No. 101107-5

SUPREME COURT

OF THE STATE OF WASHINGTON

No. 83417-7-I

COURT OF APPEALS, DIVISION I

OF THE STATE OF WASHINGTON

SHAWN SMITH,

Petitioner,

v.

DEPARTMENT OF LABORAND INDUSTRIES,

Respondent.

PETITION FOR REVIEW

Carson Law Practice

By: Dave Carson

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Sumner, WA 98390

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A. Introduction

This Court has already granted a petition for review in *Ronald Cordova v. City of Seattle, et al.* under docket number 100605-5 currently ready for Fall 2022. The issues presented in *Cordova* and foundations of logic from the Court of Appeals (Division 1) share the same errors as the Court of Appeals (Division 2) in the present case of *Smith v. STATE, DEP'T OF LABOR & INDUSTRIES, No. 83417-7-I* (Wash. Ct. App. June 21, 2022). Both the *Cordova* Court, and the court in Mr. Smith's case, prejudiced workers by denying of benefits on technicalities.

The Court of Appeals rejected Mr. Smith's counsel's written notice of representation for lacking the claimant's signature. As in *Cordova,* the Court of Appeals missed Title 51's starting point: to liberally construe the law on workers compensation with "the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment." RCW 51.12.010. Denying a worker's right

under Title 51, including a worker's right to counsel, based on strict adherence is anathema to liberal construction.

This Court should accept review and hold that a claimant's right of counsel may not be denied by the Department of Labor and Industries based on extra legal technicalities when the applicant has made their intent known by way of counsel.

B. Court of Appeals Decision.

Petitioner seeks review of the Court of Appeals' June 21, 2022, decision affirming the trial court's order that affirmed the decision of the Board of Industrial Insurance Appeals (BIIA) rejecting Mr. Smith's claim for workers' compensation benefits and finding that the Department was not required to provide Mr. Smith's attorney a copy of its order, such that that order rejecting the claim was deemed 'communicated to the parties' and thereby final and binding.

A. Issue Presented for Review

An order is final and binding when the order is communicated to the parties of interests (RCW 51.52.050(1)).

> Is an order final and binding if it was not sent to claimant's representative who filed a notice of representation with the Department when the Department rejected the attorney-client representation because it was not signed by the claimant?

D. Statement of the Case.

In 2016 Carson Law Practice filed a notice of appearance and represented Mr. Smith on claim AZ34855. Mr. Smith filed BB76955 claim on May 27, 2017. In July 2017, still representing Mr. Smith on AZ34855, Carson Law Practice filed a notice of appearance for claim BB76955.

Following the filing of the July 13th, 2017 notice of appearance for claim BB76955, Carson Law Practice had access to claim files including confidential claim information at the Department's Claims and Account Center, and had communicated with the claim

manager[1] about claim BB76955. Following the July 13th, 2017 Notice of Appearance, the Department did not provide any written correspondence to either Carson Law Practice or Mr. Smith that stated it rejected the notice of appearance or the attorney-client relationship. On July 17, 2017 and July 27, 2017, the Department called Carson Law Practice's office regarding claim related matters and including the sufficiency counsel's notice of appearance. No calls were made to Mr. Smith regarding claim BB76955.

On August 11, 2017, the Department's claims manager issued an order rejecting the BB76955 claim – that order was not sent to Mr. Smith's counsel Carson Law Practice.

[1] The Department claims manager, Jeannie Carlson, was assigned to both claims (AZ34855 and BB76955).

E. Reasons the Court Should Accept Review.

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

Both cases, *Cordova* and ***Smith***, examine the Department's responsibility when receiving communications. Citing *Nelson v. Dep't. of Lab. & Indus.,* the Appellant in *Cordova* argued Title 51 their communication should be found sufficient. 9 Wn.2d 621, 629, 115 P.2d 1014 (1941). Because "[a]s long as the writing filed with the department reasonably directs its attention" to the facts then "the statute has been substantially complied with." *Id.* Under *Nelson,* and the cases that follow, liberal construction led to the "substantially compliance" rule whether communications to Department are sufficient.

