Supreme Court No.100888-1
(Court of Appeals No. 55489-5-II)

SUPREME COURT
STATE OF WASHINGTON

COLLEEN M. ALDRIDGE

Petitioner,

v.

DEPARTMENT OF LABOR AND INDUSTRIES - STATE OF WASHINGTON

Respondent.

PETITION FOR DISCRETIONARY REVIEW

COLLEEN M. ALDRIDGE
Pro se

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ABBREVIATIONS

AG ..... Attorney General of Washington
AAG ..... Assistant Attorney General
BIIA ..... Board of Industrial Insurance Appeals
Department ..... Department of Labor and Industries
COA ..... Court of Appeals
IAJ ..... Industrial Appeals Judge
IIA ..... Industrial Insurance Act
IIC ..... Industrial Insurance Claim
JH ..... Jurisdictional History
PRA ..... Public Records Act
RA ..... Remittance Advice
RCW ..... Revised Code of Washington
WAC ..... Washington Administrative Code

WSBA..... Washington State Bar Association

I. INTRODUCTION

In 1911, the IIA supplanted the economically unwise and unfair common law system that governed the remedies available to industrially injured workers. RCW 51.04.010. It became the exclusive administrative remedy between employer and employee. The Department administers the IIA. The IIA provides for a BIIA, which serves as the administrative review body for Department decisions and orders. RCW 51.52.050. Injured workers in Washington depend upon the BIIA to render impartial decisions to challenged Department decisions and orders. As the agency with the sole authority to review Department decisions and orders, the BIIA vaunts its "independence" from the Department, its mission to "serve the public by resolving appeals in a" . . . [i]mpartial manner, and its commitment to providing "a respected,

unbiased forum for the resolution of disputes."[1] In December 2009 Ms. Aldridge submitted an IIC but continued to try and work. Because she continued to try and work for four months, the Department took no constructive action. When Ms. Aldridge was restricted from any kind of work, the Department denied her claim. Ms. Aldridge appealed. Pursuant to the law, Mr. Aldridge, Ms. Aldridge's husband of [at that time] twenty years, represented her as a lay representative. On May 10, 2012, in an agreed order, the Department was "100%" responsible for Ms. Aldridge's occupational disease. However, on June 10, 2010, Ms. Aldridge underwent surgery due to the incapacitating nature of her injury. The surgery and associated services [hospital] were billed to the Department. The Department denied payment but refused to serve notice of its denial on Ms. Aldridge. Ms.

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[1] http://www.biia.wa.gov/AboutBIIA.html.

Aldridge only learned of the denials when her treating provider informed her. Between June 10, 2010, and October 18, 2016, the Department purposely refused to serve the denials on Ms. Aldridge. Between June 2010 and October 2016, Ms. Aldridge filed approximately fourteen appeals seeking to compel the Department to serve her with notice of its decision. Caucasian IAJs heard all but one appeal. On October 6, 2016, in a summary judgment decision, an African-American IAJ entered a ruling which compelled the Department to serve its denial notice on Ms. Aldridge.

Additionally, in March 2013, the BIIA began requiring the presence of armed police, with authority to exact force up to and including deadly force, when Mr. Aldridge appeared. Although the Aldridges sought to compel the BIIA to hold hearings on the reason for implementing the security measure, the motions were denied. Mr. Aldridge had done nothing to warrant the security measure. For

this reason, the BIIA denied any motion to hold hearings on the matter. A review of the history of the BIIA requesting armed police security revealed the agency only requested the presence of armed police with Caucasian appellants after they made threats to harm Department and/or BIIA staff or to blow up a BIIA facility. Yet with Mr. Aldridge, simply being Black and married to a Caucasian woman was enough to warrant the requirement for the presence of armed police when he appeared in person.

Despite written evidence that for six years, the Department intentionally denied service of its denial of payment the COA ruled the Department's denial is in compliance with the law, that the denial of service did not unnecessarily delay Ms. Aldridge's quest for justice under the law, that the BIIA requirement for the presence of armed police, without holding hearings on the matter, when Mr. Aldridge appeared in person, is in compliance

with the law, that the BIIA's requirement for the presence of armed police when Mr. Aldridge appeared in person is justified because Mr. Aldridge conducted a public records check on the IAJ and an employee of the AG, that the BIIA's exclusion from its certified records to the superior court, an order denying Ms. Aldridge's motion for assignment of a pro-tem judge is in compliance with the law, and that the BIIA's exclusion of its dockets consisting of the appeals Ms. Aldridge filed under her IIC from 2009 through 2016, is consistent with the law even though the BIIA lists all Departments decisions and order and BIIA dockets and decision in the JH provided to the IAJ hearing the appeal and the JH is included in the certified record in appeals beyond the BIIA's consideration.

The COA's decisions will create turmoil in the prevailing laws. Each year, hundreds of requests for administrative review are advanced to the review courts from BIIA decisions in IIC. Given the number of workers,

state and self-insureds affected, the rulings in this case, although unpublished,[2] will have a significant effect.

It undermined the intent of the Legislator when it replaced the economically unwise and unfair common law system that had governed the remedies available to industrially injured workers, RCW 51.04.010, making IIC under the IIA liberally construed to reduce to a minimum the suffering and economic loss arising from injuries and death occurring in the course of employment." RCW 51.12.010.

Three reasons warrant review. First, the ruling that a request under the PRA justifies the requirement for the presence of armed police without analyzing, on the record, the case-specific reasons for the requirement disrupts the Legislature's ability to set standards, violates

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[2] Unpublished decision has no precedential value, is not binding on any court, and is cited in this brief only for such persuasive value as the court deems appropriate. GR 14.1.

the right of the people exercising their rights under the provisions of the PRA, in the future will affect other who exercise their rights under the PRA, and is a question of first impression.

Second, the decision allowing the Department to withhold service of its decisions/orders causes unnecessary delays in violation of the WA Constitution and conflicts with a decision between COA divisions.

Third, the decision allowing clandestine written and verbal communications between judges and legal staff about a representative of a litigant conflicts with a previous decision of the same division of the COA and violates the Washington State and US Constitutions.

II. IDENTITY OF PETITIONER/DECISION

Petitioner, Colleen McColley Aldridge (Ms. Aldridge). *Colleen M. Aldridge v. Washington State Department of Labor and Industries* No. 55489-5-II (March 29, 2022) Colleen M. Aldridge v. Washington State Department of

Labor and Industries No. 55489-5-II, Order Denying Motion for Reconsideration (September 27, 2022). (App.)

III. ISSUE PRESENTED FOR REVIEW

1. As a matter of first impression, do the unambiguous provisions of the PRA sanction the requirement for the presence of armed police in legal proceedings where a litigant to the proceedings obtained undisclosed information consistent with the provisions of the PRA about the trier of fact and state counsel representing the opposing party?

2. Does the decision of the COA allowing the Department to withhold service of its decision/orders involve a significant question of law under the Constitution of the State of Washington and create a conflict of decisions between COA divisions?

3. Does the decision of the COA allowing for clandestine written and verbal communications about the representative of a litigant between judges and legal staff

conflict with a previous decision of the same division of the COA and violate the US and State of Washington Constitutions?

IV. STATEMENT OF THE CASE

In addition to the misinterpretation and misapplication of the law, this case involves the racist mistreatment Ms. Aldridge, who is Caucasian, experienced before the BIIA because her husband, M. Wayne Aldridge, who legally served as her lay representative before the BIIA (WAC 263-12-020(3)(iii)), is a dark-skin Black American.

Over the seven-year history of Ms. Aldridge's IIC, Ms. Aldridge was compelled to file at least fourteen board appeals resulting from the conduct of the Department acting in solidarity with the BIIA to thwart Ms. Aldridge's legal right to unbiased proceedings before the courts. Of the fourteen appeals, all but one were decided by Caucasian IAJs. Ms. Aldridge lost all but one of her appeals. The single appeal in which she prevailed was

decided by an African-American IAJ, IAJ Anita Booker-Hay. Superlatively, IAJ Anita Booker-Hay is now *Chief Industrial Appeals Judge* Anita Booker-Hay.[3]

Additionally, in 2013, during hearings requiring personal appearances, the BIIA required the presence of armed police when Mr. Aldridge appeared in person. Although the Aldridges requested the BIIA to disclose the reason for the requirement, the BIIA refused. The BIIA's refusal led the Aldridges to request hearings because of the requirement. The BIIA refused. This requirement for the presence of armed police without holding hearings on the matter continued despite its ruling in State v. Gorman-Lykken No. 51254-8-11, Court of Appeals, Division 2 446 P. 3d 694.[4] Public records requests revealed that Mr.

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[3] http://www.biia.wa.gov/AboutBIIA.html.

[4] Gorman-Lykken's conviction for rape in the second degree-domestic violence was reversed and remanded for further proceedings when the Court of Appeals held that the trial court abused its discretion by allowing a corrections officer to be stationed next to Gorman-Lykken without analyzing whether case-specific reasons supported the need for such a security measure

Aldridge was the topic of the IAJs and that all dockets listing Mr. Aldridge indicated an "H" for "Hostile" and "S" for "Security," or the word security would be indicated in bold uppercase letters on a document in the file provided to IAJs and BIIA staff but not to Mr. Aldridge or the person he represented. Despite these clandestine warnings to any IAJ assigned a case where Mr. Aldridge's name appeared, records of email exchanges between IAJ and BIIA staff revealed no reason exists for the warning. Moreover, public records revealed that in cases involving Caucasian litigants where the BIIA required the presence of armed police, the armed police were not required until the Caucasian litigant made actual threats against an IAJ. In one case, the Caucasian litigant, Dale Alan Weems, threatened to blow up a BIIA facility.[5] Brian G. Corntassel, a Caucasian litigant appearing before the BIIA, threatened

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[5] BIIA Docket 08 12202.

to kill people at the Department and assault an IAJ.[6] Despite this racial disparity, the BIIA continued to deny the Aldridge's request that hearings be conducted on the BIIA's insistence on the presence of armed police when Mr. Aldridge appeared in person. Additionally, despite the law allowing the BIIA to certify cases of contempt to the superior court, the BIIA never brought any such proceeding against Mr. Aldridge. In addition to its denials, the BIIA purposely excluded from its full BIIA's appeal terminations orders any reference to the issue of its requirement for the presence of armed police when Mr. Aldridge appears in person and its denial of the Aldridge's request to hold hearings on the matter. The BIIA's conduct effectively deprived the reviewing courts of jurisdiction to review the matter. As a result, the Aldridges petitioned the superior court for a temporary restraining

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[6] BIIA Docket 13 21298.

order; the petition was denied. Realizing that the BIIA will continue to deny Ms. Aldridge impartial reviews intentionally, Ms. Aldridge motioned the BIIA to substitute board IAJs with pro-tem judges from outside the BIIA. WAC 263-12-045(5). The motion was denied. Although the denial is a direct part of the appeal from which Ms. Aldridge sought review up to this Court, the BIIA, in violation of the law, purposely and vindictively withheld its denial from its certified record to the Superior Court.[7]

Throughout the seven-year history of Ms. Aldridge's IIC, in conjunction with the racially discriminatory conduct of the BIIA, the Aldridges also noticed concerning conduct by an IAJ assigned to hear one of the many appeals brought by Ms. Aldridge and that of an AAG. As a result of the conduct, Mr. Aldridge obtained public records information on these state employees.[8] In its decision

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[7] RCW 51.52.110, WAC 263-12-170.
[8] RCW 42.56 WA Public Records Act.

terminating review, the COA ruled that BIIA's reason for requiring the presence of armed police when Mr. Aldridge appears is justified because Mr. Aldridge exercised his rights under the state's PRA to request public information about the IAJ and AAG. The PRA does not state, infer, or condone the use of such retaliatory practices.[9] The records revealed that the presiding IAJ received a speeding ticket from a WSP trooper two days before she changed a telephonic hearing to a hearing requiring personal appearance. The IAJ did not disclose the matter. Mr. Aldridge is a retired WSP trooper. This information is contained in files maintained by the Department on Ms. Aldridge's IIC, in the records maintained by the BIIA, in

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[9] RCW 42.56.080. See also Green v. Lewis County No. 77746-7-I, Court of Appeals, Division 1, July 16, 2018, UNPUBLISHED OPINION: The PRA establishes that agencies shall not distinguish among persons requesting records . . . This prohibition is to prevent agencies from denying PRA requests based on the requestor's identity or purpose. ***This unpublished decision has no precedential value, is not binding on any court, and is cited in this brief only for such persuasive value as the court deems appropriate. GR 14.1.***

the files maintained by the Department on Mr. Aldridge's IIC, and in the records maintained by the BIIA on Mr. Aldridge. The Aldridges did not discover the information until after the hearing. Upon discovery, Ms. Aldridge petitioned the full board for review of the ruling and the matter of the potential bias. The issue of bias was denied.

In a separate appeal from that involving the IAJ and the speeding ticket, Mr. Aldridge learned that the AAG assigned to represent the Department was using a stage name instead of her actual name. However, the day before the scheduling conference that the AAG attended, Mr. Aldridge attempted to telephone the presiding IAJ to change the conference to telephonic. When Mr. Aldridge called, the BIIA telephone system experienced issues with its public line. This prevented Mr. Aldridge from contacting anyone at the BIIA. Mr. Aldridge located a telephone number for the IAJ on the WSBA website. The address shown for the IAJ was consistent with that of the BIIA

office. The phone number was the IAJ's home telephone number. When Mr. Aldridge appeared for the conference the following day, the IAJ had summoned armed police. When Mr. Aldridge inquired about the reason, the IAJ refused to answer, saying he does not have to disclose "that to you." Mr. Aldridge moved for interlocutory review, but the motion was denied. The chief appeals judge ruled that the IAJ is not required to disclose the reason for the requirement of armed police. This evidence was provided to the COA in its review giving rise to Ms. Aldridge's pending Petition for Review. Despite this evidence and the fact that the information disproves the COA's ruling, the COA disregarded the evidence and issued its order terminating review of Ms. Aldridge's appeal. During the conference, Mr. Aldridge referred to the AAG by her actual name. The AAG did not raise an issue during the proceeding. After the proceeding, the AAG wrote a letter to the BIIA alleging that Mr. Aldridge used her actual

name as a form of intimidation. The AAG requested that the BIIA assign security to further proceedings. The letter was not sworn or signed under oath.[10] The BIIA did not hold hearings on the matter.

During the seven-year history of Ms. Aldridge's IIC, in violation of the law, when the Department received billings for services provided to Ms. Aldridge by doctors and other service providers, the Department refused to serve Ms. Aldridge with its RA denying payment for such services.[11] When Ms. Aldridge learned of the RAs, she appealed the Department's refusal to serve her with notice of the denial. Until Ms. Aldridge's appeal was heard by an African-American IAJ, some six years into her IIC and many BIIA denials by Caucasian IAJs, her appeals of the Department's refusal to serve her with notice of the

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[10] GR 13

[11] RCW 51.04.080. *See* also, Renton Sch. Dist. #403 v. Dolph, 415 P.3d 269 (Wash. App. 2017).

denials were denied. During the appeals proceedings before the African-American IAJ, the Department admitted that it deliberately refused to serve notice on Ms. Aldridge of its RAs denying payment of benefits. This refusal, in conjunction with the BIIA's continued denial of Ms. Aldridge's appeals of the practice, in violation of the Articles of the Washington State Constitution, unnecessarily delayed Ms. Aldridge's quest for justice under the law.[12] Despite evidence in the Department's own words, the COA found that the "Department issued a few remittance advices . . . ," while overlooking the deprivation of justice through the unnecessary delay brought on by the Department's refusal to serve the RAs on Ms. Aldridge and the resulting inability of Ms. Aldridge to produce witness testimony from the treating providers who, by the time Ms. Aldridge's appeal was heard, had

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[12] Const. art 1:10.

archived their files and had treated hundreds of other patients.[13] "Justice too long delayed is justice denied." Martin Luther King Jr. paraphrasing William Ewart Gladstone.[14]

V. ARGUMENT

a. There exists no provision under the PRA that authorize the presence of armed police where records request pursuant to the Act are requested and provided.

The COA's ruling that the BIIA's *practice* of requiring the presence of armed police when Mr. Aldridge appears in person because Mr. Aldridge obtained "personal information" on two state employees is a matter of first impression. The practice is not supported by any rule or policy enacted by the BIIA. Rather, the *practice* is

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[13] Ms. Aldridge filed her industrial insurance claim on December 28, 2009. The appeal of the Department's repeated refusal to serve its RA denials on Ms. Aldridge was finally heard by an African-American IAJ on October 6, 2016.

[14] "For years now I have heard the word "Wait!" It rings in the ear of every Negro with piercing familiarity. This "Wait" has almost always meant "Never." We must come to see, with one of our distinguished jurists, that "justice too long delayed is justice denied.""

resigned to the Aldridge and does not provide a method of appeal or review. A policy does not have the effect of law. If an agency improperly relies on a policy that was not promulgated pursuant to the rule-making requirements of the APA, the remedy is to invalidate the action. IE. Dunn Northwest, Inc. v. Dep't of Labor & Indus., 139 Wn. App. 35, 53, 156 P.3d 250 (2007). The COA's acceptance of the BIIA's practice of requiring the presence of armed police when Mr. Aldridge appears in person conflicts with the decision under Dunn Northwest. RAP 13.4(b)(2) authorizes review if the decision from the Court of Appeals conflicts with another decision of the Court of Appeals. See, e.g., State v. Taylor, 140 Wn.2d 229, 235, 996 P.2d 571 (2000) (granting review to resolve conflict between Division I and Division II).

Additionally, there is no evidence to support the ruling. In her motion for reconsideration, Ms. Aldridge apprised the court of this failing and provided proof that the court

erred in its decision. The court ordered the Department to answer Ms. Aldridge's motion. The Department did not dispute Ms. Aldridge's argument. Despite Ms. Aldridge's production of tangible evidence contradicting the court's ruling, the court let stand its March 29, 2022 ruling. *See* Mot. for Reconsideration App. B and C.

The BIIA receives thousands of industrial insurances appeals each year. http://www.biia.wa.gov/Reports.html. There are countless numbers of PRA requests each year. The ruling of the COA is of substantial public interest as it exposes tens of thousands of persons to the consequences of any form of punishment devised by State government for exercising the rights guaranteed under the Act. Review is also warranted because the decision involves an issue of substantial public interest pursuant to RAP 13.4(b)(4).

b. The COA supports the Department's intentional violation of the law where [the Department] purposefully refused to serve on Ms. Aldridge, its RA denying payment to her medical providers.

