loved one resulted from a job-related injury.

On May 5, 2017, less than a week after Det. Cordova's death, his widow, Tracy Cordova, submitted an application for benefits to DRS on pre-printed DRS forms declaring her "belie[f] the death was caused by an injury sustained in the course of employment." (Op. 2; BR 109-13) The DRS forms do not specify any statutory authority for the benefits, although the medical release form authorizing DLI to obtain Det. Cordova's medical records states the "records will be treated confidentially in accordance with

the laws of the state of Washington (RCW 51.28.070)." (BR 113) Ms. Cordova swore under penalty of perjury in the medical release that she was the "spouse of deceased." (BR 113)

DRS did nothing with Ms. Cordova's application for more than six months until November 9, 2017, when it forwarded the application to DLI. (BR 91) Ms. Cordova's application included a copy of the death certificate, the standard DRS forms, the medical release, statements from other officers regarding the circumstances of Det.

Cordova's death, and a letter from Det. Cordova's physician. (BR 91)[1]

DLI acknowledged receipt of Ms. Cordova's "application for death benefits through the Department of Retirement Systems" but then denied Ms. Cordova benefits because the evidence did "not support that [Det. Cordova's] death was related to an injury[] in the course of employment." (BR 116; Op. 2) Although the order denying Ms. Cordova's claim referenced her "application for the

[1] The BIIA struck the supporting materials submitted with Ms. Cordova's application at BR 71-88 and BR 92-114 based on the City's objection that its internal documents were hearsay, inauthentic, and irrelevant. (BR 50 n.5; CP 9-11) Respondents, however, agreed to the admissibility of DRS's email forwarding Ms. Cordova's application to DLI, which confirms Ms. Cordova included with her application a "Death certificate, Application for Death Benefit, Medical release, statements from other officers regarding the date of death, and statement from the doctor who treated" Det. Cordova. (CP 10-11; BR 91, 185-86, 199) The trial court also ruled it could consider the medical release and letter from Dr. Cordova's physician for the fact they were "provided to DRS and passed along to [DLI]." (CP 11) Neither the City nor DLI challenged this ruling in the Court of Appeals.

death benefit provided under RCW 41.26.048," it then went on to explain that it was denying her claim because it did not "aris[e] naturally and proximately out of employment as defined by Title 51." (BR 118)

After the denial, Ms. Cordova retained attorney Mark Wagner who on January 25, 2018, sent a letter notifying DLI that he represented Ms. Cordova "with regard to [her] Labor and Industries claim" and that Ms. Cordova was protesting the order denying her application for benefits. (BR 120; Op. 2) After DLI informed Mr. Wagner that it was "unable to locate a claim for this injured worker" (BR 122), Mr. Wagner sent another letter to DLI reiterating that he represented Ms. Cordova "with regard to the Labor and Industries claim" and providing the claim number that DLI had included in its order denying her benefits. (BR 124; Op. 3)

On May 9, 2018, DLI notified Ms. Cordova that it rejected her protest, finding "no error or injustice" in its

ruling because "[t]he cause of [Det. Cordova's] death was not due to . . . an injury sustained in the course of employment . . . arising naturally and proximately out of employment as defined by Title 51." (BR 130; Op. 3) Ms. Cordova timely appealed that decision to the BIIA. (Op. 3)[2]

Ms. Cordova engaged in mediation with the City of Seattle and DLI in September 2018. (BR 54, 61) Although Ms. Cordova believed that DLI was reviewing her application to determine her eligibility for the LEOFF death benefit and workers' compensation benefits under Title 51 RCW, during the mediation she learned that DLI believed she had not asked for workers' compensation benefits. (BR 54, 61; Op. 3)

Accordingly, on September 25, 2018, Ms. Cordova filed new forms with DLI again seeking benefits because

[2] The denial of Ms. Cordova's application for the LEOFF death benefit is being reviewed in Court of Appeals Case No. 828452.

Det. Cordova "passed away at home due to unusual stress from his job." (BR 61, 148, 150; Op. 3)[3] DLI denied this application because Det. Cordova's death was "not the result of an industrial injury" and because the application was not "filed . . . within one year after the . . . injury occurred," as required by RCW 51.28.050. (BR 136; Op. 3) Ms. Cordova appealed that decision to the BIIA, which affirmed the denial of benefits (BR 54-55)[4], and again appealed to the Snohomish County Superior Court, which affirmed the BIIA. (CP 23-40, 218-19)

Ms. Cordova then appealed to Division I of the Court of Appeals, which affirmed the BIIA in an unpublished and divided decision. The majority reasoned that neither Ms.

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[3] The City was required to provide Ms. Cordova these forms and assist her in filing them, but never did. (*See* § E.3, *infra*)

[4] Because the BIIA found the application untimely, it dismissed the remaining question—whether Det. Cordova's death was work-related—as moot. (BR 54-55)

Cordova's application to DRS, which DRS forwarded to DLI, nor her subsequent communications with DLI were a sufficient application for workers' compensation benefits. (Op. 4-9) Judge Stephen Dwyer wrote separately to express "dismay at the state of the law concerning the requirement that a writing be filed with [DLI] in order to pursue a workers' compensation claim" (Dwyer, J., dissenting in part, Op. 1), reiterating the concerns he first expressed in *Magee v. Rite Aid*, 144 Wn. App. 1, 12, 182 P.3d 429 (Dwyer, J., concurring), *rev. denied*, 164 Wn.2d 1036 (2008). Given the "confused" state of the law, Judge Dwyer "urged that either the legislature cure the problem by statute or that the Supreme Court ride to the rescue," emphasizing that "[w]idows are not supposed to have to hire lawyers in order to receive widow's benefits." (Dwyer, J., dissenting in part, Op. 1-3) On December 29, 2021, the Court of Appeals granted motions to publish the decision. (Appendix B)

E. Reasons the Court Should Accept Review.

1. This Court should accept review under RAP 13.4(b)(1) because the Court of Appeals ignored this Court's command that Title 51 RCW must be liberally construed to minimize the suffering and economic loss of working families.