In *Cordova* the Court of Appeal's (Division 1) requirement for strict adherence was examined under RCW 51.28.020 Workers application for compensation; Here regarding Mr. Smith, the Court of

Appeal's (Division 2) requirement for strict adherence was examined under RCW 51.04.080. Here, the nature of the strict adherence implied by the Court of Appeals is undefined, except that it must be "personal" and be "signed" by the claimant. *Infra vide*. The Court Appeals concluded that communication cannot come from an attorney in the form of notice of appearance or representation. In doing so, the Court of Appeals goes beyond the statute's plain language and interjects an extra-legal requirement of a claimant's signature in the holding "[t]he plain language of the statute makes clear that, when a claimant desires to have a Department order forwarded to the claimant's representative, the claimant must **personally** convey to the Department a writing **signed** by the claimant that sets forth the representative's name and address." ***Smith v. STATE, DEP'T OF LABOR & INDUSTRIES***, No. 83417-7-I (Wash. Ct. App. June 21, 2022)(emphasis added). But, the plain language of RCW 51.04.080 does not require a claimant's signature.

> 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. Claimants' written notices, orders, or payments may be forwarded to the claimant in care of a representative before an order has been entered if the claimant sets forth in writing the name and address of the representative to whom the claimant desires this information to be forwarded.

Id.

In support that a signature from a worker is required by the Department before acknowledgement of representation, the Court of Appeals relied on *inter alia Mangan v. Lamar*, 18 Wn. App. 2d 93, 96-97, 496 P.3d 1213 (2021) which cited RCW 7.06.050(1), not a Title 51 statute, which included unambiguous language "[t]his notice must be signed by the party." RCW 7.06.050.

The Court of Appeals conclusion that the "legislature is aware that it has the authority to impose a requirement on parties themselves that cannot be satisfied by the party's representative" is not in doubt. *Smith* at 12, Section E. But, the Court of Appeals

conclusion "[t]hat is what occurred in this instance" is in doubt. *Id*. It is not clear that the statute RCW 51.04.080's intended that a claimant must 'personally convey with their signature' before the Department can recognize counsel. The Court of Appeals misconstrued the target of the statute, which is the Department and the Department's duty in "[s]ending notices, order, payments to claimants." RCW 51.04.080.

Title 51 RCW must be "liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/ or death occurring in the course of employment." RCW 51.12.010. Time and time again, this Court has held "the guiding principle in construing provisions of the Industrial Insurance Act is that the Act is remedial in nature and is to be liberally construed in order to achieve its purpose of providing compensation to all covered employees injured in their employment, **with doubts resolved in favor of the worker**." *Street v. Weyerhaeuser Co.*, 399 P.3d 1156, 189 Wash. 2d 187

(2017)(emphasis added); *Dennis v. Dept. of Labor and Industries*, 745 P.2d 1295, 109 Wash. 2d 467 (1987); *Sacred Heart Med. Ctr. v. Carrado*, 92 Wn.2d 631, 635, 600 P.2d 1015 (1979); *Lightle v. Department of Labor & Indus.*, 68 Wn.2d 507, 510, 413 P.2d 814 (1966); *Wilber v. Department of Labor & Indus.*, 61 Wn.2d 439, 446, 378 P.2d 684 (1963); *State ex rel. Crabb v. Olinger*, 196 Wash. 308, 311, 82 P.2d 865 (1938); *Gaines v. Department of Labor & Indus.*, 1 Wn. App. 547, 552, 463 P.2d 269 (1969).

But here, in finding Mr. Smith's attorney's notice of representation was not effective, the Court of Appeals resolved doubts against the worker's interests by harmonizing RCW 51.04.080 with WAC 263-12-020(3)[2] to deny Mr. Smith representation at a critical

[2] WAC 263-12-020 is a limitation regarding who may appear before the Board of Industrial Insurance Appeals, not how or who may represent the worker before the Department of Labor and Industries. WAC 263-12-020(1)("Who may appear? Any party to any appeal may appear before the board…"). The Court of Appeals interpretation of WAC 263-12-020(3) is also not construed to the benefit of the worker.

time following his filing of the claim noting "the requirements and privileges that apply specifically to lawyers do not necessarily apply to nonlawyer representatives" and concluded "the legislature was authorized to impose a requirement that applies equally to all representatives, whether they be lawyers or nonlawyers." *Smith* at 12, Section E.