The 1911 supplantation of the unfair common law system of industrial insurance with the IIA projected support for the welfare of injured workers by securing "sure and certain relief for workers injured in their work regardless of fault," to the exclusion of every other remedy except as otherwise provided under the Act. RCW 51.04.010. The IIA became the exclusive administrative remedy between worker and employee. The Department administers the IIA. Whenever the Department has made any order or decision, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with a copy thereof by mail . . . . RCW 51.52.050. "On all claims under this title, claimants' written notices, orders, or payments must be forwarded directly to the claimant until such time as there has been entered an order on the claim appealable to the board of industrial insurance appeals ...." RCW 51.04.080. *See also* Lee v. Safeway

Stores, Inc. (Wash. App. 2012). (unpublished).[15] Despite the duty under the law to serve Ms. Aldridge its RA denying payment for medical services she received, the Department knowingly refused. The evidence presented to the COA in the form of a pleading filed by the Department in response to a motion for summary judgment filed by Ms. Aldridge in BIIA proceedings was ignored. *See* Mot. for Reconsideration App. B and C.

The Department manages tens of thousands of IICs each year. For this reason, the potential for this conduct to be repeated with others is substantial. Review is warranted because the decision involves an issue of substantial public interest pursuant to RAP 13.4(b)(4). RAP 13.4(b)(2) authorizes review if the decision from the Court of Appeals conflicts with another decision of the

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[15] This unpublished decision has no precedential value, is not binding on any court and is cited in this motion only for such persuasive value as the court deems appropriate.
GR 14.1.

Court of Appeals. *See*, e.g., State v. Taylor, 140 Wn.2d 229, 235, 996 P.2d 571 (2000) (granting review to resolve conflict between Division I and Division II).

Moreover, the Department's refusal to comply with the law and BIIA's retaliation against the Aldridge by Caucasian IAJs deprived Ms. Aldridge of rights under the WA State Constitution. Justice in all cases shall be administered openly and without unnecessary delay. WA Const. art 1:10. RAP 13.4(b)(3) allows for review of state and federal constitutional issues if the constitutional issue raises a "significant question of law."

c. The clandestine written and verbal communications about Ms. Aldridge's lay representative, Mr. Aldridge, prejudiced the IAJs, thereby depriving Ms. Aldridge of her right to unbiased legal reviews and due process.

The tangible evidence presented to the COA through the few records the BIIA certified to the superior court revealed that staff at the BIIA held clandestine written and verbal communication about Mr. Aldridge. Any file

maintained by the BIIA listing Mr. Aldridge as being associated with the file was flagged with a warning to treat Mr. Aldridge as "hostile," thereby requiring the presence of armed police if he appeared in person. This information was withheld from the Aldridges and was only discovered when a BIIA docket cover sheet was inadvertently provided to the Aldridges. Through public records requests, the Aldridge received email communications between BIIA judges. In one email, an IAJ requested information on the reason for the security flag on Mr. Aldridge's name. BIIA staff were unable to locate the reason for the flag. The IAJ's superior advised the IAJ to "ask around" for the information. Evidence of the unjust conduct and blatant misapplication of the law in Ms. Aldridge's BIIA appeals is contained within the dockets maintained by the BIIA under Ms. Aldridge's IIC. When Ms. Aldridge advanced her appeal to the superior court for review, the BIIA cannibalized its records choosing only to

provide the records it believed were relevant to the appeal as opposed to the records required by law to be certified and provided to the reviewing court. Equipped with tangible evidence of the BIIA's refusal to comply with the law and provide the superior court with certified copies of all records consisting of Ms. Aldridge's IIC, the COA rejected Ms. Aldridge's argument that the records were legally required to be certified and provided to the reviewing court by the BIIA, without Ms. Aldridge being required to move the reviewing court to order the BIIA to provide the records. Despite tangible evidence supporting Ms. Aldridge, the COA dismissed Ms. Aldridge's appeal. The appearance of fairness doctrine applies to administrative tribunals acting in a quasi-judicial capacity. Nationscapital Mortg. Corp. v. Dep't of Fin. Insts, 133 Wn. App. 723, 137 P.3d 78 (2006); Magula v. Dep't of Labor & Indus., 116 Wn. App. 966, 69 P.3d 354 (2003).

The conduct of the BIIA denied Ms. Aldridge of due process under the law. RAP 13.4(b)(3) allows for review of state and federal constitutional issues if the constitutional issue raises a "significant question of law." U.S. Const. amed. XIV, WA Const. are. 1, §10.

VI. CONCLUSION

On June 4, 2020, this Court authored a letter to members of the Judiciary and the Legal Community recognizing the issue of racism and systemic injustice against Black Americans in Washington and around the country. In the letter's last paragraph, this Court wrote, "We go by the title of "Justice," and we reaffirm our deepest level of commitment to achieving justice by ending racism." Despite this Court's commitment to ending racism, racism continues to thrive in this state's legal system. The BIIA does not dispute that its conduct is solely based on racism. It took commitment to the rule of law and equal treatment under the law by now *Chief*

Industrial Appeals Judge Anita Booker-Hay Chief Industrial for the BIIA to move beyond its practice of racial discrimination against the Aldridges for Ms. Aldridge to begin to receive fair treatment under the law.

This document contains 3929 words, excluding the parts of the document exempt from the word count by RAP 18.17.

Respectfully Submitted this 27 day of October 2022.

By: Colleen M Aldridge
Colleen M. Aldridge
Pro Se

CERTIFICATION OF SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the state of Washington, declares that on the below date, I served the Petitioner's Petition for Review and this Declaration of Service in the below-described manner:

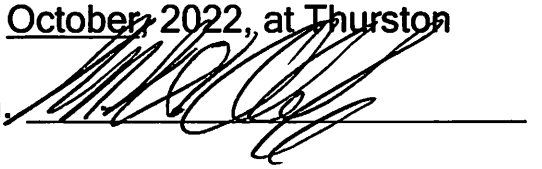
E-Filing via Washington State Appellate Courts Portal:

Erin L. Lennon
Supreme Court Clerk
Washington State Supreme Court

E-Mail via Washington State Appellate Courts Portal:

Anastasia R. Sandstrom, WSBA #24163
AAG Office of the Attorney General of Washington

Dated this 27 day of October, 2022, at Thurston County, Washington.



Filed
Washington State
Court of Appeals
Division Two

March 29, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

COLLEEN M. ALDRIDGE, Appellant, v. WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES, Respondents.	No. 55489-5-II UNPUBLISHED OPINION

VELJACIC, J. — Colleen Aldridge applied for a workers' compensation claim for neck pain diagnosed as cervical strain/sprain. The Department of Labor and Industries (Department) agreed the disease was work related and compensated the claim. But prior to the Department accepting her claim for a cervical strain/sprain, Aldridge underwent surgery for a separate condition called degenerative disc disease. She requested the Department pay for that surgery under her claim for cervical strain/sprain, but it withheld payment. Aldridge appealed to the Board of Industrial Insurance Appeals (Board), which concluded that her surgery was not compensable under her cervical strain/sprain claim. Aldridge appealed to the superior court, which affirmed the Board's findings and conclusions.

Aldridge appeals, arguing that the Board violated the appearance of fairness doctrine by ordering security be present because her husband, who represented her before the Board, is Black. She also argues the Board failed to certify all of its records and that the superior court erred by

failing to take additional testimony. Lastly, she argues that the superior court erred in affirming the Board's findings and conclusions.

The Department argues that there was no security present during proceedings for Aldridge's appeal, therefore her appearance of fairness doctrine claim fails. It also argues that under the statutes and regulations addressing the Board record on appeal, Aldridge failed to follow the procedures to add documents to the record and failed to request the superior court order the Board to include additional materials in its record.

We conclude that the Board did not violate the appearance of fairness doctrine and neither the Board nor the superior court prohibited Aldridge from supplementing the record. We affirm the superior court.

FACTS

In 2009, Aldridge suffered from neck pain and went to see Dr. Thomas Young.[1] He diagnosed her with a cervical strain/sprain. Aldridge applied for workers' compensation and eventually she and the Department entered into an agreement accepting her claim for the cervical strain/sprain. Prior to this agreement, Aldridge underwent surgery to address degenerative disc disease.

Aldridge sought compensation for the surgery performed by Dr. Daniel Nehls under her claim for cervical strain/sprain. The Department withheld payment, which it informed Aldridge of via a remittance advice.[2] Aldridge appealed to the Board, and after some delay during which the Department was reconsidering its decision, the Department adhered to its previous position

[1] Dr. Young has a chiropractic and naturopathic doctorate but did not attend medical school.

[2] The Department issued a few remittance advices, the one Aldridge appeals here, which denied compensation for her 2010 surgery is "#487012," dated August 4, 2012 with a warrant date of August 7, 2012. *See* Administrative Record (AR) 63.

and again withheld payment. Aldridge appealed the Department's refusal to pay for her 2010 surgery, arguing that her surgery was a necessary and proper treatment for her cervical strain/sprain.

During her appeal, Aldridge repeatedly requested that the Board address the presence of security, an issue that arose in a prior case involving Aldridge's husband, M. Wayne Aldridge. In M. Wayne Aldridge's case, the Board ordered security be present during his appeal after M. Wayne Aldridge had obtained personal information about a Department attorney and an Industrial Appeal Judge (IAJ). *See Aldridge v. Dep't of Labor & Indust.*, No. 49725-5-II, slip op. 3-6 (Wash. Ct. App. May 8, 2018) (unpublished), https://www.courts.wa.gov/opinions/pdf/D2%2049725-5-II%20Unpublished%20Opinion.pdf. M. Wayne Aldridge alleged the Board's decision was due to his being a Black man. *Id*. at 5. He prevailed at the board, but appealed to the superior court and to this court. This court concluded that because M. Wayne. Aldridge prevailed, he was not an aggrieved party and could not appeal. *Id*. at 14. This court also concluded that because the Board did not discuss the issue of security, the question was not passed upon by the department and therefore we did not have jurisdiction to consider the security issue. *Id*. at 14-15.

In Aldridge's case before us here, there is no record that security was present. During a scheduling conference on January 31, 2018, the IAJ required that any security requests must be made in writing. Neither the Board nor the Department requested security. Aldridge then requested the Board assign a pro tem IAJ unassociated with the Board. She asserted that the Board was incapable of rendering an unbiased decision in her appeal due to racial bias evidenced by the presence of security during her husband's case. The Board denied her request.

Before the IAJ, two experts testified regarding Aldridge's condition and surgery. Dr. Young, who treated Aldridge in 2009, testified that the conditions she presented with were work

related. He testified that Aldridge had "preexisting degenerative changes" and that such condition would have remained quiet but for Aldridge's work at a non-ergonomic workstation. Administrative Record (AR) at 424. He diagnosed Aldridge with cervical and thoracic sprain/strain and stated that her condition was not due to a specific incident. Dr. Young also testified that she had never been treated for such condition before. He did not think surgery was necessary to treat her condition.

Dr. Dennis Stumpp, testifying for the Department, conducted a record review of Aldridge's claim and concluded that the degenerative disc disease and associated surgery was unrelated to the compensated cervical strain/sprain. He explained that MRIs of Aldridge's spine in 2004 and 2007 showed deterioration of her C6-7 vertebrae. He went on to explain that cervical strains/sprains occur in ligaments and muscles, whereas cervical disc disease occurs in the discs between vertebrae. Aldridge's surgery occurred on her C6-7 disc. Dr. Stumpp also testified that degenerative disc disease is not work related and is unassociated with specific professions or movements.

The IAJ issued a proposed decision and order (PD&O) affirming the Department's decision withholding payment for the June 10, 2010 surgery. It relied on Dr. Stumpp's testimony explaining that an MRI in 2004 and 2007 showed that Aldridge's spine showed signs of deterioration. The PD&O stated that Dr. Young's conclusion that Aldridge's condition would have remained quiet was unsupported by the record because MRIs showed deterioration prior to her appointment with him. The IAJ found that Aldridge's cervical strain/sprain was work related, but that her degenerative disc condition was unconnected to that claim and therefore not work related. It also concluded that, her degenerative disc condition was ongoing and continued to progress.

The IAJ found that "[t]he June 10, 2010 surgery was not necessary and proper treatment for the allowed condition of cervical strain/sprain"; and concluded "[t]he Department remittance advice dated August 4, 2012, is correct, and is affirmed." AR at 22. Aldridge petitioned the Board for additional review, but the Board denied that petition and adopted the IAJ's order.

Aldridge then appealed to the superior court. In an attempt to perfect the record, Aldridge requested that the Board include records in its certified record that had not been submitted into evidence or examined by the Board. The Board informed Aldridge that she would need to seek an order from the superior court to have additional records included in the certified Board record. Later, the superior court asked Aldridge whether she had requested an order from the superior court that would allow her to add to the record. Aldridge stated, "No, I should not have to. They should have provided it [without an order]." Report of Proceedings at 11.

The court also requested Aldridge to cite to Dr. Young's testimony supporting her request for compensation and to what evidence showed the Board acted with racial bias. Aldridge responded by referring to her own brief. The superior court issued an oral ruling affirming the Board's order. It also issued written findings, adopting the Board's findings:

> 1.2.2. Colleen M. Aldridge developed cervical strain/sprain that arose naturally and proximately out of distinctive conditions of employment.
>
> 1.2.3. Ms. Aldridge suffers from degenerative disk disease in her cervical spine. The distinctive conditions of Ms. Aldridge's employment did not cause or aggravate this condition.
>
> 1.2.4. On June 10, 2010, Ms. Aldridge underwent C6-7 anterior cervical discectomy and fusion surgery, performed by Dr. Daniel Nehls.
>
> 1.2.5. The June 10, 2010 surgery was not necessary and proper treatment for the allowed condition of cervical strain/sprain.

Clerk's Papers (CP) at 50. It also adopted the Board's conclusions of law:

> 2.2.2. The June 10, 2010 surgery was not necessary and proper treatment for the allowed condition of cervical strain/sprain.

2.2.3. The Department remittance advice dated August 4, 2012, is correct, and is affirmed.

CP at 51. Aldridge appeals.

ANALYSIS

I. STANDARD OF REVIEW

We review workers' compensation claims to determine "'whether substantial evidence supports the findings made after the superior court's de novo review, and whether the [superior] court's conclusions of law flow from the findings.'" *Street v. Weyerhaeuser Co.*, 189 Wn.2d 187, 205, 399 P.3d 1156 (2017) (internal quotation marks omitted) (quoting *Ruse v. Dep't of Labor & Indus.*, 138 Wn.2d 1, 5, 977 P.2d 570 (1999)). "Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the finding's truth." *State v. Pratt*, 11 Wn. App. 2d 450, 457, 454 P.3d 875 (2019).

II. APPEARANCE OF FAIRNESS DOCTRINE

Aldridge argues that the Board violated the appearance of fairness doctrine by depriving her of a fair hearing when it ordered security be present in M. Wayne Aldridge's prior worker's compensation case. She argues that the Board only ordered security because M. Wayne Aldridge is Black.[3] We disagree.

A. Legal Principles

The appearance of fairness doctrine ensures that proceedings before administrative tribunals are fair and impartial. *Nationscapital Mortg. Corp. v. Dept. of Fin. Inst.*, 133 Wn. App.

[3] Aldridge also argues that the Board's refusal to conduct a hearing on whether security should be present in her appeal, despite there being no security request in her case, violated her rights of due process and equal protection. She provides no authority or analysis to support that claim, and therefore we refuse to address it. *See Bercier v. Kiga*, 127 Wn. App. 809, 824, 103 P.3d 232 (2004).

723, 758, 137 P.3d 78 (2006). Under the doctrine, proceedings are valid if "'a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing.'" *Id*. at 758-59 (quoting *Wash. Med. Disciplinary Bd. v. Johnston*, 99 Wn.2d 466, 478, 663 P.2d 457 (1983)). The party challenging a proceeding must provide evidence of actual or potential bias. *Id*. at 759. The party cannot satisfy their burden by merely speculating about potential bias. *Magula v. Dep't of Labor & Indus.*, 116 Wn. App. 966, 972, 69 P.3d 354 (2003). We presume that that public officers properly and lawfully perform their duties. *Id*.

B. Analysis

We conclude that because Aldridge failed to provide evidence showing the Board was biased, it therefore did not violate the appearance of fairness doctrine. Aldridge argues that the Board ordered security be present when M. Wayne Aldridge appeared before it due to racial bias against M. Wayne Aldridge and that the bias necessarily flows to her because she is his wife. But the record does not support that claim. In the present case, no security was requested and therefore the Board never conducted a hearing on the issue. Aldridge fails to explain how the presence of security in M. Wayne Aldridge's case affects her case, where no security was present. Aldridge fails to show how the Department's or the Board's actions resulted from bias. She also fails to provide any evidence that bias impacted her case. Because of this, she fails to satisfy her burden to show that the Board violated the appearance of fairness doctrine. *Nationscapital Mortg. Corp.*, 133 Wn. App. at 759.

III. SUPPLEMENT TO THE BOARD RECORD

Aldridge argues that the trial court should have taken additional testimony in her appeal because she alleged there were irregularities before the Board. She also argues that the Board

failed to include all the materials it considered in the certified Board record. We disagree and hold that Aldridge's claim fails.

A. Legal Principles

Under WAC 263-12-135, the record in workers' compensation appeals consists of

> the order of the department, the notice of appeal therefrom, all orders issued by the board (including litigation orders and judge's report of proceeding), responsive pleadings, if any, and notices of appearances, and any other written applications, motions, stipulations or requests duly filed by any party. Such record shall also include all depositions, the transcript of testimony and other proceedings at the hearing, together with all exhibits offered. *No part of the department's record or other documents shall be made part of the record of the board unless offered in evidence.*

(Emphasis added.) A mere reference to records is insufficient, records must be offered into evidence for the Board to consider them and to be considered part of the record. *Boyd v. City of Olympia*, 1 Wn. App. 2d 17, 35, 403 P.3d 956 (2017).

If the claimant appeals a Board's decision to the superior court, the record in such court consists of the certified Board record. RCW 51.52.115. RCW 51.52.115 allows the trial court to take testimony not included in the Board record when the appealing party alleges "irregularities in the procedure before the board." That statute also states in relevant part, "Upon appeals to the superior court only such issues of law or fact may be raised as were properly included in the notice of appeal to the board, or in the complete record of the proceedings before the board." RCW 51.52.115. Therefore, the superior court generally only reviews the certified Board record when a claimant appeals unless the claimant alleges irregularities and requests additional testimony. *See Hendrickson v. Dept. of Labor & Indus.*, 2 Wn. App. 2d 343, 351, 409 P.3d 1162 (2018).

B. Analysis

We reject Aldridge's argument that the Board and superior court erred by failing to provide or consider additional material. Aldridge cites to both RCW 51.52.115 and WAC 263-12-135 to support her argument that the Board erred in refusing to include additional material in its certified record to the superior court and that the court failed to take additional testimony. However, Aldridge never sought to introduce the materials she references during her appeals, and only referenced them in her briefs. *See Boyd*, 1 Wn. App. 2d at 35. Aldridge also admitted to the superior court that she had not asked it to order the Board to provide any additional materials. We reject Aldridge's arguments

In the same section addressing the record, Aldridge also argues that the Department's delay in providing her its remittance order requires us to reverse the trial court's decision. Aldridge cites to *McKinlay d/b/a Patsy's Progressive Pre-School v. Department of Social and Health Services*, 51 Wn. App. 491, 497, 754 P.2d 143 (1988), for the proposition that due process mandates access to the courts without unnecessary delay. But *McKinlay* does not support her argument, and that case says nothing about how we evaluate accusations of delay in a workers' compensation case. Aldridge refers to the Department's delay in providing her a final remittance decision, which she argues limited the medical evidence she was able to present due to it being archived. However, she fails to say how that evidence would support her claim nor did she provide any evidence showing why it was inaccessible. We reject her delay claim.