It is undisputed that Ms. Cordova timely applied for a LEOFF death benefit under RCW 41.26.048. The sole issue here is whether Ms. Cordova also sufficiently applied for workers' compensation benefits under Title 51 RCW. The Court of Appeals' holding that she did not conflicts with the requirement—embodied in both the statute itself and this Court's precedent—that Title 51 RCW be liberally construed in favor of workers. This Court should grant review under RAP 13.4(b)(1).

Title 51 RCW must be "liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment." RCW 51.12.010. Under RCW

51.28.030, a beneficiary seeking workers' compensation on behalf of a deceased worker "shall make application for the same to the department or self-insurer . . . which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation." The application must also be filed "within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued." RCW 51.28.050.

Consistent with the mandate for liberal construction, this Court has made clear that the requirement to file an "application" is not onerous. For example, in *Nelson*, DLI declined to consider a worker's claim based on a back injury because notice of that injury was first provided in a petition seeking rehearing of the denial of a different injury. Acknowledging that the claimant provided DLI notice of the back injury in a "somewhat irregular" manner, this Court nonetheless reversed, stressing that the statute

was intended to allow working people to easily obtain compensation and thus cannot be applied in a manner that denies benefits based on procedural technicalities:

> The Workman's Compensation Law was particularly framed to avoid legal terminology and technicalities of law pleading. It was intended that the working people themselves could make and file these claims and give notice of the injury. The cost and expense of employing attorneys were to be avoided, if possible. The act was for the benefit of the working man and his family, not for the profession.

9 Wn.2d at 629 (quoted source omitted).

This Court further stressed that "[t]here is no particular form of pleading required to give" DLI notice of a claim and that "[a]nything filed with [DLI] that challenges its attention, causes it to act, is sufficient . . . to see that compensation is paid to injured employees." *Nelson*, 9 Wn.2d at 630. Thus, DLI may not apply "formal and highly technical requirement[s] such as might apply to a pleading" when considering requests for compensation;

instead, a worker or beneficiary "substantially complie[s] with" the statute so "long as the writing filed with the department reasonably directs its attention to the fact that an injury with its particulars has been sustained and that compensation is claimed." 9 Wn.2d at 629.

Similarly, in *Beels v. Dep't of Lab. & Indus.*, 178 Wash. 301, 308, 34 P.2d 917 (1934), this Court stressed that an application for benefits is sufficient, regardless of its form, if it "fairly gave to the department such information as the law intends." In that case, this Court affirmed the trial court's grant of benefits to a sheriff's widow and rejected DLI's argument that it properly denied benefits because the widow had filed a form "used only by workmen seeking payment for time loss or disability compensation" and not the form used for claiming pension death benefits. 178 Wash. at 305-06. In rejecting DLI's argument, this Court emphasized the widow's application was sufficient because it "apprised the department that the

claimant was the widow of a deputy sheriff who died as the result of an injury sustained in the course of his employment," as detailed by reports from the deceased's employer and attending physician. 178 Wash. at 308.

The Court of Appeals' holding that Ms. Cordova did not submit a sufficient "application" directly conflicts with *Nelson* and *Beels*. Ms. Cordova sent DRS an application, which it then forwarded to DLI as required by law, providing the details of her husband's death, alleging that work related stress caused her husband's fatal aneurysm, and unequivocally requesting a "duty-related death benefit." (BR 109-14) Ms. Cordova also provided a death certificate, a statement under penalty of perjury that she was the "spouse of deceased," information from Det. Cordova's employer and co-workers regarding the circumstances of his death, and a letter from his physician. (BR 91, 113-14) This is all the information (and more) that RCW 51.28.030 requires a beneficiary to include with an

"application" for benefits when "death results from injury." DLI thus undisputedly had all the information it needed to process a claim for workers' compensation benefits.

Ms. Cordova *again* complied with RCW 51.28.050 when her attorney sent not one, but two letters notifying DLI that he represented Ms. Cordova "with regard to *the Labor and Industries* claim" and that Ms. Cordova intended to protest the order denying her application for benefits. (BR 120, 124 (emphasis added)) The Court of Appeals' holding that DLI could have somehow remained ignorant of the fact that Ms. Cordova sought compensation because her husband died from work induced stress cannot be squared with this evidence, which was more than sufficient to "direct[] [DLI's] attention to the fact that an injury . . . ha[d] been sustained and that compensation is claimed." *Nelson*, 9 Wn.2d at 629.