The Department has a duty to communicate. Failure to communicate renders a Department order not final and binding. Consider, *Shafer v. Dept. of Labor and Industries* where this Court concluded *En Banc* that a closing order was not final in a workers' claim because it was not communicated to the worker's attending physician because "the role the attending physician[3] plays in the claims process and the IIA's command to

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[3] Because of liberal construction, the determination that Dr. Cook was Ms. Shafer's attending physician was not made on arcane technicalities without a determination by the Department, but by the facts of the case with the Court noting while Ms. Shafer "visited several medical practitioners for treatment, she was eventually treated by Dr. Elizabeth Cook." Shafer held the Department had duty to communicate with the person the Claimant believed was the leading their care, aka Ms. Shafer's attending physician.

interpret ambiguous portions of the act in favor of injured workers." 213 P.3d 591, 166 Wash. 2d 710 (2009). A claimant's representative also 'plays' a critical role in the claim process, and the IIA's command should equally apply to a claimant's chosen representative as it did in *Shafer* to a claimant chosen physician.

Notwithstanding the Department's duty to accept Carson Law Practice as Mr. Smith's representative or the Department's failure to communicate the order rejecting the BB76955 claim to counsel, the Department also failed its duty to communicate to Mr. Smith when it rejected Carson Law Practice to Mr. Smith.

The right to representation, like all rights under the IIA, should not be denied on procedural technicalities: The Workman's Compensation Law was particularly framed to avoid legal terminology and technicalities of law pleading. *Nelson*, 9 Wn.2d at 629. As argued in *Cordova,* this Court stressed "[t]here is no particular

form of pleading required to give" notice and that "[a]nything filed with [DLI] that challenges its attention, causes it to act, is sufficient" *Nelson*, 9 Wn.2d at 630. Here, the Court of Appeals interpretation of RCW 51.04.080 placed the burden on workers, not the Department, to provide filings with extra-legal particularities contrary to customs in the practice of law and out-of-step with the over-arching purpose of Title 51 when the simplest interpretation of RCW 51.04.080 reads that the Department must send the claimant copies of all notices, orders, or payment until a representation's information is provided and then it must send that representative copies of those communications.

The Department's has a duty following a receiving communication. In *Cordova* the Department's duty was to inform the worker of her of the benefits under Title 51 RCW and to direct the self-insured employer to provide the worker the correct forms. *Cf.* Here at a minimum the Department had a duty to inform Mr.

Smith when it rejected Carson Law Practice's notice of representation.

This Court should grant review under RAP 13.4(b)(2, 4).

> 2. This Court should grant review under RAP 13.4(b)(2) and (4) because attorney representation is a threshold aspect of law that affects every worker who seeks counsel, and the Court of Appeals holding on sufficiency of notice for representation is at odds with a body of law from the Board of Industrial Insurance Appeals.

The Court of Appeals acknowledged "Smith cites to various authority" including several appellate opinions and the Rules of Professional Conduct (RPC) to support that a notice of appearance filed by attorney is sufficient for the Department to acknowledge the worker's representation, but Court of Appeals rejected all precedents. Smith at 12, Section B, N7.

But, the Court of Appeals decision in *Smith* goes against a body of published decisions[4] by the Board of Industrial Insurance Appeals regarding the Department's duty to communicate following notice of representation from counsel. *See In re Bell & Bell Builders (II), BIIA Dec., 90 5119 (1992) and* *In re David Herring*, BIIA Dec., 57, 831 (1981)(holding a closing order not sent to claimant's attorney was not communicated); *In re Sound Dive Center (II)*, BIIA Dec., 14 12707 (2015)(holding "where an attorney or other representative has appeared before the Department… and expressed desire to receive further communication from the Department regarding the assessment, the Department is obligated to direct all future correspondence to the firm's attorney or

[4] While administrative decisions are not binding on this court, the Board is a persuasive authority in interpreting the IIA. *O'Keefe v. Dep't of Labor & Indus.*, 126 Wash.App. 760, 766, 109 P.3d 484 (2005), review denied, 156 Wash.2d 1003, 128 P.3d 1239 (2006).

representative."); *In re Pamela Miller*[5], BIIA Dec., 05 12252 (2006)(holding the correct interpretation of the statute [RCW 51.04.080] "requires the Department to mail the first appealable order to a party's representative, assuming the Department has been notified that the party is represented" noting this interpretation was best because "all doubts as to the meaning of the Act are to resolved in the injury worker.")