IV. OCCUPATIONAL DISEASE CLAIM

Aldridge argues that the superior court erred in findings of fact 1.2.3 and 1.2.5 because the Board was not impartial in its decision. She also argues that conclusion of law 2 is unsupported by the facts. We affirm the superior court's findings and conclusions.

A. Legal Principles

The Industrial Insurance Act (IIA), Title 51 RCW, guarantees compensation for workers injured or suffering from occupational disease resulting from their employment. RCW 51.32.010; RCW 51.32.180; *Ma'ae v. Dep't of Labor & Indus.*, 8 Wn. App. 2d 189, 199, 438 P.3d 148 (2019); *Street*, 189 Wn.2d at 193-94. Under RCW 51.32.180, workers "who suffer[] disability from an occupational disease in the course of employment" are entitled to "the same compensation benefits" as injured workers. An occupational disease "arises naturally and proximately out of employment." RCW 51.08.140; *Street*, 189 Wn.2d at 194. Under RCW 51.08.140, a claimant must produce evidence showing that employment proximately caused such disease and would not have occurred but for employment. *Street*, 189 Wn.2d at 194.

A claimant may appeal the Department's decision to the Board. RCW 51.52.050(2)(a). The claimant carries the burden of providing sufficient evidence "to establish a prima facie case for the relief sought in such appeal." RCW 51.52.050(2)(a). The Board reviews an appeal from the Department's decision de novo. RCW 51.52.100; *Coaker v. Dep't of Labor & Indus.*, 16 Wn. App. 2d 923, 930, 484 P.3d 1265, *review denied*, 198 Wn.2d 1020 (2021). A claimant may appeal adverse decisions of the Board to the superior court. RCW 51.52.110.

B. Analysis

We conclude that the superior court's findings of fact are supported by substantial evidence and that its conclusions of law flow from such findings. Aldridge first challenges finding of fact 1.2.3, which states that her degenerative disc disease was not caused or aggravated by her work. Her only argument to support her claim is that the Board was not impartial.

We conclude that finding of fact 1.2.3 is supported by substantial evidence. Dr. Stumpp's testimony established that Aldridge suffered from degenerative disc disease that had been

progressing for years. He also stated that such condition is not associated with specific work or movement. Dr. Stumpp's testimony is sufficient to convince a fair-minded, rational person that Aldridge's degenerative disc disease was not caused or aggravated by her work.

Next, Aldridge challenges finding of fact 1.2.5, which states that her 2010 surgery was not a necessary and proper treatment for cervical strain/sprain. Again, her only argument to support her claim is that the Board was not impartial. We conclude finding of fact 1.2.5 is supported by substantial evidence. Dr. Stumpp testified that Aldridge's degenerative disc disease was unrelated to her cervical strain/sprain, stating that a strain involves muscles and ligaments while degenerative disc disease involves the discs between vertebrae. Finding of fact 1.2.5 is supported by substantial evidence, because Dr. Stumpp's testimony is sufficient to convince a fair-minded, rational person that Aldridge's surgery was not treatment for her cervical strain/sprain claim.

Aldridge also argues that the superior court erred in conclusion of law 2.2.3, which states the Department's remittance advice was correct. Aldridge carries the burden of establishing a prima facie case that her surgery was necessary and proper treatment for her cervical strain/sprain. *See* RCW 51.52.050(2)(a). Dr. Young failed to testify that her 2010 surgery was a treatment for her claim. Dr. Stumpp testified that the surgery was not treatment for a cervical strain/sprain. The superior court first found that the surgery was not treatment for Aldridge's cervical strain/sprain and that her cervical disc degeneration was not work related. The superior court's conclusion of law 2.2.3 flows from such findings, because it relied on them to conclude that the Department's remittance advice was correct for denying compensation for surgery to treat degenerative disc disease under her cervical strain/sprain claim. We conclude conclusion of law 2.2.3 flows from the findings and affirm the superior court.

V. ATTORNEY FEES

Aldridge argues that under RCW 51.52.130, she is entitled to attorney fees. RCW 51.52.130 allows a worker's attorney to receive fees if an appellate court reverses an order or decision of the Board. We conclude Aldridge is not entitled to fees because neither the superior court nor this court altered an order or decision of the Board.

CONCLUSION

We conclude that the Board did not violate the appearance of fairness doctrine, that neither the Board nor the superior court prohibited Aldridge from supplementing the record, and affirm the superior court.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Veljacic, J.

We concur:

Worswick, P.J.

Maxa, J.

NO. 55489-5-II

COURT OF APPEALS
DIVISION II OF THE STATE OF WASHINGTON

COLLEEN M. ALDRIDGE

Appellant,

v.

STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES

Respondent.

ON APPEAL FROM THURSTON COUNTY SUPERIOR COURT ACTING IN ITS APPELLATE CAPACITY

APPELLANT'S MOTION FOR RECONSIDERATION

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I. IDENTITY OF MOVING PARTY

The moving party is the Appellant, Colleen M. Aldridge

II. STATEMENT OF RELIEF SOUGHT

Mrs. Aldridge respectfully requests this Court grant her Motion for Reconsideration of its March 29, 2022 Decision, which terminated review of the Superior Court's January 15, 2021 ruling in favor of the Respondent.

III. GROUNDS FOR RELIEF AND ARGUMENT

At the outset, Mrs. Aldridge must respectfully take issue with many of the Facts the Court proclaims in its Decision. 1) Dr. Young *"did not attend medical school."* Although Dr. Young did not attend medical school, the Department accepted his application as a network provider. The Department does not restrict its providers to those who attended medical school. 2) *"Aldridge applied for workers' compensation and eventually she and the Department entered into an agreement accepting her claim."*This process took an unprecedented two years to

occur. 3) *"The Department withheld payment, which it informed Aldridge of via a remittance advice."* The payment was denied, not withheld. 4) *"The Department issued a few remittance advices, the one Aldridge appeals here, which denied compensation for her 2010 surgery is "#487012," dated August 4, 2012, ..."* The Department issued several remittance advices, none of which it served on Mrs. Aldridge. 5) *"During her appeal, Aldridge repeatedly requested that the Board address the presence of security, an issue that arose in a prior case involving Aldridge's husband, M. Wayne Aldridge."* This issue originated in a BIIA appeal arising from matters intrinsically tied to the instant industrial insurance claim. The security was actually armed police. 6) *"In M. Wayne Aldridge's case, the Board ordered security be present during his appeal after M. Wayne Aldridge had obtained personal information about a Department attorney and an Industrial Appeal Judge (IAJ)."* Because the Department

declined to argue the matter and, despite Mrs. Aldridge's attempt, the BIIA declined to hold hearings on the matter, and in the superior court's de novo review of Aldridge's appeals, it declined to compel the BIIA to hold hearings on the matter, no evidence exists to support this alleged Fact. 7) *"Neither the Board nor the Department requested security."* A standing written request for the presence or armed police is maintained in BIIA administrative records and the records of the AG. 8) Dr. Young did *"[n]ot think surgery was necessary to treat her condition."* This "Fact" misrepresents Dr. Young's position and testimony. 9) *"Dr. Dennis Stumpp, testifying for the Department, conducted a record review of Aldridge's claim."* Before rendering his opinion, Dr. Stumpp testified that he conducted a mere ninety-minute review of sixteen years of Mrs. Aldridge's medical history. He did not identify the records he relied upon to develop his opinion.

In its decision, the COA begins its review by setting the pace for how it views the testimony of Dr. Young, the treating provider, in contrast to the testimony of Dr. Stumpp, the Department's hired expert witness. The COA proclaims, "Dr. Young has a chiropractic and naturopathic doctorate but did not attend medical school." Decision March 29, 2022, p.2. However, in addition to his education at Pierce College, Dr. Young also attended Western Washington University pre-med and biology and received a Bachelor of Science and biochemistry at the Evergreen State College. Additionally, Dr. Young earned a four-year chiropractic degree at Western State Chiropractic College and received his Doctor of Naturopathic Medicine from Bastyr University. CABR 416

"The Doctor of Naturopathic Medicine
https://bastyr.edu/about/accreditation-compliance."

As a provider qualified and accepted by the Department to treat injured workers,[1] Mrs. Aldridge sought treatment by Dr. Young at the onset of her IIC. The Department accepted Dr. Young as Mrs. Aldridge's treating provider. Whether Dr. Young attended medical school was apparently irrelevant to the Department when it reviewed his application to become a provider because the department approved him to be part of its provider program. Nor was it relevant when Dr. Young became Mrs. Aldridge's treating provider. Moreover, as Mrs. Aldridge's department-approved treating medical provider, the court must give "special consideration" to the attending physician's opinion. Hamilton v. Department of Labor & Indus., 111 Wash.2d 569, 571, 761 P.2d 618 (1988). This is because an attending physician is not an expert hired to give a particular opinion consistent with

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[1] RCW 51.36, WAC 296-20, 296-20-015

one party's view of the case. Intalco Aluminum v. Department of Labor and Industries, 833 P.2d 390, 66 Wn.App. 644 (Wash. App. 1992).

Under this Court's analysis of Occupational Disease the Court concluded: *"[t]he superior court's findings of fact are supported by substantial evidence and that its conclusion of law flow from such findings."* The Court proclaims that Mrs. Aldridge's only argument to support her claim against the superior court's ruling of finding of fact 1.2.3, 1.2.5, and 2.2.3 is *"[t]hat the Board was not impartial."* However, on page 38 of the AB, Mrs. Aldridge directs the Court's review to the testimony of Dr. Young. During his appearance at the BIIA hearing, Dr. Young addressed the issue of, among other things, degenerative disk disease. CABR 416. In addition to providing medical testimony regarding his treatment of Mrs. Aldridge from her initial appointment on December 28, 2009, injury date, Dr. Young was also her treating provider throughout her

claim. This Court proclaims that *"[D]r Young failed to testify that her [Mrs. Aldridge] 2010 surgery was a treatment for her claim."* Sadly, this proclamation speciously implies that Dr. Young's testimony did not address the issue of surgery. When initially asked, "[b]ased upon what you know of Mrs. Aldridge and her occupational disease of December 28, 2009, would you - did you agree surgery was necessary?" Dr. Young responded, "No, not at all. And so, in regard to the sprain/strain diagnoses here, I think, the judge put it well . . . ." After a course of clarification by the interviewer, Dr. Young was asked, "Did you understand the question?" Dr. Young replied, "I don't even remember the question." Interviewer, "When you learned that Dr. Nehls was going to perform the surgery, did you what did you do (sic)? Did you contact Dr. Nehls?" Dr. Young, "No, and that's not my job. My job as primary care is to establish the information as best I can, and make the appropriate referrals both for

the imaging, for the neuro-conduction tests, the neurology follow-up, and get the surgeon's opinion. Dr. Nehls is the one that has to make his own decision whether he is going to advise a patient to move forward with surgery. Once he advises that a patient moves forward with surgery, I am more than happy to give my two cent's worth, but at that point, that's all it's worth is two cents, because the surgeon's opinion trumps mine." "And so, if the surgeon says, I think, that I can make this person better, and that her symptoms related to this motor unit go away with the procedure that I am offering her, I am not in a position to argue with that." Interviewer, "Okay. Well, you just - the question that I asked you previously, you said that you did not think that the surgery was necessary. So, you did not contact Dr. Nehls to express that you did not believe the surgery was necessary?" Dr. Young, **"Boy, if I said that, I was mistaken on that.** Emphasis added. My job is to try to help people avoid surgeries and invasive

procedures, but there is a limit to what I can do, and the goal is to shorten that recovery period, and if the surgeon says that they can shorten that recovery period and offer a better outcome than me, then we are stuck. We go to surgery." Although Dr. Young did not utter the exact words [the 2010 surgery was necessary treatment], he deferred to the surgeon [Dr. Nehls's] expertise. Additionally, this Court rejects Mrs. Aldridge's argument that the BIIA is biased, and that bias negatively affected the handling of her appeal. With the exception of the blatant lie AAG Barnes, an officer of the court, averred to the superior court judge during the Department's case-in-chief [2](RP

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[2] Despite the record being replete with information that confirms that the Department purposely refused to serve its August 4, 2012 Remittance Advice (RA) on Mrs. Aldridge until it was compelled to do so by order through the BIIA, AAG Barnes, counsel to the Department, blatantly lied to the superior court arguing, "And for whatever reason, it is not uncommon that people don't

p.19:18, CABR p. 266, 267),[3] it is undisputed that for four years, the Department maliciously withheld serving Mrs. Aldridge notice of its Remittance Advice (RA) denying payment of services to Drs. Nehls and Flamoe while refusing to serve notice without the requirement of a BIIA order. After repeated attempts at bringing appeals before the BIIA on the issue of the Department's failure to serve its RA's on Mrs. Aldridge only to have the Department

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always receive the orders in the mail. But then it was resubmitted to her (Emphasis added) in 2016 which she then appealed from and was timely, and that's what started this action," the COA ignored this atrocity while rejecting evidence of Mrs. Aldridge's attempt to obtain the testimony of Dr. Nehls. CABR 145.

[3] In its response to Request for Admission, the Department admits, "Between June 10, 11, 2010, and October 17, 2016, the Department did not serve notice on Mrs. Aldridge advising her of the denial of benefits for the treatment provided by Dr. Nehls and Dr. Flamoe for services performed on June 10, and 11, 2010."

reassume jurisdiction over the claim or the appeals were assigned to Caucasian IAJs, which she lost, on October 8, 2015, the Department once again served Mrs. Aldridge with a letter advising that the Department had revisited and reaffirmed the decision of its August 4, 2012, RA. Appendix B. However, the Department again refused to serve the RA on Mrs. Aldridge. Mrs. Aldridge appealed. Appendix B. The appeal was assigned to IAJ Kalenius. Because IAJ Kalenius is the IAJ who wrongly and maliciously instigated the requirement for the presence of armed police when Mr. Aldridge appears in person, Mrs. Aldridge moved for recusal. Appendix B. The appeal was assigned to an African-American IAJ. On August 3, 2016, Mrs. Aldridge moved for summary judgment. Appendix B. On August 17, 2016, the Department responded. The Department admitted that it had not served its RA on Mrs. Aldridge in its response. "The Department has not transmitted a copy of this remittance advice to Ms.

Aldridge other than through the discovery process pursuant to this appeal."[4] Appendix B. The fundamental basis for not serving the RA on Mrs. Aldridge was because the Department believed, "[t]here could be no such failure to communicate a denial of benefits because no denial of benefits took place." "[r]emittance advice 487012 was not a final decision regarding whether any treatment was compensable, that the Department does not have knowledge that would indicate proximate effects of the remittance advice, and that this remittance advice is not a denial of benefits. Declaration of Angel Travis at ¶10-12." "[T]here is a factual dispute regarding whether the Department made a "decision" per RCW 51.52.050 and as to whether Ms. Aldridge was "affected thereby." See RCW 51.52.050. This RCW mandates that the

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[4] Appendix B, Department's Response to Ms. Aldridge's Motion for Summary Judgment p.2:9.

Department promptly serve a person affected by the Department's "order, decision, or award." RCW 51.52.050. Here, if the appealed remittance advice does not represent a final decision or order, Ms. Aldridge cannot prevail." On October 6, 2016, the IAJ issued a proposed decision and order (PD&O) in favor of Mrs. Aldridge. Ironically, the evidence and argument Mrs. Aldridge relied upon in her summary judgment are identical to the evidence and argument she relied upon in prior identical appeals. Nonetheless, until an African-American IAJ heard her appeal, Caucasian members of the BIIA, impetuously determined to deny Mrs. Aldridge under any circumstance despite the validity of her legal argument, did so. The requirements or RCW 51.52.050 are incontrovertible. "[W]henever the department has made any order, decision or award, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with a copy thereof by mail . . . ." *Id.* The

concern is, and should very well be, why did the Department target Mrs. Aldridge to test the issue of whether an RA is an "order, decision, or award." "[W]e agree instead with the Department's interpretation: that RCW 51.52.050 requires the Department–not the worker's employer or other third party–to communicate the Department's orders to the worker." Renton Sch. Dist. # 403 v. Dolph, 415 P.3d 269 (Wash. App. 2017). The Department's malicious and purposeful refusal to serve its RA decision on Mrs. Aldridge caused an unnecessary four-year delay in properly processing her claim and is in repudiation of the law. "[O]n all claims under this title, claimants' written notices, orders, or payments must be forwarded directly to the claimant until such time as there has been entered an order on the claim appealable to the board of industrial insurance appeals . . . ." RCW 51.04.080. *See* also Lee v. Safeway Stores, Inc. (Wash.

App. 2012). (unpublished).[5] Justice in all cases shall be administered openly and without unnecessary delay. WA Const. art 1:10. In the AB, Mrs. Aldridge relied upon McKinlay d/b/a/ Patsy's Progressive Pre-School v. Department of Social and Health Services, 51 Wn. App. 491, 497, 754 P.2d 143 (1988) to support her argument that the total six-year unnecessary delay in administering her IIC is in repudiation of the law. This COA rejects McKinlay as inapplicable holding, *"[B]ut, McKinlay does not support her argument, and that case says nothing about how we evaluate accusations of delay in a workers' compensation case."* Mrs. Aldridge agrees that McKinlay is not on point with the matters of her appeal. However, McKinlay is constructive in that, like Mrs. Aldridge's case,

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[5] This unpublished decision has no precedential value, is not binding on any court and is cited in this motion only for such persuasive value as the court deems appropriate. GR 14.1.

McKinlay involves issues originating from proceedings in a Washington State administrative agency and addresses, albeit through dicta, access to the courts and unnecessary delay. In an administrative proceeding resulting from the Department of Social and Health Services (DSHS) revocation of a daycare license, Mrs. Antes appealed to Walla Walla superior court after an Administrative Law Judge (ALJ) upheld the revocation. Mrs. Antes wanted the tape recording from the administrative hearing transcribed at the DSHS's expense and moved the superior court for an order so requiring. The superior court granted the motion. DSHS moved for discretionary review. DSHS revoked James and Patsy McKinlay's daycare license under circumstances related to child abuse. Upon affirmation of the revocation, the McKinlay's appealed to Chelan County superior court, where they moved to have the 38 hours of tapes of the administrative proceeding transcribed at DSHS expense.