The Court of Appeals erroneously reasoned this case was distinguishable from *Nelson* because Ms. Cordova

"had no existing Title 51 RCW claim" and that her application "made no mention of workers' compensation benefits and sought only an LEOFF one-time death payout—a separate benefit from a different government agency." (Op. 6-7) But the application—submitted on standard DRS forms—does not identify *any* authorizing statute, such as RCW 41.26.048 or RCW 51.28.030, and refers only generally to "a Lump Sum Benefit Payment" and a "one-time duty-related death benefit." (BR 109, 111) The Court of Appeals' decision to foreclose one statutory remedy because the DRS forms do not expressly distinguish between the statutory grounds for benefits contravenes this Court's instruction in *Nelson* and *Beels*: DLI must not dismiss applications based on legal technicalities because it is the information provided by an applicant—and not the form submitted—that determines whether an application is sufficient.

The Court of Appeals' decision also ignores that the same evidence—proof of a work-related death—is required for benefits under both LEOFF claims and workers' compensation claims, as DLI itself stressed to Ms. Cordova in repeatedly denying her request for the LEOFF benefit because it did not satisfy the requirements "as defined by Title 51." (BR 118, 130) No reasonable person would interpret a request for one of two functionally identical benefits to exclude the other, nor is there any logical reason for a person to apply for one benefit but not the other.

At its core, the Court of Appeals' decision punishes Ms. Cordova because she filed one form instead of two, contrary to this Court's admonition that Title 51 RCW must be applied such that "the working people themselves could make and file these claims." *Nelson*, 9 Wn.2d at 629. It also absurdly requires beneficiaries to file redundant forms. Ms. Cordova's renewed workers' compensation application provided no information DLI did not already have in the

DRS forms; that application did nothing except reiterate Ms. Cordova's belief that Det. Cordova "passed away at home due to unusual stress from his job." (BR 134) This Court has repeatedly stressed an interpretation of a statute "that produces absurd results must be avoided." *Tingey v. Haisch*, 159 Wn.2d 652, 664, ¶ 21, 152 P.3d 1020 (2007).

Moreover, by providing that DRS must forward any application for LEOFF benefits to DLI to determine eligibility "consistent with Title 51 RCW," RCW 41.26.048(2) gives applicants the impression they can seek both benefits simply by filing an application with DRS. WAC 415-02-710 reinforces that impression by stating LEOFF benefits are "consistent with workers' compensation law, Title 51 RCW" and that DLI "will determine eligibility consistent with Title 51 RCW *and* applicable retirement statutes," such as "chapter 41.26 RCW (LEOFF)." (emphasis added) As Judge Dwyer noted, "to 'file' the writing does not require action akin to service

of process in a civil action," but can instead be satisfied when, as required by RCW 41.26.048(2), DRS "transmit[s] documents sent to them . . . to [DLI] for claim handling." (Dwyer, J., dissenting in part, Op. 2) *See also Continental Sports Corp. v. Dept. of Labor and Indus.*, 128 Wn.2d 594, 602-03, 910 P.2d 1284 (1996) (employer substantially complied with RCW 51.48.131 by delivering notice of appeal via Federal Express instead of USPS).

It is thus entirely understandable that Ms. Cordova, or any other applicant, would have no idea a separate application was required for workers' compensation benefits, contrary to the Court of Appeals' contention that Ms. Cordova should have understood she needed to file a separate form with DLI. That is especially true given that DRS's medical release form authorizes *DLI* to review records "so that [DLI] can administer and process my claim." (BR 113) Ms. Cordova's belief that no additional application was necessary is even more reasonable

considering that neither the City nor DLI fulfilled their legal duties to Ms. Cordova, which required DLI to inform her of the benefits she was entitled to seek under Title 51 RCW and required the City to provide her the form it now faults her for not filing and *assist her with filing it*. (*See* § E.3, *infra*)

The Court of Appeals also wrongly relied on *Magee* to conclude that "[n]othing in the application would reasonably cause DLI in their role as DRS pension adjudicator to conclude that [Ms. Cordova] was also seeking workers' compensation benefits." (Op. 8-9) Ms. Cordova's multiple contacts with DLI stand in stark contrast to *Magee*, where the Court of Appeals rejected the plaintiff's claim that pleadings in a civil lawsuit, in which DLI was not a party, were an "application" for workers' compensation benefits. 144 Wn. App. at 11, ¶¶ 27-28. Here, Ms. Cordova filed an application with DRS that DLI is *required by law* to consider and that DLI has the sole

authority to grant or deny. RCW 41.26.048(2); WAC 415-02-710(3).

The Court of Appeals' decision directly conflicts with this Court's precedent and the mandate for liberal interpretation in RCW 51.12.010. This Court should grant review under RAP 13.4(b)(1).

2. This Court should grant review under RAP 13.4(b)(4) because this confused area of law affects thousands of Washington's public servants and their families.

This Court should also accept review because the published Court of Appeals decision "involves an issue of substantial public interest." RAP 13.4(b)(4).

As this case underscores, Washington's public institutions are not fulfilling the workers' compensation system's "purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment." RCW 51.12.010. Even in *Magee*, two Court of Appeals judges wrote

separately to express dismay at the harsh operation of the statute's procedural requirements and urged clarification, either from the legislature or from this Court. *See Magee*, 144 Wn. App. at 12, ¶ 32 ("Marcia Magee should not be deprived of compensation because, although she tried, she was unable to comply with the procedural requirements of the statute." Agid, J., concurring); 144 Wn. App. at 13-14, ¶¶ 37-39 ("All of this strikes me as inconsistent with the goals of our workers' compensation scheme." Dwyer, J., concurring). Judge Dwyer reiterated that concern here, emphasizing that "[w]idows are not supposed to have to hire lawyers in order to receive widow's benefits." (Dwyer, J., dissenting in part, Op. 1-3)

As Judge Dwyer further explained, this Court's "formulations of [the statute's] requirements" in *Nelson* more than 80 years ago do not account for "the evolution of workers' compensation law" (Dwyer, J. dissenting in part, Op. 1), including that there was no such thing as a

"self-insured" employer in 1941 who could, as the City did here, escape liability for a workers' compensation claim by violating its legal obligations to its employee. (*See* § E.3, *infra*) Nor does *Nelson* account for functionally identical benefits offered by multiple state agencies that have the potential to confuse applicants. Even the majority shared Judge Dwyer's concern "that the notice requirement established in *Nelson* is outdated given the many changes to workers' compensation law that have taken place over the past seven"—now eight—"decades." (Op. 8, n.8, quoting *Magee*, 144 Wn. App. at 15-16, ¶ 48 (Dwyer, J., concurring)).