The superior court denied the motion. The cases were consolidated for oral argument and decision before the COA. Under the Administrative Procedure Act (APA), Within thirty days after service of the petition, or within such further time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. The COA found that the cost of transcription is the parties' responsibility. The McKinlays were unable to pay the cost of transcribing the tapes. Because the superior court had not addressed the issue of indigency, the matter was remanded for hearing involving, among other things, indigency. The McKinlay COA held that "[D]ue process requires that citizens be allowed to access the courts. Const. art. 1, § 3. Also required is that justice be administered without unnecessary delay. *See generally*, Const. art. 1, § 10." Although the issues raised in McKinlay are not precisely on par with those raised here,

the McKinlay COA saw the necessity to surmise that, although the case originates from review of issues raised in administrative proceedings, the guarantees of due process and the administration of justice without unnecessary delay exists under our [Washington] Constitution. No similar publicized case originating in an administrative proceeding in Washington exists. Therefore, Mrs. Aldridge's reliance on McKinlay is reasonable.

The COA references its holding in *Boyd* to support its decision in this case and rule that WAC 263-12-135 prohibits department records or other documents from becoming part of the record of the BIIA unless offered in evidence.

The matters in *Boyd* are inapposite to the issues in the instant case. In *Boyd*, the court addressed *Boyd's* argument that a chart note and bill sent to the Department but not offered into evidence during his BIIA appeal

should have been considered by the full BIIA and available for review by the superior court. The *Boyd* COA ruled that [I]n declining to consider them [exhibits A, B, C, D, I, O, and P attached to his petition for review before the full BIIA], the BIIA acted consistently with its decision in In re: Eileen P. Clearly, 92 1119, 92 1119A, 1993 WL 308686, at *2 (Wash. Bd. Indus. Ins. Appeals Apr. 12, 1993). However, *Boyd* and *Clearly* address "newly discovered evidence." In the instant case, the issue revolves around internal trial and hearing records of the BIIA arising from the same industrial appeals claim. In appeals before the BIIA, the Department must forward to the BIIA its "original record." "The department shall promptly transmit its original record, or a legible copy thereof produced by mechanical, photographic, or electronic means, in such a matter to the board." RCW 51.52.070. The term "original record" is not defined, nor has the Department ever provided this record to Mrs.

Aldridge despite the requirement to do so. WAC 263-12-01501(6). However, the record serves at least two critical purposes. 1) The entire contents of the claim are reviewed to assist the BIIA in determining its next course of action. In re Mildred Holzerland, BIIA Dec., 15 729 (1965). The BIIA may decide to "[g]rant or deny the appeal, rule that the department acted properly and lawfully, and deny the appeal or rule in favor of the appellant and grant the relief sought." *Id.* 2) The BIIA uses the record to formulate its Jurisdictional History (JH) record. However, the requirement for the existence of the JH is not listed under the Industrial Insurance Act (IIA) or the BIIA's administrative rules. The entries placed into the JH by the BIIA span the life of the industrial insurance claim (IIC). *See* CABR p.57. Generally, establishing jurisdiction on the BIIA to hear an appeal is accomplished by stipulation of the parties to the correctness of the JH. In re Clemma K. Varner, Dec'd., BIIA July 06 11288 (2007). Once an

appeal is granted, the appellant and the department are asked to stipulate the JH's correctness. Although the language in JH records depicting the stipulation to which the parties must agree recently changed, during a significant part of the history of Mrs. Aldridge's IIC and BIIA appeal history, the JH stipulation required the following:

"[P]lease review the Jurisdictional History and note any errors or additions. This is a summary of Department actions relevant to this appeal. The summary may not include every action taken by the Department. At the initial conference you will be asked to stipulate to the correctness of these facts for the purposes of establishing the Board's jurisdiction to hear the case and determine the issues to be resolved." Appendix A.

The stipulation language at the time of filing the BIIA appeal at issue here required:

"[T]his is a summary of actions relating to this appeal and does not include every action taken by the Department of Labor and Industries. Have it available at your conference. The judge will ask you if there are any errors in this document. The judge will ask you to agree the Board may use this document to show our authority to hear this appeal (jurisdiction)." CABR 57.

The JH offers summaries of the BIIA's explanation of the information in the original record it received from the Department under RCW 51.52.070. Additionally, the JH includes BIIA docket numbers and summaries of other appeals but does not include the appellant's side of the matter. Essentially, the JH is equivalent to a trial judge in a criminal case reviewing the arrest record and history of a defendant whose case is about to be heard. In Mrs. Aldridge's appeal before the BIIA, she referenced several appeal dockets filed with the BIIA and were the result of some form of action, inaction, or violation of the IIA

occurring throughout the six-year history of her IIC. The issues raised in each appeal were relevant to Mrs. Aldridge's IIC as a whole, let alone the appeal under Dckt. 15 15608,[6] from which the instant appeal originates. Accordingly, during the BIIA appeal process, Mrs. Aldridge identified the evidence she relied upon as the board dockets occurring throughout the six-year history of her IIC. CABR 119. In the instant case, the records the BIIA illegally refused to include in its CABR and which the superior court declined to consider are not records or evidence that was not originally a part of the IIC the Department maintained on Mrs. Aldridge's occupational disease claim. This is supported by the JH the parties were required to stipulate to. Neither are they testimony of

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[6] Despite Mrs. Aldridge's efforts, it took six-years for the BIIA granted and heard this appeal. The IAJ who heard this appeal is African-American. All prior judges are Caucasian.

which the opposing party was unaware or did not have an opportunity to address. Instead, according to the JH produced by the BIIA, the contents of the dockets directly reflect the information contained in the IIC file maintained by the Department. The BIIA violated RCW 51.52.070 when it did not include in its CABR to the superior court the contents of the dockets Mrs. Aldridge incorporated by reference in her pleadings before the BIIA. This COA holds that WAC 263-12-135 prohibits department records or other documents from being made a part of the record unless offered into evidence. *"[N]o part of the department's record or other documents shall be made part of the record of the board unless offered in evidence."* *Id.* However, the Department's daily conduct violates the language in this agency code. The JH, which contains information from throughout the life of an IIC, the Department's rendition of occurrences before the BIIA, and the BIIA's interpretation of the Department's

interpretation of occurrences before the BIIA, is included as a part of the record in workers' compensation appeals. *See* WAC 263-12-135 "[a]nd any other written applications, motions, stipulations or requests duly filed by any party." The COA's holding that "the superior court generally only reviews the certified Board record when a claimant appeals unless the claimant alleges irregularities and requests additional testimony, Hendrickson v. Dept. of Labor & Indus., 2 Wn. App. 2d 343, 351, 409 P.3d 1162 (2018)" supports Mrs. Aldridge's case.

This Court makes proclamations asserted as factual on matters for which no evidence or testimony exists. Nor are there prior hearings on the information for which this Court renders its proclamations. There is no evidence to support this Court's conclusion and proclamation that the reason the BIIA ordered the presence of "security" [armed police] when Mr. Aldridge appears is that he obtained *"personal information about a Department attorney and an*

industrial appeals judge." Decision p.3. The records that hold the truth about what Mr. Aldridge did immediately before the BIIA began requiring the presence of armed police when he appears in person are contained in the records the BIIA refused, for obvious reason, to certify and provide to the superior court in Mrs. Aldridge's appeal. Appendix C. The document contained in Appendix C is the motion for reconsideration Mr. Aldridge filed with the BIIA on April 19, 2013, in the same IIC giving rise to the instant appeal before this Court, requesting that the Assistant Chief Industrial Appeals Judge (ACIAJ) reconsider his ruling that, inter alia, upheld IAJ Kalenius's decision (without a hearing) for the presence of armed police when Mr. Aldridge appears and that the IAJ's statement to Mr. Aldridge when Mr. Aldridge asked why an armed police officer was present "[f]or reasons I do not have to explain to you [Mr. Aldridge], is "[a] question that is reserved to the sound discretion of the judge

conducting a proceeding." This document refutes this Court's proclamation, made solely in reliance upon the Department's unsupported assertion of the reason for the requirement for the presence of armed police. This Court proclaimed, *"[A]ldridge argues that the Board ordered security be present when M. Wayne Aldridge appeared before it due to racial bias against M. Wayne Aldridge and that the bias necessarily flows to her because she is his wife."* Decision p.7. In the AB, Mrs. Aldridge argued that the BIIA's armed police requirement in her dealings and appeals before the BIIA is because Mr. Aldridge is Black, and she is Caucasian. AB p.8. This is supported by IAJ Kalenius's armed police requirement, the first time Mr. Aldridge ever appeared before IAJ Kalenius, and the IAJ's tenacious insistence on not disclosing the reason for the requirement. This Court proclaimed, *"[I]n the present case, no security was requested, and therefore the Board never conducted a hearing on the issue."* Decision p.7.

The proclamations issued in its Decision infers this Court relies upon, supports its proclamations and holdings, and believes determinedly in the argument offered by the Department. Yet, this Court curiously challenges as untrue, any argument, testimony, or evidence presented by Mrs. Aldridge. The evidence contained in the illegally incomplete and cannibalized[7] CABR the BIIA provided the superior court contains argument and testimony Mrs. Aldridge provided to the BIIA in support of her case, yet this Court rebuffs the material. *"[T]he court also requested Aldridge to cite to Dr. Young's testimony supporting her request for compensation and to what evidence showed*

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[7] The BIIA illegally withheld its May 1, 2018 order on motion to substitute industrial appeal judge for a pro-tem judge from outside of the BIIA. Additionally, the BIIA withheld records of dockets occurring as a direct result of the Department's administration of Mrs. Aldridge's IIC that are intrinsically tied to the instant case.

the Board acted with racial bias. Aldridge responded by referring to her own brief." Decision p.5. However, the Court accepts and bases its proclamations on the argument offered by the Department through its brief and the unsworn and un-litigated statement of a *"Department attorney,"* AAG Penny (Christensen) Allen, written in 2013. Moreover, the written statement is not part of any record before this Court. It is undisputed that AAG Allen's written statement also contains hearsay. Additionally, although no instance of IAJ Kirkendoll having complained that Mr. Aldridge obtained public record information regarding her speeding ticket has been divulged to the Aldridges, made a part of any BIIA record involving the Aldridges, nor have hearings been held on any such matter, this Court confidently proclaims the issue of Mr. Aldridge having accessed public record information this Court calls "personal information," as the reason the BIIA implemented the requirement for the presence of armed

police when Mr. Aldridge appears in person. However, this Court does not address how accessing and referencing public records information in public proceedings justifies the requirement for the presence of armed police.

> "[T]he people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected . . . ." RCW 42.56.030.

In this case, IAJ Kirkendoll was the IAJ who presided over a BIIA appeal intrinsically tied to the instant appeal. As with the instant appeal, the issue presented there results from matters related to the same IIC currently before this Court. Mr. Aldridge obtained public record information on IAJ Kirkendoll after a facial expression and demeanor given to Mr. Aldridge as the IAJ entered the courtroom indicated a problem. At the time, Mr. Aldridge, who was

53 years of age, and, having entered the military police at age 18, received training in interpreting body language and had received training in interpreting body language throughout his career as a Washington State Patrol (WSP) Trooper combined with his life experienced having grown up a Black man in the United States,[8] recognized that IAJ Kirkendoll's facial expression and demeanor indicated an underlying issue. As it turns out, Mr. Aldridge's instinct was not wrong. The IAJ denied every one of Mrs. Aldridge's motions resulting in the dismissal of Mrs. Aldridge's appeal. The public record check revealed that the IAJ received a speeding ticket from a WSP Trooper two days earlier. Although receiving a traffic ticket by a WSP Trooper created potential bias, the IAJ refused to disclose the information. "[U]nder the appearance of

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[8] It is important to note Mr. Aldridge does not believe race and/or the Aldridge's interracial marital status played a part in IAJ Kirkendoll's rulings.

fairness doctrine, it is *not* necessary to show that a decisionmaker's bias actually affected the outcome, only that *it could have.* Nationscapital Mortg. Corp. v. Dept. of Fin. Inst., 133 Wn. App. 723, 758, 137 P.3d 78 (2006) quoting: Buell v. City of Bremerton, 80 Wash.2d 518, 523, 495 P.2d 1358 (1972). Emphasis added.

"[P]ublic record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives." RCW 42.56.010.

Although researching the public record history of anyone, let alone a state employee is a right guaranteed by law[9] to all citizens, this Court, in solidarity with the lower courts,

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[9] RCW 42.56.030

vilify, without a scintilla of evidence, and in blatant repudiation of the guarantees provided under the law, Mr. Aldridge for having the audacity, as a Black man, to exercise those rights and expose the racial bias Mrs. Aldridge suffers before the courts by being married to a Black man.[10] Additionally, Mr. Aldridge received public records information on AAG Allen as well. Like IAJ Kirkendoll, AAG Allen is a public employee who was acting in her official capacity when she appeared before the BIIA representing the Department in its opposition to Mrs. Aldridge's IIC. Although no reason exists for AAG Allen to conceal her legal name, particularly when any

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[10] Systemic racism in the justice system is not limited to the court system. This problem also exists in the legal profession in general which explains the problem in the justice system. Although Mrs. Aldridge sought legal representation the merits of her case are accepted, and lawyers were willing to represent her. It isn't until they she is married to a Black man that things change.

ordinary citizen is required to divulge their legal name [unless extraordinary circumstances exist] or a court has ordered otherwise in legal proceedings. Nonetheless, the exercise of a legal right and discovering a person's legal name and then referring to such person by their legal name does not justify the requirement for the presence of armed police when the discoverer appears in person in legal proceedings. Particularly where a hearing on the issue of the requirement for the presence of armed police is not held despite the insistence and efforts of equal access to the courts by the person for whom the presence of armed police has been summoned. Apparently, being a Black man exercising rights allegedly guaranteed to all under the law where the exercise of such rights involves White women is an exception deserving of "calling the police." Moreover, in either alleged case of misconduct allegedly perpetrated by Mr. Aldridge, the BIIA possessed the authority to initiate legal proceedings against Mr.

Aldridge, given the alleged intimidation allegedly suffered by AAG Allen. Although Mrs. Aldridge argued this before this Court rendered its Decision, this Court ignored the argument. It ruled Mrs. Aldridge *"[f]ails to satisfy her burden to show that the Board violated the appearance of fairness doctrine."* This Court held, *"[A]ldridge fails to explain how the presence of security in M. Wayne Aldridge's case affects her case, where no security was present."* Despite the documented [proven] history that the BIIA insists on the presence of armed police when Mr. Aldridge appears, this Court takes the word of an individual employee of the BIIA [IAJ Randall Hansen], who, having no authority to direct the operation of the BIIA, on the day of trial says "[I] don't think - it hasn't been requested." CABR 369 p.10:12. As previously stated herein, this Court places great weight on the unsworn, unadjudicated word of a *"Department attorney"* who, nine years ago, alleged she was intimidated when Mr. Aldridge

referred to her by her legal name. So much weight that this Court supports and publicly[11] proclaimed in its Decision that the reason the BIIA requires the presence of armed police when Mr. Aldridge appears in person is because of the 2013 statement made by the *"Department attorney,"* where the statement makes an indefinite request for the presence of armed police, this Court proclaims with no evidence and no uncertainty, that *"[n]o security was present."* This Court takes the word of the *"Department attorney"* and supports, through proclamation in its Decision, that the presence of armed police is justified but does not rely on that same *"Department attorney's"* statement whereby she issues a

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[11] Although the March 29, 2022 Decision in this appeal is "unpublished," this does not mean the Decision is not released to the public. On the contrary. The Decision is already publicly accessible worldwide, through free websites located on the Internet.

standing indefinite request for the presence of armed police. The argument offered by Mrs. Aldridge, the supporting Declaration of Michael W. Aldridge and the exhibits attached to it, as well as the intrinsically-tied BIIA records the BIIA illegally refused to provide the superior court and now deprive this Court, provide the evidence that supports the presence of armed police during BIIA proceedings in the instant appeal as well as all other BIIA proceedings since March 2013. In its Decision, this Court proclaimed, *"[A]ldridge fails to show how the Department's or the Board's actions resulted from bias. She also fails to provide any evidence that bias impacted her case."* Although Mrs. Aldridge and the CABR the BIIA illegally withheld offers innumerable examples and evidence of bias and "potential bias," the appearance is that this Court declines to accept them as credible. Like this Court's holding that Mr. Aldridge's exercise of his right to exercise access to public records under the Public

Records Act (PRA), the requirement that Mrs. Aldridge show how the Department's or the BIIA's actions resulted from bias flies in the face of the law. "[U]nder the appearance of fairness doctrine, it is *not* necessary to show that a decisionmaker's bias *actually affected* the outcome, *only that it could have*. *Id* at Nationscapital Mortg. Corp. Emphasis added.

IV. CONCLUSION

Mrs. Aldridge respectfully requests this Court reconsider its March 29, 2022 Decision.

This document contains 5991 words, excluding the parts of the document exempt from the word count by RAP 18.17.

Respectfully Submitted this 23 day of May, 2022.

Colleen M. Aldridge

By: Colleen M. Aldridge
Pro Se

APPENDIX A

JURISDICTIONAL HISTORY

Please review the Jurisdictional History and note any errors or additions. This is a summary of Department actions relevant to this appeal. The summary may not include every action taken by the Department. At the initial conference you will be asked to stipulate to the correctness of these facts for the purposes of establishing the Board's jurisdiction to hear the case and determine the issues to be resolved.

IN RE: COLLEEN M. ALDRIDGE

CLAIM NO: AM-48151

DOCKET NO: [redacted]

Jurisdictional Stipulation

I certify that the parties have agreed to include this history in the Board record for jurisdictional purposes only.

☐ As Amended

Dated _____ at _____.

_____
Judge's Signature

FOR BOARD USE ONLY

MFP	DATE DOC/ ACTION	DOCUMENT NAME	ACTION/RESULT
1	1-7-10	AB	[redacted]
3	~~4-16-10~~	~~NA (10 14602)~~	[redacted]
	4-20-10	DO	[redacted]
	4-21-10	NA (10 14802)	[redacted]
	~~4-28-10~~	~~BD ODA (10 14602)~~	[redacted]
4	4-29-10	P & RR	[redacted]
	5-3-10	DO	[redacted]
	5-4-10	Letter	[redacted]
5	5-6-10	Motion	[redacted]

APPENDIX B

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF INDUSTRIAL INSURANCE
PO BOX 44291
OLYMPIA, WA 98504-4291

MAILING DATE	10/08/2015
CLAIM NUMBER	AM48151
INJURY DATE	12/28/2009
CLAIMANT	ALDRIDGE COLLEEN M
EMPLOYER	DEPT OF SOCIAL
UBI NUMBER	342 007 865
ACCOUNT ID	043, 811-00
RISK CLASS	4902
SERVICE LOC	Tacoma

COLLEEN ALDRIDGE
PO BOX 237
DU PONT WA 98327-0237

NOTICE OF DECISION

The Department of Labor and Industries has reconsidered the order of remittance advice of 08/04/2012 - #487012. The department has determined the order is correct and it is affirmed.