Despite the Court of Appeals' calls for action, this Court has not revisited the notification requirement under Title 51 RCW since it decided *Nelson*. In fact, the only recent case to even mention *Nelson* suggests its analysis may be of limited utility. *See Kovacs v. Dep't. of Lab. & Indus.*, 186 Wn.2d 95, 99-100, ¶ 9, 375 P.3d 669 (2016)

(disregarding as dicta analysis in *Nelson* stating that "the one year period in which [a] claim must be filed commences to run on the day of the accident." (quoting *Nelson*, 9 Wn.2d at 632)).

This Court should grant review to determine whether *Nelson*'s framework continues to correctly implement the important policies of Title 51 RCW, particularly given thousands of Washington's law enforcement officers, fire fighters, and their families are at risk of falling into the same bureaucratic labyrinth that failed Ms. Cordova.[5] Indeed, the City agreed that the Court of Appeals' decision addressed important issues of public policy in joining Ms. Cordova's request that the Court publish its decision. (*See* App. B)

[5] There were 18,700 active LEOFF members in 2021. Dep't. of Ret. Sys., *Ann. Comprehensive Fin. Report*, 47 (Oct. 25, 2021), available at: https://tinyurl.com/7px2f4vr

Family members of deceased law enforcement officers and fire fighters should not be denied statutory benefits simply because they filed one form, but not two; nor should they have to pay attorneys to navigate bureaucratic pitfalls after the death of a loved one. This Court should revisit the standard for giving notice of a claim and ensure that Title 51 RCW is applied in a manner that furthers its purpose of reducing the suffering caused by work-related deaths and injuries.

3. This Court should accept review under RAP 13.4(b)(1)-(2) because the Court of Appeals wrongly concluded that equitable estoppel did not apply.

This Court should also accept review because the Court of Appeals held that equitable estoppel did not prevent DLI from dismissing Ms. Cordova's application as untimely, conflicting with authority from this Court and the Court of Appeals. RAP 13.4(b)(1)-(2).

Washington courts apply equitable estoppel "against the state or against a political subdivision . . . when necessary to prevent a manifest injustice, and the exercise of governmental powers will not thereby be impaired." *Shaffer v. State*, 83 Wn.2d 618, 622, 521 P.2d 736 (1974). Equitable relief is appropriate when a claimant's ability to understand orders, procedures, and time limits affects the communication process and the government engages in misconduct. *Rabey v. Dep't. of Lab. & Indus.*, 101 Wn. App. 390, 395, 3 P.3d 217 (2000).

The Court of Appeals wrongly concluded that equitable estoppel did not apply here, when neither DLI nor the City complied with the legal duties they owed Ms. Cordova. When an employer "has notice or knowledge" that an employee has died from a work-related accident, the employer "shall immediately report the same" to DLI. RCW 51.28.025(1); *see also* RCW 51.28.010(1). "Upon receipt of such notice . . . the department shall immediately

forward to the worker or his or her beneficiaries or dependents notification . . . of their rights under this title." RCW 51.28.010(2); *see also* RCW 51.28.030 ("Upon receipt of notice of accident under RCW 51.28.010, the director shall immediately forward to the party or parties required to make application for compensation under this section, notification, in nontechnical language, of their rights under this title.").

The Court of Appeals concluded that equitable estoppel did not apply here because "DLI did not receive an accident report from [Det. Cordova's] employer," the City, and thus DLI's statutory obligation to provide Ms. Cordova notice of her rights was never triggered. (Op. 10) This is wrong for two reasons:

First, DLI undisputedly knew Det. Cordova had died and that Ms. Cordova believed his death was work-related, as confirmed by its letter expressing its own belief Det. Cordova's death did not arise "out of employment." (BR

116) Despite this knowledge, DLI never informed Ms. Cordova of her rights under Title 51 RCW, as required by both RCW 51.28.010 and RCW 51.28.030. The Court of Appeals' holding that DLI was absolved of its statutory duties simply because the City never filed a formal accident report that would have only told DLI what it already knew—that Ms. Cordova believed her husband's death was work-related—underscores that its decision elevates technicalities over the purpose of Title 51 RCW to "reduc[e] to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment." RCW 51.12.010.

Second, even if DLI did not receive adequate notice to trigger its statutory duty to notify Ms. Cordova of her rights, the Court of Appeals never addressed whether equitable estoppel should prevent dismissal because *the*

City failed to comply with its independent duties.[6] Not only must the City report workplace injuries to DLI under RCW 51.28.025, but WAC 296-15-405(1) provides that "[w]hen notified of injury or illness" self-insured employers such as the City "*must provide the worker with [a] prenumbered form and assistance in filing a claim*." (emphasis added); *see also* WAC 296-15-320(1) (providing that every self-insurer "must" "[e]stablish procedures to assist injured workers in reporting and filing claims" and "*[i]mmediately* provide [an accident report] form . . . to every worker . . . upon the self-insurer's first knowledge of the existence of an industrial injury") (emphasis added).[7]

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[6] Ms. Cordova argued that "misconduct by DLI *and the City* justifies equitable relief." (App. Br. 19, emphasis added)

[7] The form that WAC 296-15-320 and WAC 296-15-405 require a self-insured employer to provide an injured employee is "the Self-Insurer Accident Report (SIF-2)," which is the form that Ms. Cordova filed as soon as she learned of respondents' belief that she had not filed a workers' compensation claim. (BR 134)

The City undisputedly knew that Ms. Cordova sought compensation due to her husband's death from work-related stress, having obtained multiple statements from officers to support Ms. Cordova's application to DRS. (BR 91) Yet, it never filed a formal accident report with DLI that would have prompted DLI to inform Ms. Cordova of her rights. Nor did the City provide Ms. Cordova the form that both it and DLI now fault her for not filing earlier, let alone assist her in filing that form—a direct violation of its obligations as a self-insurer. The City instead remained silent while a grieving widow tried to navigate the vagaries of workers' compensation law.

In short, both DLI and the City violated their legal duties to Ms. Cordova. Had they not done so, Ms. Cordova would have known immediately after her husband's death—not seventeen months later—that she needed to file a separate application to recover workers' compensation benefits. The bureaucratic morass undergirding Title 51

RCW unquestionably failed Ms. Cordova, who simply asked for compensation following her husband's death from a work-related illness. This result is especially unjust considering that Ms. Cordova was diligent while DRS was not—Ms. Cordova filed her application with DRS less than a week after her husband's death and DRS did *nothing* with it for more than six months before finally forwarding it to DLI.

The Court of Appeals' holding that equitable relief did not apply under these circumstances contradicts not only the liberal interpretation of Title 51 RCW this Court mandated in *Nelson* to ensure that "working people themselves could make and file" claims, 9 Wn.2d at 629, but authority from this Court and the Court of Appeals acknowledging that equitable relief should be granted to prevent injustice. Review should be granted. RAP 13.4(b)(1)-(2).

F. Conclusion.

By elevating form over substance and ignoring equitable remedies, the published decision here conflicts with decisions from this Court and other Court of Appeals decisions, in addition to presenting an issue of substantial public interest demanding this Court's attention. This Court should accept review. RAP 13.4(b)(1)-(2), (4).

I certify that this petition is in 14-point Georgia font and contains 4,982 words, in compliance with the Rules of Appellate Procedure. RAP 18.7(b).

Dated this 28th day of January, 2022.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on January 28, 2022, I arranged for service of the foregoing Petition for Review, to the court and to the parties to this action as follows:

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DATED at Seattle, Washington this 28th day of January, 2022.

/s/ Andrienne E. Pilapil
Andrienne E. Pilapil

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Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RONALD CORDOVA, DEC'D, Appellant, v. CITY OF SEATTLE and THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Respondents.	)	No. 81947-0-I DIVISION ONE UNPUBLISHED OPINION

BOWMAN, J. — A workers' compensation application need not be formal or highly technical but it must, within a year of a worker's injury or death, notify the Department of Labor and Industries (DLI) that the applicant seeks workers' compensation benefits. Because Tracy Cordova's application to the Department of Retirement Services (DRS) for a one-time death benefit did not notify DLI that she also sought workers' compensation, we conclude that the Board of Industrial Insurance Appeals (BIIA) properly denied her subsequent DLI claim as untimely. We affirm the superior court's order on summary judgment affirming the decision of the BIIA.

FACTS

Ronald Cordova worked for the city of Seattle (City) as a police detective. He died at home on April 30, 2017 from a ruptured cerebral aneurysm. His wife

Tracy[1] believed "unusual stress" from Ronald's job led to his aneurysm, so she timely applied for a "lump sum benefit payment" through DRS under the Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act (LEOFF), chapter 41.26 RCW. The application titled "One-Time Duty-Related Death Benefit" bore the DRS logo and "Washington State Department of Retirement Systems" on the first page and identified DRS on each subsequent page.

Per statute, DRS sent Tracy's application to DLI to process on its behalf.[2] DLI through its "Pension Adjudicator Section" denied Tracy's claim. In its December 2017 order, pension adjudicator Noreen Currier denied the application for the one-time death benefit "because the cause of death is not related to either an injury sustained in the course of employment or an occupational disease." The order displays DRS claim number "DRS0202."

Tracy hired an attorney, who wrote a letter in January 2018 protesting the denial of DRS benefits. The letter identified Tracy's DRS application by claim number DRS0202 but described the retirement benefits application as a "Labor and Industries claim." The attorney mailed the letter to the general DLI post-office box address but did not identify the Pension Adjudication Section as the intended recipient.

[1] For clarity, we refer to Tracy Cordova and Ronald Cordova by their first names. We intend no disrespect.

[2] DLI determines an individual's eligibility for a one-time death benefit claim under RCW 41.26.048 and WAC 415-02-710(3).