Supervisor of Industrial Insurance
By Peggy L Stegner
Claims Consultant
(360) 902-4780

MAILED TO: WORKER - COLLEEN ALDRIDGE
PO BOX 237, DU PONT WA 98327-0237
EMPLOYER(B) - DEPT OF SOCIAL AND HEALTH SERV
DSHS OFFICE OF RISK MANAGEMENT, PO BOX 45882, OLYMPIA WA 98
PROVIDER - YOUNG THOMAS J ND
8909 GRAVELLY LAKE DR SW, LAKEWOOD WA 98499-3109

ANY APPEAL FROM THIS ORDER MUST BE MADE IN WRITING TO THE BOARD OF INDUSTRIAL INSURANCE APPEALS, P.O. BOX 42401, OLYMPIA, WA 98504-2401 OR SUBMIT IT ON AN ELECTRONIC FORM FOUND AT HTTP://WWW.BIIA.WA.GOV/ WITHIN 60 DAYS AFTER YOU RECEIVE THIS NOTICE, OR THE SAME SHALL BECOME FINAL.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

2430 Chandler Court SW, P O Box 42401
Olympia, Washington 98504-2401 • www.biia.wa.gov
(360) 753-6823

In re: **COLLEEN M. ALDRIDGE**	Docket No. 15 11604
Claim No. AM-48151	**ORDER GRANTING APPEAL**

The CLAIMANT's appeal from L&I's decision dated October 8, 2015 is granted.

- This order granting appeal does not mean you have won your appeal. It means our agency agrees to hear your appeal.
- You will be notified of a conference date and time to discuss the appeal.
- You may represent yourself at the conference. You may also bring an attorney to represent you, or a family member, friend, or union representative to help you.
- In any proceeding, you may ask the judge questions and have the judge explain the procedures.

Dated November 16, 2015.

BOARD OF INDUSTRIAL INSURANCE APPEALS

DAVID E. THREEDY, Chairperson

FRANK E. FENNERTY, JR., Member

JACK S. ENG, Member

c: L&I

Visit our website at www.biia.wa.gov for information on the appeal process. You will find an instructional video, a list of frequently asked questions, and our publications *Your Right to be Heard* and *Rules of Practice and Procedure*.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

In re Colleen M. Aldridge Claim No. AM-48151	**Docket No.: 15 11604** MOTION AND DECLARATION TO RECUSE (IAJ TOM M. KALENIUS

I. MOTION

COMES NOW Colleen M. Aldridge, Appellant, and moves Industrial Appeals Judge Tom M. Kalenius (hereinafter "IAJ") to recuse himself from all matters related to this Appeal. Mrs. Aldridge supports this Motion in the Declaration infra.

II. DECLARATION

I, Colleen M. Aldridge, declare as follows:

I am the Claimant in this Appeal.

In a prior appeal (12 24705) I brought before the Board of Industrial Insurance Appeals (hereinafter "BIIA"), IAJ Kalenius sat as the presiding judge. Wayne Aldridge, with The Helping Hand Lay Representation Services, represented me the appeal. IAJ Kalenius required the presence of armed security when Mr. Aldridge appeared in person at a scheduling conference (March 19, 2013) after Mr. Aldridge inadvertently telephoned IAJ Kalenius home. IAJ Kalenius home phone number was listed on the website of the Washington State Bar Association (hereinafter "Bar") along with the address of the BIIA. IAJ Kalenius overreacted to a situation by requiring the presence of armed security when Mr. Aldridge appeared in person at the scheduling conference. The situation whereby Mr. Aldridge inadvertently telephoned the IAJ's home was the direct result of the shortcoming of IAJ Kalenius. Had the IAJ listed his business phone number on Bar's website, rather than his home number which, coincidently, was listed next to the address of the BIIA, the situation would not have occurred. The result of the IAJ's shortcoming is the requirement for the presence of armed security when Mr. Aldridge appears in person before the BIIA. In solidarity with the decision of the IAJ Kalenius, the BIIA flagged Mr. Aldridge's name thereby requiring the presence of armed security when Mr. Aldridge appears before the BIIA. The overreaction of IAJ Kalenius in conjunction with the BIIA's support of the

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requirement of armed security and direction, without due process, that armed security be present when Mr. Aldridge appears in person before the BIIA is racially motivated. Mr. Aldridge is Black. The BIIA does not deny this nor has it ordered a hearing to address the matter. To the contrary, the BIIA has consistently resisted and denied Mr. Aldridge's request for a hearing on the matter. As a result, I cannot receive a fair trial before IAJ Kalenius.

I declare under penalty of perjury under the laws of the state of Washington that the preceding is true and correct.

SUBMITTED this 8 day of February 2016.

Colleen M. Aldridge

Colleen M. Aldridge

Colleen M. Aldridge
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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

In re Colleen M. Aldridge Claim No. AM-48151	**Docket No.: 15 11604** DECLARATION OF M. WAYNE ALDRIDGE IN SUPPORT OF COLLEEN M. ALDRIDGE'S MOTION AND DECLARATION TO RECUSE (IAJ TOM M. KALENIUS

I. DECLARATION

I, M. Wayne Aldridge, declare as follows:

On March 18, 2013, I attempted to contact IAJ Kalenius judicial assistant by telephone at the number then listed for her (360) 753-6823. I attempted my calls at 9:14 AM, 9:18 AM, 9:26 AM and 9:42 AM. With each call, the phone system to the Board of Industrial Insurance Appeals (hereinafter "BIIA") went to its messaging system. The system indicated that an operator could be reached by pressing the digit "0." When I attempted followed these instructions, the number rang without being answered. I checked the Washington State Bar Association's (hereinafter "WSBA") website for the telephone number or e-mail address for IAJ Kalenius. A phone number was listed for "Thomas Michael Kalenius" at (360) 956-1550. Additionally, the address associated with Thomas Michael Kalenius was PO Box 42401 Olympia, WA. 98504-2401. [Exhibit A] The address listed as the contact address for Thomas Michael Kalenius was the same as the mailing address for the BIIA. [Exhibit B] Moreover, a review of other records for BIIA judges on the website revealed contact information, including telephone numbers, facsimile numbers and e-mail address for those BIIA employees. [Exhibit C]

At 9:46 AM, I called the number listed on the WSBA website believing it to be the office number for IAJ Kalenius. The voice of a female answered the call "hello." The greeting "hello," is unusual for a call to a government office. As such, I advised the answering party that he was calling to speak with Judge Kalenius. I asked if the number was the IAJ Kalenius office telephone number. The answering party said that it is not. I apologized and said that I would try to call the BIIA again. The answering party replied, "Oh, no problem." I then disengaged the call.

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At 9:50 AM, I telephoned the Tacoma BIIA ((253) 593-2910). Ms. Juanita Sandifer answered. Ms. Sandifer provided the name and extension of the IAJ's judicial assistant (Debbie Thomas Ext: 148), then transferred my call. I explained to Ms. Thomas that I was requesting to attend the scheduling conference set to occur the next day (March 19, 2013) by telephone. Ms. Thomas explained that the judge would have to make that decision. She explained that she would contact the judge then return my call. IAJ Kalenius refused to return my call. As a result, I was required to appear in person at the scheduling conference.

The failure of IAJ Kalenius to return my call was intentional. It was his desire to force me to appear in person so I could see that he had summoned armed security, essentially, a show of power, since I had telephoned (unintentionally) his home.

On March 19, 2013, I appeared before IAJ Kalenius at the BIIA office in Olympia. After signing in, receiving a visitor's pass from the representative at the information window and receiving detailed information regarding the location of the hearing room, I proceed toward the room. Although I was unaware at the time, I now know that the reason the receptionist went into such detail after I signed was because she was attempting to stall to allow time for the armed security guard to arrive.

As he walked toward the hearing room, he heard a male voice and a female voice coming from the assigned hearing room. A discussion regarding dates could be heard. As I entered the hearing room, IAJ Kalenius commanded: "May I help you." I identified himself and said I was there for the scheduling conference. At this time an armed uniformed Trooper arrived. The conference commenced as the IAJ directed that the proceedings go on the record. In an unprecedented action, IAJ Kalenius demanded that I be sworn in prior to conducting the scheduling conference. During the proceedings, I expressed concern that the IAJ had engaged in ex parte discussions with opposing counsel regarding Mrs. Aldridge's case. The IAJ verified that he had in fact engaged in ex parte discussions with opposing counsel stating that he had done so because counsel was there five minutes before I arrived. A review of the sign-in log at the front office revealed that Mrs. Allen[1], counsel for the Department of Labor and Industries (hereinafter "Department"), arrived at 8:45 AM. This gave the IAJ and Mrs. Allen approximately twelve minutes to discuss Mrs. Aldridge's case ex parte. As a result of the ex parte discussion, Mr.

[1] Mrs. Allen's legal last name is Christensen. Mrs. Allen uses the stage name "Allen" in all proceedings before the BIIA and the courts. All other persons appearing before the BIIA and/or the courts are required to use their true legal name.

M. Wayne Aldridge
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DuPont WA. 98327-0237
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Aldridge moved for IAJ's recusal. The IAJ denied the motion. At the conclusion of the conference, I placed on the record, inter alia; the telephone call inadvertently made to the IAJ's home phone number. I also requested information as to the reason the armed uniformed Trooper was in attendance at the hearing. The IAJ stated condescendingly that he required the presence of the Trooper for reasons that he did not have to explain.

The actions taken by IAJ Kalenius are racially motivated. Rather than addressing the issues with the telephone system at the BIIA, in solidarity with the measures taken by IAJ Kalenius, the BIIA has flagged my name indicating that I am a physical threat to BIIA members and that armed security is required when I appear in person at the BIIA.

IAJ Kalenius cannot preside fairly over Mrs. Aldridge's Appeal and should recuse.

I declare under penalty of perjury under the laws of the state of Washington that the preceding is true and correct.

SUBMITTED this 8 day of February, 2016.

M. Wayne Aldridge

M. Wayne Aldridge
1313 Thompson Cir Unit 237
DuPont WA. 98327-0237
(253) 470-6967 Fax: (855) 893-0004

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

In Re: Colleen M. Aldridge	Docket No.: **15 11604**
Claim No. AM-48151	DECLARATION OF SERVICE/MAILING

I, M. Wayne Aldridge, being first duly sworn on oath, depose and say: On the 8 day of February 2016, I sent via facsimile and/or deposited in the mails of the United States of America, properly stamped and addressed envelope(s) directed to:

Kathryn Balzer
Attorney General of Washington
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containing the following:

1. Motion and Declaration to Recuse (IAJ Tom M. Kalenius);
2. Declaration of M. Wayne Aldridge in Support of Colleen M. Aldridge's Motion and Declaration to Recuse (IAJ Tom M. Kalenius);
3. Declaration of Service/Mailing.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct: Signed at Thurston County, Washington this 8 day of February, 2016.

By: _____
M. Wayne Aldridge

M. Wayne Aldridge
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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

In re: Colleen M. Aldridge Claim No. AM-48151	Docket No: **15 11604** MOTION FOR SUMMARY JUDGMENT

COMES NOW Colleen M. Aldridge Claimant, by The Helping Hand Lay Representation Services and through her Lay Representative of record M. Wayne Aldridge, and moves the BIIA, pursuant to RCW 51.52.140, CR 56 and WAC 263-12-125, for an Order on Summary Judgment in this matter.

This Motion is based on the brief of Lay Representative M. Wayne Aldridge.

Signed at Olympia, Washington this 3 day of August, 2016.

By: _____

M. Wayne Aldridge
Lay Representative

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

In re: Colleen M. Aldridge Claim No. AM-48151	Docket No: **15 11604** BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I. STATEMENT OF RELIEF SOUGHT

Mrs. Aldridge moves the BIIA for an order of summary judgment finding, the Department in violation of the IIA through its failure to promptly serve, within the meaning of RCW 51.52.050, notice of denial of benefits on Mrs. Aldridge. And that the Department violated Mrs. Aldridge's rights to due process, through its failure to serve, within the meaning of RCW 51.52.050, notice of denial of benefits on Mrs. Aldridge.

Mrs. Aldridge moves the BIIA for an order of summary judgment defining the phrase "promptly serve," and order the Department to, within a time certain, to promptly issue and serve a further determinative order addressing the compensability of the services and treatment provided by Drs. Nehls and Flamoe on June 10, and 11, 2010. And that the BIIA specifically define the definition of the phrase "promptly issue."

II. FACTS RELEVANT TO THE MOTION:

In this Appeal, the facts and issues raised in Mrs. Aldridge's industrial insurance claim (AM-48151) under BIIA docket 14 13103, are relevant here in terms of explanation and clarity of the issues involving the service and treatment Mrs. Aldridge received on June 10, and 11, 2010, by Drs. Nehls and Flamoe. The matters are inextricably linked. The surgery Mrs. Aldridge received on June 10, and 11, 2010, was performed by Drs. Nehls and Flamoe at St. Clare Hospital. The issues on appeal under Docket 14 13103, involved denial of entitled benefits through the lace of service of such notice.

LACK

Although the Department has never served on Mrs. Aldridge, notice of denial of entitled benefits that it allegedly served on Drs. Nehls, Flamoe and on St. Clare Hospital, the information Mrs. Aldridge was able to obtain through third-party sources, indicates the Department served separate Remittance Advice documents on Drs. Nehls and Flamoe than on St. Clare Hospital. The issue of failure to serve notice of denial of entitled benefits on Mrs. Aldridge, regarding the same industrial insurance claim number for the service provided by St. Clare Hospital on the same dates (June 10, and 11, 2010), were decided under BIIA docket 14 13103. For this reason,

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the facts raised under docket 14 13103, are inextricably tied to this Appeal and are referenced herein. It is not, however, Mrs. Aldridge's intent to re-litigate docket 14 13103 here.

On December 29, 2009, Mrs. Aldridge suffered an industrial injury that resulted from her assignment to work at a non-ergonomic workstation on several occasions. Mrs. Aldridge timely reported the injury to her employer and to the Department.

On January 7, 2010, the Department acknowledged receipt of her claim.

On January 11, 2010, the Department notified Mrs. Aldridge that it would be investigating her claim as an occupational disease claim. Mrs. Aldridge continued to work while receiving treatment for her injury.

On April 7, 2010, Mrs. Aldridge's attending physician Dr. Thomas Young (hereinafter "Dr. Young), notified the Department by letter that Mrs. Aldridge's condition required a reduction in her work hours from full-time to part-time and that she would be seeking loss of earning power compensation.

On April 20, 2010, the Claims Manager, Ms. Angela C. Roberts (hereinafter "Ms. Roberts"), entered a decision to reject Mrs. Aldridge's claim.

On April 21, 2010, Mrs. Aldridge appealed (Dckt: 10 14802).

On April 27, 2010, Dr. Young served the Department with a letter in response to the denial of her claim. Ms. Roberts accepted the letter as a protest and on May 3, 2010, issued a decision placing the rejection order in abeyance.

On May 10, 2010, Dr. Young restricted her from any kind of work due to her industrial injury and certified the restriction in a notice to the Department. Mrs. Aldridge contacted Ms. Roberts via the Department's secure messaging system and requested that the Department begin paying provisional time-loss compensation.

On May 19, 2010, Ms. Roberts responded to the request through the secure messaging system. Ms. Roberts denied time-loss compensation asserting that the claim remained in rejected status. Mrs. Aldridge appealed (Dckt: 10 15903).

On June 10, 2010, Mrs. Aldridge underwent surgery to the cervical area of her spine. The surgery was performed by Dr. Daniel Nehls at St. Clare Hospital with the assistance of Dr. Michael J. Flamoe.

On June 16, 2010, Mrs. Aldridge's lay representative discovered notes in the Department's claim file written in response to Mrs. Aldridge's appeal. The Department returned the appeal to the Board with instructions to deny the appeal. The author of the Department's response was Claims Adjudicator 4 Peggy L. Stegner (hereinafter "Ms. Stegner").

On June 18, 2010, the Board granted Mrs. Aldridge's appeal.

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On May 10, 2012, the BIIA entered an order on agreement of parties whereby Mrs. Aldridge's claim was allowed as an occupational disease. Acceptance of the claim was made retroactive to January 7, 2010, by the order.

Between June 10, 2010, and the date of the instant Appeal, the Department was billed at least twice for the medical treatment Mrs. Aldridge received as a result of her occupational disease claim. The providers who submitted bills related to Mrs. Aldridge's occupational disease claim are Dr. Young, Mrs. Aldridge's attending physician, Dr. Nehls, the surgeon who performed the surgery on Mrs. Aldridge's cervical spine (June 10, 2010), and Physician's Assistant Michael J. Flamoe, who assisted Dr. Nehls during the surgery. Despite acceptance of Mrs. Aldridge's occupational disease claim, the Department initially denied payment for the treatment/services Mrs. Aldridge received from these providers. However, the Department did not serve notice of the denials of entitled benefits on Mrs. Aldridge.

In July 2012, Mrs. Aldridge learned that the Department had not paid for the medical services/treatment related to her occupational disease claim. Mrs. Aldridge contacted the providers and requested that they re-bill the Department.

On August 7, 2012, the Department denied payment for the services and again failed to serve notice of the denial of entitled benefits on Mrs. Aldridge. Dr. Young provided Mrs. Aldridge with a copy of the Department document titled *"Remittance Advice."* Contained within the Remittance Advice is the Department's denial of payment for the treatment/services Dr. Young provided. The document also contains the bold print lettering required under RCW 51.52.050, warning that the decision will become final unless action is taken pursuant to the law.

On August 14, 2012, Mrs. Aldridge filed appeal with the BIIA (Dckt: 12 19603).

On September 13, 2012, the Department reassumed jurisdiction of the claim.

By March 13, 2013, the Department had not taken further action on the matters related to the appeal as required by law. Neither had it provided good cause for an extension of the 90-day requirement that it had to take further action on the matters related to the appeal after having reassumed jurisdiction of the claim. Mrs. Aldridge filed a motion with the BIIA to vacate the BIIA' s September 13, 2012, order dismissing her August 14, 2012, appeal.

On May 15, 2013, the BIIA issued an order denying Mrs. Aldridge's motion to vacate. In the order, the BIIA directs the Department to issue a further order as required by RCW 51.52.060. By June 2013, the Department failed to comply with the BIIA order.

On June 6, 2013, Mrs. Aldridge filed a motion for an order of contempt, for certification to superior court and for sanctions.

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On June 14, 2013, the Department filed a copy of Remittance Advice 524738 allegedly showing that on October 2, 2012, it paid Dr. Young. Because the Department failed to comply with the law when it failed to serve notice of its decision to pay Dr. Young, Mrs. Aldridge was unaware that the payment was received until she contacted Dr. Young directly.

On July 12, 2013, Mrs. Aldridge filed a reply. Mrs. Aldridge argued that the Department still had not paid another medical provider, Sound Medical Imaging.