DLI responded that it was "unable to locate a claim for this injured worker" and requested Tracy's attorney add a "current state fund claim number" and provide a "report of accident." Tracy's attorney replied by resending his original letter with the DRS0202 claim number but added "Attn: Noreen" in the upper right corner. The DLI Pension Adjudicator Section confirmed receipt of the second letter and on May 9, 2018, affirmed the December 2017 order denying Tracy's claim "for death benefits provided under RCW 41.26.048," finding Ronald's death was not duty-related. Tracy timely appealed the ruling to the BIIA.

Tracy asserts that on September 11, 2018, she realized for the first time that she had not applied for Title 51 RCW workers' compensation benefits with either the City or DLI. So on September 25, 2018, nearly 17 months after Ronald died, Tracy applied to the City for Title 51 RCW benefits.[3] On October 30, 2018, DLI denied Tracy's claim because she did not file it within the one-year statutory period and because she did not establish an employment-related injury.[4]

Tracy protested the decision and the BIIA assigned her case to an industrial appeals judge (IAJ). Tracy and the City cross moved for summary judgment on timeliness grounds. DLI joined the City's motion. The IAJ granted summary judgment for the City and DLI. The IAJ also rejected Tracy's argument that the BIIA should equitably estop DLI from rejecting her application for Title 51 RCW benefits as untimely.

[3] Because Ronald worked for the City, a self-insured employer, the DLI oversees applications for workers' compensation, though the City is directly responsible for the costs. RCW 51.14.010, .020; RCW 41.26.048.

[4] The issue of whether Ronald's death was employment-related is not before us.

The BIIA also denied Tracy's petition for review. Tracy then appealed to the Snohomish County Superior Court. Tracy and the City again cross moved for summary judgment on timeliness grounds. DLI responded to both motions, arguing the court should grant the City's motion and deny Tracy's. The superior court granted summary judgment for the City, affirming the BIIA and dismissing Tracy's appeal. The superior court determined that Tracy's claim was untimely and such untimeliness "cannot be excused under the doctrine of equity."

Tracy appeals.

ANALYSIS

Timeliness

Tracy argues the superior court erred in granting the City's summary judgment motion because the BIIA erred by rejecting her claim for Title 51 RCW benefits as untimely. She claims the "information and documents [she] submitted to DRS and delivered to DLI, along with her counsel's subsequent letters to DLI," amount to a timely application for workers' compensation benefits under RCW 51.28.020. We disagree.

We review a superior court's grant of summary judgment de novo, engaging in the same inquiry as the superior court. Hill v. Dep't of Labor & Indus., 161 Wn. App. 286, 292, 253 P.3d 430 (2011); Rabey v. Dep't of Labor & Indus., 101 Wn. App. 390, 393-94, 3 P.3d 217 (2000). A party is entitled to summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). The moving party must establish its right to judgment as a matter of law, and we view

the facts in the light most favorable to the nonmoving party. Romo v. Dep't of Labor & Indus., 92 Wn. App. 348, 354, 962 P.2d 844 (1998). In our review, we rely exclusively on the certified BIIA record. Watson v. Dep't of Labor & Indus., 133 Wn. App. 903, 909, 138 P.3d 177 (2006); RCW 51.52.115. We accept the BIIA's decision as prima facie correct, and the party challenging the decision must support its challenge by a preponderance of the evidence. Watson, 133 Wn. App. at 909; Hill, 161 Wn. App. at 291.

Title 51 RCW governs claims for industrial insurance and workers' compensation. Under RCW 51.28.030, a party making a workers' compensation claim "shall make application for the same . . . accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation." Under RCW 51.28.050, "[n]o application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued."

We construe Title 51 RCW liberally "for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment." RCW 51.12.010. In that regard, we have determined that an application for Title 51 RCW benefits need not be as formal and highly technical as a pleading. Magee v. Rite Aid, 144 Wn. App. 1, 8, 182 P.3d 429 (2008). Any writing seeking Title 51 RCW benefits "filed with the Industrial Commission that challenges its attention, and causes it to act, is sufficient to put in motion the process of the Industrial Commission to see that

compensation is paid." Magee, 144 Wn. App. at 9 (citing Nelson v. Dep't of Labor & Indus., 9 Wn.2d 621, 630, 115 P.2d 1014 (1941)).

Citing Nelson, Tracy argues her May 4, 2017 DRS LEOFF application along with her attorney's letters notified DLI that she was also seeking workers' compensation benefits. In Nelson, a logger broke his ankle and fell on his neck and upper back while working in the forest. Nelson, 9 Wn.2d at 623. The logger timely applied for workers' compensation related to his broken ankle and DLI approved his claim. Nelson, 9 Wn.2d at 623. Less than a year after his injury, the logger petitioned DLI for a rehearing, seeking additional compensation for "increasing pain in his spine and head, dizziness and weakness in his back due to said injury and the fall upon his back." Nelson, 9 Wn.2d at 624-25.[5]

Our Supreme Court held that the logger's petition amounted to an application for additional Title 51 RCW benefits. Nelson, 9 Wn.2d at 628-29. It reasoned that the petition was 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. Because the logger first notified DLI of his injuries within the one-year statute of limitations, he timely "challenged the attention of the department." Nelson, 9 Wn.2d at 629-30.

Tracy's claim is distinguishable from the petition in Nelson. In Nelson, the logger petitioned for additional compensation in an existing Title 51 RCW claim. But here, Tracy had no existing Title 51 RCW claim. Her May 2017 application was titled "One-Time Duty-Related Death Benefit" and bore either the DRS logo

[5] Emphasis omitted.

and/or "Department of Retirement Systems" on each page. It made no mention of workers' compensation benefits and sought only an LEOFF one-time death payout—a separate benefit from a different government agency.

Neither did the protest letters sent by Tracy's attorney notify DLI that she was also claiming workers' compensation.[6] Though her attorney asserted that he "represents Tracy . . . with regard to the Labor and Industries claim referenced above," the "claim referenced" was DRS0202, the case number DRS assigned to her one-time death benefit application. In trying to clarify the discrepancy, DLI told the attorney that it was "unable to locate a claim for this injured worker" and requested a current state fund claim number and a copy of an accident report. Still, Tracy's attorney made no effort to explain that Tracy was seeking both LEOFF and Title 51 RCW benefits. Instead, he sent his original protest letter again but wrote "Attn: Noreen"—the first name of the DLI pension adjudicator who processes DRS death benefit claims—on the upper right corner. As a result, DLI forwarded the letter to their Pension Adjudication Section and processed the claim for only DRS benefits.

We agree with DLI that this case is more like Magee. In that case, Rite Aid employee Magee claimed her supervisor sexually assaulted her. Magee, 144 Wn. App. at 4. She petitioned for an antiharassment order against her supervisor and sued him civilly. Magee, 144 Wn. App. at 4-5. Rite Aid was not a named party to either civil action but it received copies of the antiharassment

[6] As much as Tracy argues that applications for an LEOFF payout and workers' compensation benefits are coextensive, her argument is unsupported by citation to legal authority, so we do not consider it. RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (argument unsupported by reference to the record or citation to authority will not be considered).

order and Magee's answer to the supervisor's counter suit and participated in settling the lawsuit. Magee, 144 Wn. App. at 5-6. Magee later sought workers' compensation for her injuries and claimed that Rite Aid's receipt of the antiharassment order and her answer was sufficient timely notice that she would be seeking workers' compensation under Title 51 RCW.[7] Magee, 144 Wn. App. at 9. We concluded that under Nelson, the documents did not amount to an application for Title 51 RCW benefits. Magee, 144 Wn. App. at 11.[8] Because the documents sought only civil damages for Magee's injuries, Rite Aid could not "reasonably infer that a claim for workers' compensation [wa]s being made." Magee, 144 Wn. App. at 11.

Like the documents in Magee, Tracy's DRS application did not notify DLI that she was seeking workers' compensation. She filed her application with DRS seeking an LEOFF one-time death benefit. Nothing in the application would reasonably cause DLI in their role as DRS pension adjudicator to conclude that Tracy was also seeking workers' compensation benefits.

Tracy argues that Magee "is readily distinguishable" because notice of the claim there was "wholly unrelated to statutory benefits," while her application sought a specific, though different, statutory benefit. But she fails to explain how notice of Ronald's death in the form of a DRS application for a one-time death benefit differs in any meaningful way from notice of Magee's injury in the form of

[7] Rite Aid was a self-insured employer under RCW 51.14.020. Magee, 144 Wn. App. at 13.

[8] We expressed our concern that the notice requirement established in Nelson is outdated given "the many changes to workers' compensation law that have taken place over the past seven decades" and urged legislative review of the statutory scheme to prevent future similar outcomes. Magee, 144 Wn. App. at 15-16 (Dwyer, J., concurring). To date, neither the Supreme Court nor the legislature has acted.

a civil lawsuit seeking money damages. Neither notifies the insurer of a claim for Title 51 RCW benefits. We conclude that the BIIA properly determined that the sum of Tracy's communications with DLI did not amount to an application for workers' compensation benefits and the superior court did not err in granting the City's summary judgment motion.

Equitable Estoppel

Tracy argues that even if the information she submitted to DRS did not amount to an application for benefits under Title 51 RCW, "DLI should be [equitably] estopped from denying that her claim was timely made." We disagree.

The trial court has broad discretion, exercised in light of the facts and circumstances of a particular case, to determine whether a party is entitled to equitable relief. Rabey, 101 Wn. App. at 396; Heckman Motors, Inc. v. Gunn, 73 Wn. App. 84, 88, 867 P.2d 683 (1994). In industrial insurance cases, a trial court may grant equitable relief only in the limited circumstances where (1) a claimant's competency to understand orders, procedures, and time limits affects the communication process and (2) DLI engaged in misconduct. Rabey, 101 Wn. App. at 395 (citing Kingery v. Dep't of Labor & Indus., 132 Wn.2d 162, 174, 937 P.2d 565 (1997)); Lynn v. Dep't of Labor & Indus., 130 Wn. App. 829, 839, 125 P.3d 202 (2005); Harman v. Dep't of Labor & Indus., 111 Wn. App. 920, 924, 47 P.3d 169 (2002). We review a superior court's decision whether to fashion an equitable remedy for an abuse of discretion. Harman, 111 Wn. App, at 923.

Tracy contends that DLI engaged in misconduct because it failed to notify her of her rights under RCW 51.28.010. That statute compels DLI to notify workers or beneficiaries of their statutory rights after receiving an accident report from an employer:

> (1) Whenever any accident occurs to any worker it shall be the duty of such worker or someone in his or her behalf to forthwith report such accident to his or her employer . . . and of the employer to at once report such accident and the injury resulting therefrom to [DLI] . . . .
>
> (2) Upon receipt of such notice of accident, [DLI] shall immediately forward to the worker or his or her beneficiaries or dependents notification, in nontechnical language, of their rights under this title.