On August 19, 2013, the BIIA issued an order denying Mrs. Aldridge's motion for an order of contempt, for certification to superior court and for sanctions. In the order, the BIIA held that no appeal was before it and that it, *"[h]as no jurisdiction to attempt to enforce its directive to the Department regarding RCW 51.52.060 by certifying the facts to superior court for contempt."* The BIIA directed that Mrs. Aldridge *"[s]eek a writ of mandamus in superior court"* regarding the Department's failure to issue a further order involving Sound Medical Imaging.

On April 22, 2014, Mrs. Aldridge filed Appeal of Remittance Advice 474696 and 583934 after her lay representative was able to obtain copies of the Department decisions from sources other than the Department. The Remittance Advice denied Mrs. Aldridge of benefits to which she was legally entitled but were never, nor have they to date, been served on Mrs. Aldridge.

Remittance Advice 474696 was docketed as 14 13102 and was denied by the BIIA as having been "modified, reversed, or changed." *See* Order Denying Appeal Docket No. 14 13102 June 19, 2014. Remittance Advice 583934 was docketed as 14 13103. The appeal was dismissed on June 25, 2015.[1]

On June 4, 2015, Mrs. Aldridge filed appeal after receiving a copy of Remittance Advice No. 487012 from Regence BlueCross, not from the Department. The contents of the Remittance Advice revealed the denial of benefits at issue in this Appeal.[2] The appeal was docketed as 15 15608.

On July 2, 2015, the Department issued a decision reassuming jurisdiction of the claim.

On October 8, 2015, the Department issued a Notice of Decision affirming "[t]he order of remittance advice of 08/04/2014 - #487012;" however, the Department did not, nor has it ever, served on Mrs. Aldridge its original denial of benefits.

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[1] The full BIIA's conclusions of law hold that it had jurisdiction over the parties; the Department did not service the Remittance Advice (583934) on Mrs. Aldridge, and "Because Mrs. Aldridge does not choose to proceed with the merits of her appeal "until the Department properly and legally communicates to all parties its denial of benefits at issue in her claim" the appeal from the January 8, 2013, Remittance Advice No. 583934 is dismissed without prejudice under CR 41(a). The matter was remanded to the Department with direction to "promptly serve the January 8, 2013 Remittance Advice No. 583934 on Mrs. Aldridge within the meaning of RCW 51.52.050 or to promptly issue and serve a further determinative order addressing the compensability of the surgery performed at the C 6-7 level in June 2010 at St. Clare's Hospital in Lakewood, Washington."

[2] Denial of payment for the service and treatment provided by Drs. Nehls and Flamoe (June 10, and 11, 2010).

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III. ISSUES PRESENTED FOR REVIEW

1. Whether an order on summary judgment should be granted?

IV. EVIDENCE RELIED UPON

1. BIIA dockets 15 11604.

V. ARGUMENT

The Board has the authority to resolve appeals in whole or in part, by summary judgment. RCW 51.52.140; WAC 263-12-125; CR 56. *In re David Potts,* BIIA Dec., 88 3822 (1989).

Civil Rule 56(c) provides summary judgment motions will be granted if the evidence shows there is no genuine issue of any material fact, and the moving party is entitled to judgment as a matter of law.

A material fact is one upon which the outcome of the litigation depends in whole or in part. *Island Air, Inc. v. LaBar*, 18 Wn. App. 129, 566 P.2d 972 (1977). Mrs. Aldridge, as the moving party, bears the burden of establishing the absence of any genuine issue of material fact.

When determining whether any genuine issues of material fact exist, the court views all facts in the light most favorable to the non-moving parties. *Fell v. Spokane Transit Authority* 128 Wn. 2d 618, 625, 911 P.2d 1319 (1996), citing Mountain Park Homeowner's Assn. v. Tydings, 125 Wn. 2d 337, 341, 883 P.2d 1383 (1994).

If material facts are undisputed, the court must decide whether the moving party is entitled to judgment as a matter of law. *Marincovich v. Tarabochia,* 114 Wn2d 271, 787 P.2d 562 (1990).

Only after the moving party has met its burden of producing factual evidence showing it is entitled to judgment as a matter of law does the burden shift to the non-moving party to set forth facts showing there is a genuine issue of material fact. *Hash v. Children's Orthopedic Hospital*, 110 Wn. 2d 912, 915, 757 P.2d 507 (1988).

A motion for summary judgment should be granted only if, after looking at all the evidence, reasonable persons could reach only one conclusion. *Nationwide Mutual Fire Insurance Co, v. Watson*, 120 Wn2d 178, 840 P.2d 851 (1992).

For the reasons set forth herein, Mrs. Aldridge's motion for summary judgment should be granted. The Department cannot prove that it served on Mrs. Aldridge, on the Employer or all aggrieved parties, the notice denying entitled benefits to Mrs. Aldridge for the services provided by Drs. Nehls and Flamoe on June 10, and 11, 2010. Moreover, by failing to serve Mrs. Aldridge, the Department deprives Mrs. Aldridge of due process as provided by law.

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a. The provisions of the IIA provide the mandates under which the Department must abide in actions or inaction in decisions involving a worker's benefit entitlements.

The facts in this Appeal are undisputed.

At some point during its administration of Mrs. Aldridge's industrial insurance claim, the Department entered a decision or order denying entitled benefits to Mrs. Aldridge.[3] The IIA requires that the Department *promptly* serve on the worker, notice of *any* order or decision. Whenever the Department has made any order or decision it "*shall*" promptly serve the worker or other person affected thereby, with a copy thereof by mail. [RCW 51.52.050]. The use of the word "*shall*" makes the requirements of this law mandatory. "Fundamental to statutory construction is the doctrine that "shall" is construed as mandatory language and "may" is construed as permissive language. *State v. Goins,* 151 Wn. 2d 728; 92 P.3d 181; (2004). *Accord* Rios v. Dep't of Labor & Indus., 145 Wn.2d 483, 501 n.11, 39 P.3d 961 (2002) (construing "shall" as "mandatory language").

In this Appeal, Mrs. Aldridge served Interrogatories and Request for Admissions on the Department and Employer. In its Answers to the Interrogatories, the Employer denies service by the Department, of notice that it denied entitled benefits to Mrs. Aldridge. [Exhibit SJ-1].[4] In its Responses to Mrs. Aldridge Request for Admission, the Employer denies service by the Department, of notice that it denied entitled benefits to Mrs. Aldridge. [Exhibit SJ-2].[5]

In its Answers to the Interrogatories, the Department engages in gamesmanship in an attempt not to provide a direct answer. The Department's gamesmanship and violation of the rules of discovery/evidence are being addressed in a Motion to Compel. In the interim, the Department does not deny or dispute its failure to serve notice on Mrs. Aldridge, of its denial of entitled benefits. [Exhibit SJ-3].[6] In its Responses to Mrs. Aldridge's Request for Admission, the Department engages in the same course of gamesmanship. Rather than responding to the admissions, it references documents that are nonresponsive to the admissions then denies the admission while making frivolous objections. [Exhibit SJ-4].[7]

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[3] The Department denied payment for the treatment provided by Drs. Nehls and Flamoe (June 10, and 11, 2010), but has never served the denial of entitled benefits on Mrs. Aldridge.
[4] Department of Social and Health Services' Answers and Responses to Claimant's Interrogatories and Request for Production of Documents (First Set), 6:26-32, 7:1-26.
[5] Department of Social and Health Services Responses to Claimant's Request for Admission, 3:22-32, 4:1-3.
[6] Department's Answers to Claimant's Interrogatories and Requests for Production of Documents.
[7] Department's Responses to Claimant's Requests for Admission.

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The Department did not serve on Mrs. Aldridge, notice of denial of entitled benefits thereby depriving her of due process:

The IIA governs the remedies available to workers who have suffered an industrial injury or occupational disease. *Shafer v. Dep't of Labor and Industries of the State of Washington,* 213 P.3d 591, 166 Wash.2d 710, WA.0001136 § [23] versuslaw.com (2009).

The Department is endowed with "original and exclusive jurisdiction, in all cases where claims are presented, to determine the mixed question of law and fact as to whether a compensable injury has occurred." *Abraham v. Department of Labor & Indus.*, 178 Wash. 160, 163, 34 P.2d 457 (1934). Marley v. Department of Labor and Industries, 125 Wash. 2d 533, 886 P.2d 189, WA.40012 § [45] versuslaw.com (1994).

The Department administers the IIA and is responsible for supervising the medical treatment and services provided to workers insured under the IIA [*Id* at Shafer § [24]]. Workers who suffer an industrial injury or occupational disease are *entitled* to proper and necessary treatment from a physician chosen by the worker [*Id* at Shafer § [25]]. [Emphasis added]. The Department is required to pay for the treatment provided by the chosen physician and received by the injured worker under the IIA [*Id* at Shafer § [25]].

Whenever the Department has made *any* order, decision or award, it is required to *promptly serve* the *worker* and *other persons affected thereby*, with a copy of the order, decision or award *Sinaipua Leuluaialii v. Department of Labor & Industries; and Franciscan Health Systems,* 279 P.3d 515, WA.0000805 §[45]versuslaw.com (2012). [Emphasis added].

A claimant alleging deprivation of due process must first establish a legitimate claim of entitlement to the life, liberty or property at issue. Meyer v. Univ. of Wash., 105 Wn.2d 847, 853, 719 P.2d 98 (1986). Mrs. Aldridge industrial insurance claim was accepted effective May 10, 2012. This is undisputed.

Legitimate claims of entitlement generally entail vested liberty or property rights. In re Marriage of MacDonald, 104 Wn.2d 745, 748, 709 P.2d 1196 (1985). *Willoughby v. Department of Labor and Industries of the State of Washington*, 147 Wash.2d 725, 57 P.3d 611, §[42, 43] WA.0001659 (2002) versuslaw.com. A vested right, entitled to protection from legislation, must be something more than a mere expectation based upon an anticipated continuance of the existing law; it must have become a title, legal or equitable, to the present or future enjoyment of property, a demand, or a legal exemption from a demand by another.' Harris v. Dep't of Labor & Indus., 120 Wn.2d 461, 475, 843 P.2d 1056 (1993) (quoting Godfrey v. State, 84 Wn.2d 959, 963, 530 P.2d 630 (1975)). *Id.*

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Due process requires that the agency gave the appealing party adequate notice and an opportunity to be heard and that procedural irregularities did not undermine the fundamental fairness of the proceedings. Due process requires "'such procedural protections as the particular situation demands.'" The test for determining due process issue under the IIA is Mathews v. Eldridge, 424 U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976)). In accordance with Mathews v. Eldridge, the courts weigh the following factors to determine what process is due in a particular situation: (1) the private interest at stake in the governmental action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government interest, including the additional burdens that added procedural safeguards would entail.

(1) the private interest at stake in the governmental action:

Mrs. Aldridge asserts that the private interest at stake is her vested right to benefits from the Department. Courts have held that all injured workers covered by the IIA have a vested interest in disability payments upon determination of an industry injury. The court later held in Willoughby that all workers suffering an industrial injury "have a vested interest in disability payments upon determination of an industrial injury. Here, the Department made such a determination by allowing Mrs. Aldridge's claim and issued an order entitling her to benefits; therefore, she has a vested right at stake.

(2) The risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.

The Department's policies require claim managers to issue letters denying medical treatment. The letter "needs to be sent to the provider, with copies to all parties." 4-10.74 CHAPTER 4: MEDICAL MANAGEMENT.

(3) the government interest, including the additional burdens, that added procedural safeguards would entail.

The Department willfully violates its own rules. Mrs. Aldridge is prejudiced by its violation.

Kustura v. Dep't of Labor and Industries, 175 P.3d 1117, 142 Wash.App. 655, §[43] WA.0000124 (2008) versuslaw.com

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VII. CONCLUSION

Mrs. Aldridge Motion should be granted.

SUBMITTED this 3 day of August, 2016.

M. Wayne Aldridge
Lay Representative

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BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

In re: COLLEEN ALDRIDGE	Docket Nos. 15 11604
Claim No. AM-48151	DEPARTMENT'S RESPONSE TO MS. ALDRIDGE'S MOTION FOR SUMMARY JUDGMENT

Ms. Aldridge failed to establish that there are no material facts in dispute, instead choosing to assert entitlement to judgment based on an unsupported and inaccurate assertion of the very facts that are in dispute in this appeal. Litigation of the correctly established threshold issue, of whether the Department failed to communicate a decision to deny benefits, requires the determination of several disputed facts related to the status and effect of remittance advice 487012. Ms. Aldridge has failed to prove entitlement to judgment as a matter of law, even in the absence of these material factual disputes. For these reasons, Ms. Aldridge's motion should be denied.

I. STATEMENT OF RELEVANT FACTS

Colleen McColley Aldridge filed a claim with the Department of Labor and Industries (Department) on January 7, 2010, for coverage of medical issues which she alleged resulted from her exposure to a non-ergonomic work station. Declaration of Angel Travis at ¶3. This claim was rejected on April 20, 2010, in an order stating that "any and all bills for services or treatment concerning this claim are rejected, except those authorized by the department". *Id.* at ¶4. This order was appealed the next day. *Id.* Later, Ms. Aldridge requested time-loss compensation,

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which Claims Manager Angela Roberts denied, informing Ms. Aldridge that her claim remained in rejected status. *Id.* at ¶5. Later, on June 10, 2010, Ms. Aldridge underwent a cervical fusion surgery with doctors Nehls and Flamoe while her claim remained rejected. *Id.* at ¶6. Nearly two years later, the Department entered an agreement with Ms. Aldridge, allowing her claim as an Occupational Disease for the condition of cervical strain/sprain, with a December 28, 2009, date of manifestation. *Id.* at ¶7. The Department mailed remittance advice 487012 on August 7, 2012, to the billing contact for FMG Neurosurgery Northwest, who was the party known to the Department to process billing information and/or remittance advices for Dr. Nehls and Dr. Flamoe at the time the remittance advice was mailed. *Id.* at ¶8. The Department has not transmitted a copy of this remittance advice to Ms. Aldridge other than through the discovery process pursuant to this appeal. *Id.* at ¶9. On June 4, 2015, Ms. Aldridge filed an appeal directly to the BIIA regarding an alleged "failure to serve notice upon the aggrieved parties, of his decision to deny medical benefits to me for services that I receive on June 10, 2012" [sic], including an attached copy of remittance advice 487012. The Board remanded this appeal to the Department in an order dated July 2, 2015, and the Department issued an order on October 8, 2015, affirming that the remittance advice was correct. Ms. Aldridge has appealed the October 8, 2015, order.

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II. ISSUES

1. **Whether any material issue of fact exists as to whether the Department made a decision denying benefits to Ms. Aldridge.**
2. **Whether any material issue of fact exists as to whether the Department's remittance advice 487012 was required to be served upon Ms. Aldridge per RCW 51.52.050.**
3. **Whether any material issue of fact exists as to whether Ms. Aldridge has been denied due process or property rights.**

III. ARGUMENT

A. There is a Genuine Issue of Material Fact as to Whether the Department Made a Decision Denying Benefits to Ms. Aldridge.

In a summary judgment motion, the moving party bears the initial burden of showing that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989); CR 56(c). Summary judgment should be granted only if the pleadings, depositions, affidavits, or declarations submitted show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). Here, there is a genuine and fundamental dispute regarding whether remittance advice 487012 is an order, decision, or award that denied benefits to Ms. Aldridge.

A "material" fact is one on which the outcome of the litigation depends. *Balise v. Underwood*, 62 Wn.2d 195, 199, 381 P.2d 966 (1963). In performing this inquiry, the trial court examines all the facts and does not view any one fact or piece of evidence in isolation. *Van Hook v. Anderson*, 64 Wn. App. 353, 361, 824 P.2d 509 (1992). Ms. Aldridge's motion for summary judgment asserts, without support, that remittance advice 487012 denied benefits to Ms. Aldridge. The issue on appeal is whether the Department failed to communicate a denial of benefits. *See* Litigation Order for Docket 1511604, March 24, 2016. Here, the Department asserts that there could be no such failure to communicate a denial of benefits because no denial of benefits took place. Further, despite Ms. Aldridge's unsupported statements that this remittance advice relates to "entitled benefits", there has been insufficient argument or evidence provided to show that

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remittance advice 487012 relates to any benefit to which Ms. Aldridge may have actually been entitled. Because a decision to deny medical benefits is the subject of Ms. Aldridge's appeal, such facts determine the course of litigation and are material under *Balise v. Underwood, supra.* Because this matter is a fundamental dispute regarding these facts, summary judgment remains inappropriate here.

If reasonable persons, after considering the evidence, could reach different conclusions regarding the material facts at issue, summary judgment should not be granted. *DePhillips v. Zolt Constr. Co.*, 136 Wn.2d 26, 30, 959 P.2d 1104 (1998). All pleadings, affidavits, depositions, admissions, and all reasonable inferences there from are construed in the light most favorable to the Department as the non-moving party. *King Cnty. v. Taxpayers of King Cnty.*, 133 Wn.2d 584, 616, 949 P.2d 1260 (1997). If direct evidence produced by the moving party conflicts with direct evidence produced by the nonmoving party, the judge must assume the truth of the evidence set forth by the nonmoving party with respect to that fact. *See Hansen v. Transworld Wireless TV-Spokane Inc.*, 111 Wn. App. 361, 373, 44 P.3d 929 (2002). "Only where there is no genuine issue of material fact and reasonable people could reach but one conclusion from all of the evidence is summary judgment appropriate." *In re Estate of Black*, 153 Wn.2d 152, 161, 102 P.3d 796 (2004) (internal quotation omitted). Here, Ms. Aldridge's motion for summary judgment is supported by discovery responses, which merely *imply* that remittance advice 487012 was a Department decision or order, with further support offered by the unsupported assertion that this remittance advice denied benefits. This is contrasted with the Declaration of Angel Travis, which provides evidence that remittance advice 487012 was not a final decision regarding whether any treatment was compensable, that the Department does not have knowledge that would indicate proximate effects of the remittance advice, and that this remittance advice is not a denial of benefits. Declaration of Angel Travis at ¶10-12. Thus, under *Hansen*, the Board must assume the truth of the Department's evidence for the purposes of

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deciding summary judgment, and must deny Ms. Aldridge's motion. The proper place for adjudication regarding conflicting evidence is in a hearing to determine whether the Department made a decision to deny benefits to Ms. Aldridge, and to address further questions if such a denial were present. *See* Litigation Order for Docket 1511604, March 24, 2016.

Because this appeal is fundamentally a dispute regarding the material facts of whether the Department made a decision constituting a denial of benefits, and because Ms. Aldridge has therefore failed to prove that she is entitled to judgment as a matter of law, summary judgment is inappropriate here.

B. A material issue of fact exists as to whether the Department's remittance advice 487012 was required to be served upon Ms. Aldridge per RCW 51.52.050.