RCW 51.28.010. But DLI did not receive an accident report from Ronald's employer. Instead, it received notice of his death in the form of an application for DRS benefits provided to its Pension Adjudication Section. As a result, the application did not trigger the notice requirement under RCW 51.28.010. And even if we construed the statute so broadly as to trigger a duty to notify on receipt of a report of injury from any source, DLI's failure to interpret the statute likewise does not amount to misconduct.

Tracy also asserts that DLI engaged in misconduct by obscuring from her its role in processing DRS applications. The record does not support her assertion.

DLI's letter accompanying its order denying Tracy's application for LEOFF benefits identifies Noreen Currier as the "Pension Adjudicator" and explains that DLI "received your application for death benefits through the Department of Retirement Systems." It then explains that DLI "determines eligibility for the

death benefit you have filed for." And the order itself states that "[t]he application for the death benefit provided under RCW 41.26.048 . . . is hereby denied." The order displays DRS claim number DRS0202. And it includes addresses for both the "Dept. of Retirement Systems LEOFF" and "Dept. of Labor and Industries Pension Adjudicator Section." The record shows that DLI adequately identified its role as Pension Adjudicator for DRS when communicating with Tracy.

Because Tracy's DRS application did not also amount to an application for Title 51 RCW benefits and she was not entitled to equitable relief, the BIIA did not err in concluding her application for workers' compensation was untimely. We affirm the superior court order granting the City's summary judgment motion to dismiss Tracy's appeal.

I CONCUR:

Cordova v. City of Seattle, No. 81947-0-I

DWYER, J. (concurring and dissenting) — More than a dozen years ago, in a case referenced in the majority opinion, I expressed my dismay at the state of the law concerning the requirement that a writing be filed with the Department of Labor and Industries in order to pursue a workers' compensation claim. See Magee v. Rite Aid, 144 Wn. App. 1, 12, 182 P.3d 429 (2008) (Dwyer, J., concurring). My premise then was simple: the legislature had not chosen to define a "claim" or to delineate that which was required to constitute a "claim," and the Supreme Court's formulations of such requirements as explicated in Nelson v. Dep't of Labor & Industries, 9 Wn.2d 621, 115 P.2d 1014 (1941), were anti-worker, inconsistent with the evolution of workers' compensation law, and unjust. I urged that either the legislature cure the problem by statute or that the Supreme Court ride to the rescue and alter its Nelson decision.

As with most such exhortations by intermediate appellate court judges, my jurisprudential call to arms failed to inspire legislative rescue. And the Justices remained dismounted.

As to the content of the notices given to the Department of Labor and Industries herein, the majority imposes an injustice by correctly applying the law. As I observed 13 years ago, "[t]hus, with a reluctance outweighed only by my obligation to the law, I concur"[1] in that decision.

[1] Magee, 144 Wn. App. at 16 (Dwyer, J., concurring).

However, there is more to this case. Both the Board of Industrial Insurance Appeals and the superior court ruled that Tracy Cordova did not file a writing with the Department of Labor and Industries within one year of Detective Ronald Cordova's death, as required by statute. See RCW 51.28.050. To reach its decision, the majority does not need to address this issue and understandably does not do so.

But I disagree with both the Board and the superior court on this question. And here is why.

The statutory requirement is merely that a writing be filed with the Department of Labor and Industries. See RCW 51.28.010. As conceded at oral argument in this court, *any* employee of the Department of Labor and Industries can be the recipient of the filing. The statute does not provide otherwise. Moreover, to "file" the writing does not require action akin to service of process in a civil action. To the contrary, the writing can be mailed to *anyone* employed by the Department of Labor and Industries or to the Department itself.

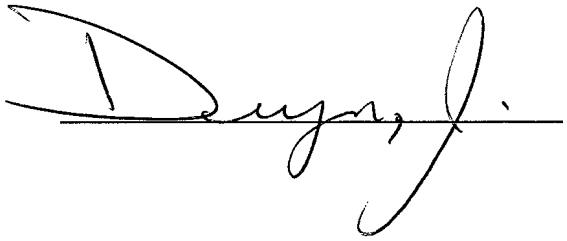
Here, such a filing happened twice. It first happened when an employee of the Department of Retirement Systems transmitted documents sent to them by Tracy Cordova to the Department of Labor and Industries for claim handling. It happened a second time when Tracy Cordova's attorney wrote and mailed his January 2018 letter, which was received by an employee of the Department of Labor and Industries.

I recognize that the majority rejects these filings as insufficient in their *content*—but that is a separate question. Tracy Cordova unquestionably filed—

twice—a writing with the Department of Labor and Industries in a timely manner. Her claims were *timely* even if their content was insufficient under the Nelson requirements.

It is important that we recognize this distinction. Widows are not supposed to have to hire lawyers in order to receive widow's benefits. This area of law is confused enough without conflating the issues at hand.

Both the Board and the superior court erred in their rulings on this question.



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RONALD CORDOVA, DEC'D, Appellant, v. CITY OF SEATTLE and THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Respondents.	)	No. 81947-0-I DIVISION ONE ORDER GRANTING MOTIONS TO PUBLISH

Appellant Ronald Cordova, respondent the city of Seattle, and nonparty attorney Brian M. Wright each filed a motion to publish the opinion filed on November 22, 2021 in the above case. A majority of the panel has determined that the motions should be granted. Now, therefore, it is hereby

ORDERED that the motions to publish the opinion are granted.

FOR THE COURT:

Judge

SMITH GOODFRIEND, PS

January 28, 2022 - 11:51 AM

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