There is a factual dispute regarding whether the Department made a "decision" per RCW 51.52.050 and as to whether Ms. Aldridge was "affected thereby". *See* RCW 51.52.050. This RCW dictates that the Department promptly serve a person affected by the Department's "order, decision, or award". RCW 51.52.050. Here, if the appealed remittance advice does not represent a final decision or order, Ms. Aldridge cannot prevail. Even if a decision were to be found, there remains a factual dispute regarding whether she was affected by any such decision. Ms. Aldridge has failed to provide evidence that she was so affected. Because a lack of an "order, decision, or award" by the department bars Ms. Aldridge from being a person "affected thereby" under RCW 51.52.050, and because a lack of proven effect on Ms. Aldridge precludes any such decision from affecting her, these facts determine the course of litigation and are potentially both material under *Balise v. Underwood*, supra. Because there are issues of material fact regarding remittance advice 487012 that are essential to an analysis under RCW 51.52.050, and because Ms. Aldridge has therefore failed to prove that she is entitled to judgment as a matter of law, summary judgment is inappropriate here.

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C. Issues of fact exist regarding whether Ms. Aldridge has been denied due process or property rights.

As a threshold matter, the Board cannot rule on constitutional issues. See *In re: James W. Gersema*, 01 20636 (2003) citing *Yakima County Clean Air Authority v. Glascam Builders, Inc.*, 85 Wn.2d 255 (1975) (stating in part that an administrative tribunal is without the authority to rule on the constitutionality of a statute, and thus that there is no administrative remedy for such a claim). Here, Ms. Aldridge's Brief in Support of Motion for Summary Judgment asserts that her constitutional right to due process was violated. In the Litigation Order for this appeal, this issue is presented as a partial secondary consideration to the prerequisite determination of whether the Department failed to communicate a denial of benefits. *See* Litigation Order for Docket 1511604, March 24, 2016. The present appeal itself is proof that the administration of Ms. Aldridge's workers' compensation claim is granted adequate procedural safeguards to preclude unlawful deprivation of any so-called "property interest". Regarding such a "property interest", Ms. Aldridge's brief repeats an assertion that remittance advice 487012 somehow affects a "vested right to benefits" without describing how her interests constitute such a "right", how it could be "vested", whether or which such benefits exist for Ms. Aldridge, or even how this remittance advice might affect such benefits. The only support offered for this assertion is case law finding a vested interest in *disability payments*; yet no argument or support is provided that remittance advice 487012 relates in any way to any disability payment. Rather, Ms. Aldridge makes further unsupported assertions regarding the assumed application of Department policies. Because the Board cannot rule on the constitutional due process applicable to Ms. Aldridge's circumstances, and because factual issues exist regarding whether remittance advice 487012 has any effect on any vested right or property interest which could trigger such an analysis, no summary judgment, nor any judgment regarding due process, is appropriate here.

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IV. CONCLUSION

Summary judgment is not appropriate in these circumstances due to genuine disputes of material fact regarding whether the Department made any decision, whether such a decision denied benefits to, or otherwise affected, Ms. Aldridge, and as to whether or which facts exist that could trigger analysis under RCW 51.52.050. Ms. Aldridge has also failed to prove that she is entitled to judgment as a matter of law, even if such material facts were not in dispute. Therefore, the Board should deny Ms. Aldridge's motion for summary judgment.

DATED this 17th day of August, 2016.

ROBERT W. FERGUSON
Attorney General

MICHAEL DUGGAN
Assistant Attorney General
WSBA No. 44910

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PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

☒ US Mail Postage Prepaid via Consolidated Mail Service

M. Wayne Aldridge, Lay Representative
The Helping Hand Lay Representation Services
1313 Thompson Circle, #237
Dupont, WA 98327-0237

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 17th day of August, 2016, at Seattle, Washington.

Angie Faulkner
ANGIE FAULKNER
Legal Assistant

BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

In re: COLLEEN ALDRIDGE	Docket Nos. 15 11604
Claim No. AM-48151	DECLARATION OF ANGEL TRAVIS

I, Angel Travis, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct.

1. I am over the age of 18, am a citizen of the United States, I have personal knowledge of the facts stated herein, and am otherwise competent to testify.
2. I am an employee of the Washington State Department of Labor and Industries (Department). I am a Claims Consultant in the Tumwater service location.
3. Colleen McColley Aldridge filed a claim with the Department of Labor and Industries (Department) dated January 7, 2010, for coverage of medical issues which she alleged resulted from her exposure to a non-ergonomic work station.
4. This claim was rejected on April 20, 2010, in an order stating that "any and all bills for services or treatment concerning this claim are rejected, except those authorized by the department". This order was appealed April 21, 2010.

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5. On May 10, 2010, Ms. Aldridge requested time-loss compensation via secure message, which Claims Manager Angela Roberts denied in a secure message response dated May 19, 2010, informing Ms. Aldridge that her claim remained in rejected status.

6. On June 10, 2010, Ms. Aldridge underwent a cervical fusion surgery performed by doctors Nehls and Flamoe. At this time, her claim remained rejected.

7. On May 10, 2012, the Board entered an Order on Agreement of Parties, allowing claim AM-48151 as an Occupational Disease for the condition of cervical strain/sprain, with a December 28, 2009, date of manifestation.

8. The Department mailed remittance advice 487012 on August 7, 2012, to the billing contact for FMG Neurosurgery Northwest, who was the party known to the Department to process billing information and/or remittance advices for Dr. Nehls and Dr. Flamoe at the time the remittance advice was mailed.

9. The Department has not transmitted a copy of remittance advice 487012 to Ms. Aldridge other than through the discovery process pursuant to this appeal.

10. Remittance advice 487012 does not represent a final decision by the Department regarding compensability for any treatment related to claim AM48151, but is a notice to the billing contact for a medical provider that the referenced bills or invoices sent to the Department are being denied at the time the remittance advice is issued.

11. The Department does not retain records that would indicate how remittance advices are handled in every circumstance or by every billing contact, nor does the Department have records or of whether or how administration of remittance advice 487012 resulted in proximate effects to Ms. Aldridge.

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12. Remittance advice 487012 is not a determination of whether or what benefits are available to Ms. Aldridge, and only reflects the Department's administration of billing at the time the remittance advice was issued.

DATED this 17th day of August, 2016, at Tumwater, Washington.

ANGEL TRAVIS
Claims Consultant

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: COLLEEN M. ALDRIDGE	)	**DOCKET NO. 15 11604**
	)	
CLAIM NO. AM-48151	)	**PROPOSED DECISION AND ORDER**

Anita A. Booker-Hay, Industrial Appeals Judge — The Claimant, Colleen M. Aldridge, filed an appeal with the Board of Industrial Insurance Appeals on October 16, 2015 from the Department of Labor and Industries' (Department's) Order dated October 8, 2015 affirming Remittance Advice No. 487012 dated August 4, 2012. In this Remittance Advice, the Department denied billed medical treatment in the amount of $6,976.00 because the diagnoses listed on the billing was not accepted as related to the injury. Mrs. Aldridge contends the Department failed to provide notice to her of its decision to deny the bill. The appeal is **DISMISSED**.

DISCUSSION

The parties did not stipulate to the Board's jurisdiction in this matter. However, the Board may review and take notice of the contents of the Department file, sua sponte, at any stage of the proceedings in order to determine whether it has jurisdiction over the appeal.[1] On September 13, 2016, I asked Board of Industrial Insurance Appeals Review Judge Christopher Swanson to conduct a review of the Department's file and determine the Board's jurisdiction to decide this appeal. On September 13, 2016, Judge Swanson determined that the Board does have jurisdiction to decide this appeal.

On August 3, 2016, and on August 4, 2016, Mrs. Aldridge filed a Motion of Summary Judgement alleging the Department failed to provide her with notice of its decision to deny benefits by not providing notice of the August 4, 2012 remittance advice pursuant to RCW 51.52.050 and other citied authority. The Department filed a Response on August 17, 2016, contending it had not failed to provide notice of denied benefits because the Remittance Advice was not an order denying benefits. The parties appeared before me on September 2, 2016. As a result of submitted briefing and arguments, I find that Mrs. Aldridge is entitled to summary judgment as a matter of law.

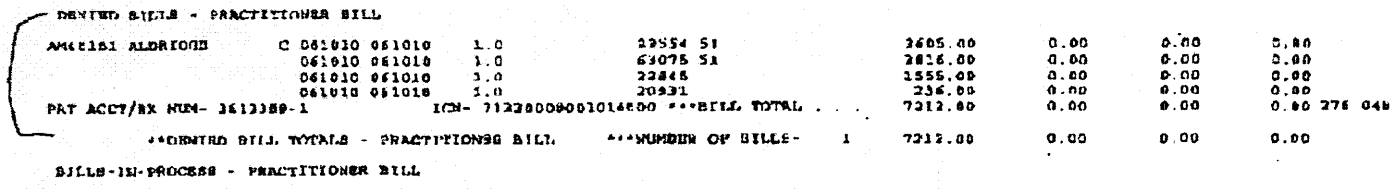
The purpose of summary judgment is to examine the sufficiency of the evidence in hopes of avoiding unnecessary trials where no genuine issue as to any material fact exists. Summary judgment is appropriate if, after considering the pleadings and the evidence in the light most favorable to the non-moving party, there is no genuine issue of material fact, and the moving party is entitled

[1] *In re Mildred Holzerland*, BIIA Dec., 15,729 (1965).

to judgment as a matter of law.[2] The party moving for summary judgment has the initial burden of proving, by uncontroverted evidence, that there is no genuine issue of material fact.[3] As the moving party in this matter, the claimant, Colleen Aldridge, has the initial burden of proof.

RCW 51.52.050 provides: "Whenever the department has made any order, decision, or award, it shall promptly serve the worker, beneficiary, employer or other person affected thereby, with a copy thereof by mail. . ." Pursuant to RCW 51.52.060, an appeal of a Department order, decision, or award must be filed within 60 days of the day the appealed decision was communicated to the aggrieved appealing party.

The uncontested evidence presented at hearing establishes the content of the Remittance Advice dated August 4, 2012. A copy of the relevant portions of the Remittance Advice appear below. Specifically, at page 2, the Remittance Advice reads:

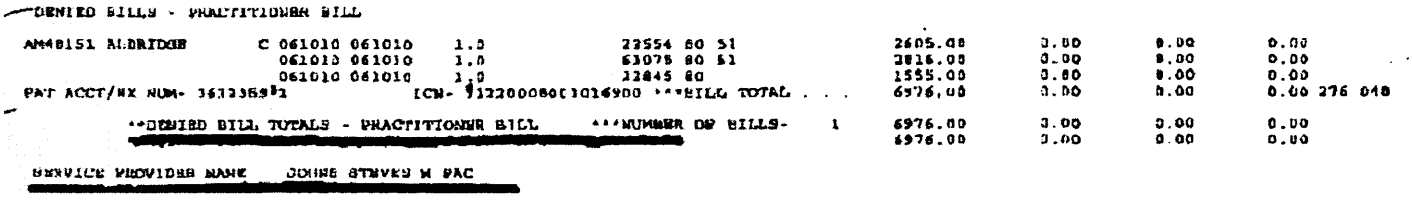


DENIED BILLS - PRACTITIONER BILL

AM48151 ALDRIDGE	C	061010	061010	1.0	22554 51	2605.00	0.00	0.00	0.00
		061010	061010	1.0	63075 51	2816.00	0.00	0.00	0.00
		061010	061010	1.0	22845	1555.00	0.00	0.00	0.00
		061010	061010	1.0	20931	236.00	0.00	0.00	0.00
PAT ACCT/HX NUM- 3613389-1				ICN- 7132000900010146D0		***BILL TOTAL . . .	7212.00	0.00	0.00	0.00 276 048
**DENIED BILL TOTALS - PRACTITIONER BILL						***NUMBER OF BILLS- 1	7212.00	0.00	0.00	0.00

BILLS-IN-PROCESS - PRACTITIONER BILL

At page 3, the remittance advice shows codes relative to the denied bill.

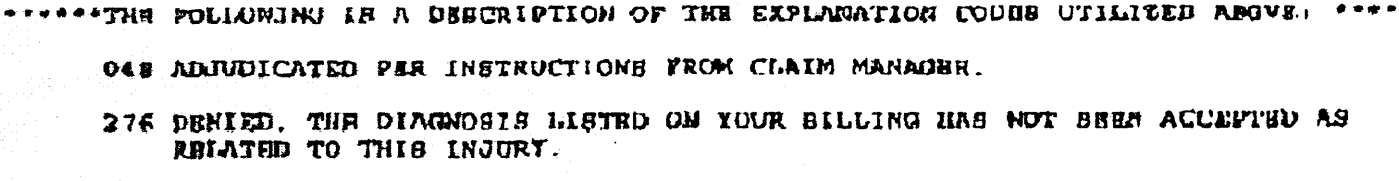


DENIED BILLS - PRACTITIONER BILL

AM48151 ALDRIDGE	C	061010	061010	1.0	22554 80 51	2605.00	0.00	0.00	0.00
		061010	061010	1.0	63075 80 51	2816.00	0.00	0.00	0.00
		061010	061010	1.0	22845 80	1555.00	0.00	0.00	0.00
PAT ACCT/HX NUM- 3613389-1				ICN- 7132000800010169D0		***BILL TOTAL . . .	6976.00	0.00	0.00	0.00 276 048
**DENIED BILL TOTALS - PRACTITIONER BILL						***NUMBER OF BILLS- 1	6976.00	0.00	0.00	0.00
							6976.00	0.00	0.00	0.00

SERVICE PROVIDER NAME JOHNS STEVEN M PAC

Page 4 of the remittance advice provides an explanation of the codes:



******THE FOLLOWING IS A DESCRIPTION OF THE EXPLANATION CODES UTILIZED ABOVE.******

048 ADJUDICATED PER INSTRUCTIONS FROM CLAIM MANAGER.

276 DENIED. THE DIAGNOSIS LISTED ON YOUR BILLING HAS NOT BEEN ACCEPTED AS RELATED TO THIS INJURY.

The final paragraph of pages two through five provides as follows:

> PAYMENTS AND PAYMENT DENIALS RECEIVED HERE BECOME FINAL IN SIXTY DAYS, OR, PROVIDER REPAYMENTS ORDERED HERE BECOME FINAL IN TWENTY DAYS, UNLESS, (1) YOU FILE A WRITTEN REQUEST FOR RECONSIDERATION WITH THE DEPARTMENT OF LABOR AND INDUSTRIES,

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[2] CR 56(c); *Hollis v. Garwall, Inc.*, 137 Wn. 2d 683, (1999).
[3] CR 56(c); *Fischer-McReynolds v. Quasim*, 101 Wn. App. 801, (20-00): *Maloney v. Tribune Publishing Company*, 26 Wn. App. 357, (1980).

OLYMPIA, OR (2) YOU FILE AN APPEAL WITH THE BOARD OF INDUSTRIAL INSURANCE APPEALS, OLYMPIA, WITHIN THAT TIME.

The other material and uncontested evidence presented at the hearing is that the August 4, 2012 Remittance Advice was not communicated to Mrs. Aldridge.

The Board has addressed the effects of the Department's failure to properly communicate its order or decision in a manner that is consistent with RCW 51.52.050 on several occasions. In a Significant Decision *In re Daniel Bazan,* the Board held that the claimant was aggrieved by the Department's failure to properly communicate its order consistent with RCW 51.52.050.[4] In that case, the Department failed to properly serve or communicate its order to Mr. Bazan such that his appeal was deemed timely. The *Bazan* decision has been distinguished and followed but not overturned. Instructively, the decision also provides guidance on the remedy for non-communication as well. *Bazan* indicates the Board has jurisdiction to dismiss the appeal and remand the matter to the Department and "strongly suggests that the Department either communicate the original Department order or issue a further determinative order, without prejudice, to any party to appeal therefrom".[5]

Mrs. Aldridge has shown by uncontroverted evidence that there is no genuine issue of material fact. The Department issued a Remittance Advice that denied payment of Mrs. Aldridge's medical bill and then failed to communicate that Remittance Advice to Mrs. Aldridge. The Department admits it did not communicate the Remittance Advice. However, the Department contends that the remittance advice was not an order denying benefits that required such communication to the claimant. I disagree. The Remittance Advice is the type of order, determination or decision contemplated in RCW 51.52.050. It contains language that clearly indicates the Department's decision to decline payment of Mrs. Aldridge's medical bill because the diagnoses was not accepted as related to the injury. The advice also declares adjudication was made pursuant to the Claim Manager's instructions. Finally, pages two through five of the Remittance Advice warn that denials become final in sixty days if not appealed. Thus, as a matter of law, Mrs. Aldridge is aggrieved because of the Department's failure to comply with RCW 51.52.050.

The Claimant's Motion for Summary Judgment is granted and the Appeal is **DISMISSED**. I strongly suggest this remittance advice be remanded to the Department properly communicate its

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[4] *In re Daniel Bazan*, BIIA Dec., 92 5953 (1994).
[5] *In re Daniel Bazan*, BIIA Dec., 92 5953 (1994).

remittance advice in a manner consistent with RCW 51.52.050 or issue a further determinative order without prejudice to any party to appeal therefrom.

DECISION

In Docket No. 15 11604, the claimant, Colleen M. Aldridge, filed an appeal with the Board of Industrial Insurance Appeals on October 16, 2015. The claimant appeals a Department order dated October 8, 2015 affirming Remittance Advice No. 487012. In this order, the Department denied billed medical treatment in the amount of $6,976.00 because the diagnosis listed on the bill was not accepted as related to the injury. This appeal is **DISMISSED** because the Department has not communicated its remittance advice to Mrs. Aldridge as required by RCW 51.52.050.

FINDINGS OF FACT

1. On September 13, 2016, an industrial appeals judge conducted a review of the Department's file to determine whether the Board has jurisdiction to decide this appeal. The review was conducted pursuant to the Board's decision in *In re Mildred Holzerland*.[6] The industrial appeals judge determined the Board does have jurisdiction to decide this appeal.

2. On August 4, 2012, the Department of Labor and Industries issued Remittance Advice No. 487012, which denied billed medical treatment in the amount of $6,976.00 because the diagnoses listed was not accepted as related to the injury.

3. The August 4, 2012 Remittance Advice No. 487012 was not communicated to Mrs. Aldridge by the Department of Labor and Industries.

4. On October 16, 2015, Mrs. Aldridge filed a Notice of Appeal with the Board of Industrial Insurance Appeals from the August 4, 2012 Remittance No. 487012.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in this appeal that allows the Board to dismiss the appeal and remand the matter to the Department. The appeal from the Department's failure to communicate the August 4, 2012 Remittance Advice No. 487012 is timely.

2. The Department's Remittance Advice No. 487012 was never communicated to Mrs. Aldridge as required by RCW 51.52.050. The Remittance Advice is not operable against Mrs. Aldridge.

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[6] *In re Mildred Holzerland*, BIIA Dec., 15,729 (1965).

3. The Remittance Advice is remanded to the Department with the suggestion to either communicate the August 4, 2012 Remittance Advice No. 487012 to Mrs. Aldridge in a manner consistent with RCW 51.52.050 or to issue a further determinative order in this matter without prejudice to any party to appeal therefrom.

Dated: October 6, 2016

Anita A. Booker-Hay

ANITA A. BOOKER-HAY
Industrial Appeals Judge
Board of Industrial Insurance Appeals

Addendum to Proposed Decision and Order
In re Colleen M. Aldridge
Docket No. 15 11604
Claim No. AM-48151

Appearances

Claimant, Colleen M. Aldridge, by The Helping Hand Lay Representation Services, per M. Wayne Aldridge

Employer, Dept of Social & Health Services - Claims Unit, per Sandra Chakones, Consultant

Department of Labor and Industries, by The Office of the Attorney General, per Michael E. Duggan

Evidence

Pursuant to CR 56(h), in evaluating the Claimant's Motion for Summary Judgment and the Department's Response, I considered the following evidence, arguments and authority:

1. Claimant's Motion for Summary Judgment and Brief In support of Motion for Summary Judgment dated August 3, 2016;

2. Claimant's Motion of judgment on the Pleadings – Failure to state a Legal Defense to a Claim and attachments which included the previously filed Brief In support of Motion for Summary Judgment which included the following exhibits as identified by the parties:

    - Exhibit SJ-1, entitled Department of Social and Health Services' Answers and Responses to Claimant's Interrogatories and Request for Production of Documents; A letter to Ms. Connie Minton dated August 11, 2010; A certificate of health care provider for employee's serious health condition; Department Notice of Decision dated July 2, 2015;

    - Exhibit SJ-2 Department of Social and Health Service Responses to Claimant's Request for Admission;

    - Exhibit SJ-3 Department's Answer to Claimant's Interrogatories and Requests for Production of Documents; Department's Supplemental Answer to Claimants Interrogatories and Requests for Production of Documents and Attachment B that included a utilization review report, as well as a suspended bill communication/inpatient bill response dated December 26, 2012 and medical information;

    - Exhibit SJ-4 Department's response to claimant's request for admission;

    - Exhibit SJ-5 assorted pages entitled Authorization process;

3. The Departments' Response to the Claimant's Motion For Summary Judgment including the Declaration of Angel Travis;

4. Department order dated October 8, 2015; and,

5. Remittance Advice dated August 4, 2012.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

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Olympia, Washington 98504-2401 • www.biia.wa.gov
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In re: **COLLEEN M. ALDRIDGE**	Docket No. 15 11604
Claim No. AM-48151	**ORDER ADOPTING PROPOSED DECISION AND ORDER**

A Proposed Decision and Order by Industrial Appeals Judge **ANITA A. BOOKER-HAY** was issued on **October 6, 2016**. Copies were mailed to the parties of record.

No Petition for Review of the Proposed Decision and Order has been filed by any party as provided by RCW 51.52.104. The Board adopts the order and it becomes the Decision and Order of the Board. No appeal may be taken to the courts.

A worker/beneficiary/crime victim represented by an attorney who succeeds in their appeal may ask the Board to set the attorney fee. The request must be in writing and must be filed within one year of receipt of the Board's final order. The Board has authority to set the fee even though a fee agreement was made with the attorney. The responsibility for paying the fee, however, remains with the worker/beneficiary/crime victim (RCW 51.52.120).

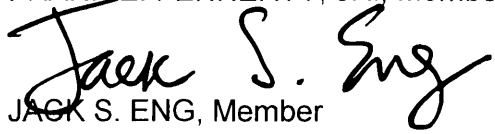
If you have questions, contact the Review Section at (360) 753-6824. Please visit our website for electronic filing: www.biia.wa.gov. If filed by facsimile or online, documents received after 5 p.m. will be deemed filed the next business day. WAC 263-12-015(3) and WAC 263-12-01501.

Dated: November 03, 2016.

BOARD OF INDUSTRIAL INSURANCE APPEALS

DAVID E. THREEDY, Chairperson

FRANK E. FENNERTY, JR., Member



JACK S. ENG, Member

c: L&I

APPENDIX C

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

In re: Colleen M. Aldridge Claim No. AM-48151	Docket No.: **12 24705** MOTION FOR RECONSIDERATION

COMES NOW Colleen M. Aldridge, Appellant, (hereinafter "Mrs. Aldridge"), by The Helping Hand Lay Representation Services, and through her Lay Representative of record, M. Wayne Aldridge, and moves the BIIA, pursuant to CR 59, for reconsideration of its Order Affirming Interlocutory Ruling, entered on April 4, 2013, by Assistant Chief Industrial Appeals Judge John E. Ellsworth (hereinafter "ACIAJ").

I. STATEMENT OF RELIEF SOUGHT

Mrs. Aldridge seeks reconsideration of the ACIAJ's Order Affirming Interlocutory Ruling of Industrial Appeals Judge Thomas M. Kalenius (hereinafter "IAJ") denial of Mrs. Aldridge's request that he recuse.

II. FACTS RELEVANT TO THE MOTION

On March 18, 2013, Mr. Aldridge attempted to contact the IAJ's judicial assistant by telephone. Mr. Aldridge telephoned (360) 753-6823 at 9:14 AM, 9:18 AM, 9:26 AM and 9:42 AM. With each call, the Board's messaging system answered however, when Mr. Aldridge attempted to contact the operator by pressing the number "0," there was no answer as the number kept ringing. Mr. Aldridge checked the Washington State Bar Association's (hereinafter "WSBA") website for the telephone number or e-mail address of the IAJ. The telephone number listed for Thomas Michael Kalenius is (360) 956-1550. Additionally, the address associated with Thomas Michael Kalenius is PO Box 42401 Olympia, WA. 98504-2401. The address listed on the WSBA's website as the contact address for Thomas Michael Kalenius is the same as the mailing address for the BIIA. Moreover, a review of other BIIA IAJ information contained on the WSBA's website reveals contact information, including telephone numbers, facsimile numbers and e-mail address, for the BIIA employee. At 9:46 AM, Mr. Aldridge telephoned the number listed on the WSBA website believing it to be the IAJ's office number. The voice of a female answered the call by stating "hello." The greeting "hello," is unusual for a call to a government office or business. As such, Mr. Aldridge advised the answering party that he was

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calling to speak with Judge Kalenius. Mr. Aldridge asked if the number was the IAJ's office telephone number. The answering party said that it is not. Mr. Aldridge apologized and said that he would try to call the Board again. The answering party said "Oh, no problem." Mr. Aldridge then disengaged the call. At 9:50 AM, Mr. Aldridge telephoned the Tacoma BIIA (253) 593-2910. Ms. Juanita Sandifer answered. Ms. Sandifer provided the name and extension of the IAJ's judicial assistant (Debbie Thomas Ext: 148) to Mr. Aldridge then transferred Mr. Aldridge's call to Ms. Thomas. Mr. Aldridge explained to Ms. Thomas that he was requesting to attend the scheduling conference set to occur the next day (March 19, 2013), telephonically. Ms. Thomas explained that the judge would have to make that decision. She explained that she would contact the judge then return Mr. Aldridge's call. No call was forthcoming.

On March 19, 2013, Mr. Aldridge appeared before the IAJ at the BIIA office located in Olympia. After signing in, receiving a visitors pass from the representative at the information window and receiving detailed information regarding the location of the hearing room and directions to the room, Mr. Aldridge proceed toward the room. As he walked toward the hearing room, he heard a male voice and a female voice coming from the assigned hearing room. A discussion regarding dates could be heard. As Mr. Aldridge entered the hearing room, the IAJ commanded "May I help you." Mr. Aldridge identified himself and said that he was there for the scheduling conference. At this time, a uniformed Trooper arrived. The conference commenced as the IAJ directed that the proceedings go on the record. In an unprecedented action, the IAJ demanded that Mr. Aldridge be sworn in prior to conducting the scheduling conference. During the proceedings, Mr. Aldridge expressed his concern that the IAJ had engaged in ex parte discussions with opposing counsel regarding Mrs. Aldridge's case. The IAJ verified that he had in fact engaged in ex parte discussions with opposing counsel stating that he had done so because counsel was there five minutes before Mr. Aldridge. A review of the sign-in log at the front office revealed that Mrs. Allen, counsel to the Department of Labor and Industries (hereinafter "Department"), arrived at 8:45 AM. This gave the IAJ and Mrs. Allen approximately twelve minutes to discuss Mrs. Aldridge's case ex parte. As a result of the ex parte discussion, Mr. Aldridge moved for recusal of the IAJ. The IAJ denied the motion. At the conclusion of the conference, Mr. Aldridge placed on the record, inter alia; the telephone call inadvertently made to the IAJ's home telephone number. Mr. Aldridge also requested information as to the reason the uniformed Trooper was in attendance of the hearing. The IAJ stated condescendingly, that he requested the presence of the Trooper for reasons that he did not have to explain to Mr. Aldridge.

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On March 21, 2013, Mrs. Aldridge filed the Claimant's Petition for Interlocutory Review by a Chief Industrial Appeals Judge, in response to the IAJ's denial of her request that he recuse. Included with the Petition, is the Declaration of Mrs. Aldridge affirming her request that the IAJ recuse since it is her impression that the IAJ is incapable of being impartial. In response to Mr. Aldridge's Petition, on April 4, 2013, the BIIA entered its Order Affirming Interlocutory Ruling of the IAJ. In the Order, the ACIAJ holds 1) the IAJ did engage in ex parte contact with Mrs. (Christensen) Allen, counsel to the Department; however, the ex parte contact was solely for the purpose of determining the availability of the Department for scheduling purposes and under the BIIA's code of ethics for Industrial Appeals Judges, such contact is permissible in relation to "purely procedural matters," 2) that the decision to have security present is "a question that is reserved to the sound discretion of the judge conducting a proceeding," and 3) that compelling a person appearing in the place of a lawyer, such as a lay representative, to be sworn as a witness was "entirely appropriate in this case. Judge Kalenius had a duty to determine whether there was a fee arrangement between Mr. Aldridge and the claimant. Mr. Aldridge's testimony was necessary to make that determination. Attorneys in some cases, typically in Superior Court, may also be required to testify on fee arrangements and they should also be sworn in before testifying."

The ACIAJ's holdings are in repudiation of the law and should be reconsidered.

III. GROUNDS FOR RELIEF

The ACIAJ erred by affirming the IAJ's decision not to recuse himself. The holdings of the ACIAJ are in repudiation of the law. Pursuant to CR 59(a)(7), the ACIAJ's decision is contrary to the law and CR(a)(9), Mrs. Aldridge is denied substantial justice as a result of the ACIAJ's affirmation of the IAJ's decision not to recuse and the holding of the ACIAJ in support of the affirmation.

IV. ARGUMENT

In his review of Mr. Aldridge's Petition, the ACIAJ renders several ruling in support of his affirmation of the IAJ's decision not to recuse. However, the rulings are not supported by law; rather, repudiate the law while inferring an IAJ's right to discriminate against a litigant, under the color of law, without setting forth any grounds or reasons for such discrimination.

Ex parte Contact:

In his order, the ACIAJ rules that the ex parte contact the IAJ had with counsel to the Department, Mrs. Penny "Christensen" Allen (hereinafter "Mrs. Christensen-Allen"), was

"solely for the purpose of determining those months in which the Department's representative might be available for scheduling the claimant's hearing." Additionally, any such contact is permissible under the Board's Code of Ethics for Industrial Appeals Judges. Because the IAJ admits to ex parte contact with opposing counsel on the record, the ruling of the ACIAJ assumes that no other topic related to Mr. Aldridge's Appeal was discussed. However, it is noteworthy that the IAJ admitted that the reason he engaged in ex parte contact with Mrs. Christensen-Allen was that Mr. Aldridge arrived three minutes prior to the set conference time of 9:00 AM, rather than arriving five minutes prior to the set start time of the conference. [Tr. p.1 line 7 (actual start time), and p.6 lines 3-12.] Additionally, if the only ex parte topic of discussion occurring between the IAJ and Mrs. Christensen-Allen dealt with scheduling, it is reasonable to assume that the Mrs. Christensen-Allen would have already provided dates to the IAJ thereby making it unnecessary for the IAJ to require Mr. Aldridge to identify a hearing date for the presentation of Mrs. Aldridge's case-in-chief rather than advising Mr. Aldridge of the dates already identified by Mrs. Christensen-Allen as available dates for the Department, and establishing Mrs. Aldridge's availability for those dates. [Tr. p.6 lines 8 – p.9 line 5.] Even if nothing other than scheduling was discussed ex parte between the IAJ and Mrs. Christensen-Allen, a cloud of mere suspicion as referenced supra, is enough to justify recusal.

> *Sherman v. Washington,* 128 Wash. 2d 164, 205, 905 P.2d 355 (1995) However, in deciding recusal matters, actual prejudice is not the standard. The CJC recognizes that where a trial judge's decisions are tainted by even a mere suspicion of partiality, the effect on the public's confidence in our judicial system can be debilitating. The CJC provides in relevant part: "Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned . . . ." CJC Canon 3(C)(1) (1995).

In his ruling, the ACIAJ appears to suggest that the effect of the new Code of Judicial Conduct that became effective on January 1, 2011, negates the intent of the holdings in prior case law where the appearance of fairness, impartiality and legal precedence set by prior holdings regarding the decisions of trial judges where such decisions may be tainted, no longer apply to persons serving in a judicial capacity within an administrative agency. The courts routinely referred to predecessor rules to determine applicable issues. *Business Services of America Ii, Inc v. Wafertech LLC*, 274 P.3d 1025 (2012) WA.0000481§25www.versuslaw.com (2012). *"[M]oreover, we have held under the predecessor rule to CR 41(b)(1) that an issue of law or fact is joined when, among other circumstances, a case is remanded from an appeal."*

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Appearance of Fairness:

The ACIAJ ruled that the decision of whether security is reasonably necessary for any proceeding is a *"[q]uestion that is reserved to the sound discretion of the judge conducting the proceeding."* However, for the IAJ to exercise discretion, grounds for the decision resulting in the exercise of discretion must be presented. Here, the IAJ ordered security but when an inquiry was made as to the reason for the extra security measure, the IAJ's retort was that the security was his choice, that the extra security was specifically requested for Mrs. Aldridge's case, and that he would not disclose to Mr. Aldridge, the reason for the extra security. [Tr. p.31 lines 12 – 22.] A judge abuses discretion when a decision is manifestly unreasonable or exercised on untenable grounds for untenable reasons. *Mayer v. STO Indus, Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006) *Accord* State v. Atsbeha, 142 Wn.2d 904, 913-14, 16 P.3d 626 (2001). An abuse of discretion occurs when no reasonable person would take the view the trial court adopted. Id. at 914 (quoting State v. Ellis, 136 Wn.2d 498, 504, 963 P.2d 843 (1998)) *See also* An abuse of discretion occurs when the decision is "manifestly unreasonable or based upon untenable grounds or reasons." Industrial Indem. Co. v. Kallevig, 114 Wn.2d 907, 926, 792 P.2d 520, 7 A.L.R.5th 1014 (1990) (quoting Davis v. Globe Mach. Mfg. Co., Inc., 102 Wn.2d 68, 77, 684 P.2d 692 (1984)).

In the instant case, Mrs. Aldridge is denied substantial justice by the IAJ for refusing to divulge the grounds and/or reasons for the extra security measure, and the ACIAJ's affirmation of the IAJ's denial and refusal to recuse. The law expressly allows a litigant the ability to challenge issues related to abuse of discretion. However, in order to challenge a judge's abuse of discretion, the basis of the decision resulting in the exercise of discretion must be revealed. The literal ruling of the ACIAJ means that an IAJ conducting a proceeding may practice discrimination, under the color of law, against the blind, deaf, gays, lesbians, males, females, blonde-haired people, brown-haired people, Jewish people, Muslims, Caucasian, or intimidating looking Black males since such discrimination is "[r]eserved to the sound discretion of the judge conducting a proceeding." The ACIAJ's ruling is in repudiation of the law.

Sworn Testimony:

In his order, the ACIAJ ruled that requiring Mr. Aldridge be sworn was *"[e]ntirely appropriate in this case."* The ACIAJ suggests that, in superior court cases, attorneys are typically sworn when required to testify on fee arrangements. The ACIAJ references RPC 3.7(a)(2) in support of his ruling. However, the ACIAJ ruling that requiring Mr. Aldridge be

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sworn to determine the fee arrangement between Mr. Aldridge and his wife was appropriated *"[i]n this case,"* is reminiscent of the concerns expressed by Mr. and Mrs. Aldridge with regard to the appearance of fairness and the abuse of discretion. Why is *"this case,"* any different from any other case when WAC 263-12-020 unequivocally prohibits a lay representative from receiving a fee. *See Generally* RCW 2.48.180. It is reasonable to assume that ACIAJ's holding with regard to the sound discretion of the judge conducting the proceeding and the resulting impunity to practice any sort of discrimination was the determining factor in the instant case. Moreover, RPC 3.7(a)(2) allows the testimony of a lawyer where the testimony relates to *"[t]he nature and value of legal services rendered in the case."* WAC 263-12-020 unequivocally established that a person acting in the capacity of lay representative is prohibited from receiving a fee for his services. RPC 3.7(a)(2) does not require that the testimony of the lawyer be taken under oath. Furthermore, the March 19, 2013 proceeding, was a scheduling conference. Conferences, in particular scheduling conferences, are not proceedings where sworn testimony is taken for the purpose of deciding the issues on appeal. *In re: Jose R. Benavides* BIIA 05 10661(2007) *Accord* Watt v. Weyerhaeuser, 18 Wn. App. 731 (1977).

V. CONCLUSION

The order of the ACIAJ affirming the interlocutory ruling of the IAJ should be reconsidered.

SUBMITTED this 19 day of April, 2013.

M. Wayne Aldridge
Lay Representative

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Filed
Washington State
Court of Appeals
Division Two

September 27, 2022

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

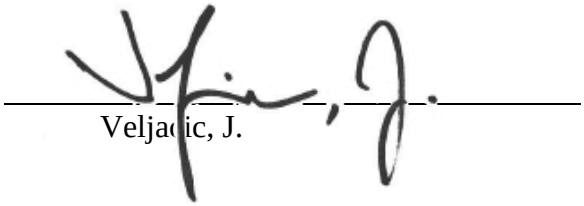
COLLEEN M. ALDRIDGE, Appellant, v. WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES, Respondents.	No. 55489-5-II ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Colleen M. Aldridge, moves this court to reconsider its March 29, 2022 opinion. Respondent, Department of Labor and Industries, responded in opposition to Appellant's motion. After consideration, we deny Appellant's motion for reconsideration. It is

SO ORDERED.

Panel: Jj. Worswick, Maxa, Veljacic.

FOR THE COURT:



Veljacic, J.

COLLEEN ALDRIDGE - FILING PRO SE

October 27, 2022 - 4:27 PM

Filing Petition for Review

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