The Board has also held that the Department has an "obligation to inquire" or duty to investigate representation. *See In re Betty Brashear*, Dckt. No 96 3341 (August 8, 1997)("In cases in which the Department has received notice of representation, we will not consider a subsequent order to be communicated to the party's last known address unless

---

[5] The facts of Mr. Smith case most closely pair the facts in *Pamela* with analaysis of RCW 51.04.080 central to the determination that the order was not communicated, it is further noted that no communication was sent from the claimant, rather communication regarding representation came from the claimant's attorney.

the Department has either served the representative with a copy or has made reasonable inquiry on the question of representation.") The Court of Appeals did not make a finding as to whether the Department made a reasonable inquiry, and its ruling suggests the Department does not have a duty to communicate or investigate following a notice of representation by counsel.

Mr. Smith filed a claim on May 27, 2017, which was rejected by Department order by August 11, 2017 with Mr. Smith's counsel filing a notice of representation on July 13, 2017. When was the representation rejected? The Court of Appeals holding would suggest that notice of representation by counsel is *void ab initio*, and no action or communication to the claimant is required by the Department.

Synthesizing the Court of Appeals holding with the present facts, the Department's voice messages to Carson Law Practice on July 17 and July 27 were not to Mr. Smith's counsel because the Department had not

recognized Carson Law Practice as Mr. Smith's representative.

In *Cordova* the petitioner raised equitable estoppel in its petition for review by this Court, and the doctrine is applicable here for the same reasons. The Department made an impactful decision to deny Mr. Smith representation without informing him of its decision, and then by rejecting his claim without communicating that order to his chosen representative.

The Court of Appeals decision is in conflict with multiple existing decisions, several Board of Industrial Appeals significant decisions, and American jurisprudence as it currently practiced regarding the sufficiency of an Attorney's notice of representation. This Court should also accept review because the published Court of Appeals decision "involves an issue of substantial public interest." RAP 13.4(b)(4).

F. Conclusion

By elevating form over substance, the published decision in ***Smith*** and *Cordova* conflicts with decisions

from this Court, in addition to presenting an issue of substantial public interest demanding this Court's attention. This Court should accept review. RAP 13.4(b)(1)-(2), (4).

I certify that this petition is in 14-point Georgia font and contains 3230 words, in compliance with the Rules of Appellate Procedure. RAP 18.7(b).

Dated this day of July 21, 2022

Carson Law Practice

By: Dave Carson
WSBA NO.: 48002
Attorney for the Petitioner

CARSON LAW PRACTICE

July 21, 2022 - 2:17 PM

Filing Petition for Review

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State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SHAWN SMITH, Appellant, v. WASHINGTON STATE DEPARTMENT OF LABOR & INDUSTRIES, Respondent.	DIVISION ONE No. 83417-7-I PUBLISHED OPINION

DWYER, J. — Shawn Smith appeals from the superior court's order concluding that Smith did not timely file a request for reconsideration of an order entered by the Department of Labor and Industries (the Department), which rejected his claim for workers' compensation benefits. Smith contends that the superior court erred in so concluding because the Department did not send a copy of its order to his attorney. Accordingly, Smith asserts, the order was not properly communicated and, in turn, the 60-day statutory deadline for filing a request for reconsideration did not apply.[1] However, Smith did not timely provide the Department with a writing signed by Smith setting forth the name and address of his representative as required by RCW 51.04.080. Therefore, the Department was not required to provide Smith's attorney with a copy of its order. Finding no error in the superior court's analysis, we affirm.

[1] RCW 51.52.050(1) provides that a "final order, decision, or award shall become final within sixty days from the date the order is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries."

I

In May 2017, Smith filed a claim with the Department. This claim, designated as "Claim No. BB 76955," alleged that Smith developed an occupational disease—namely, bilateral carpal tunnel syndrome.

Sometime before filing claim number BB76955, Smith filed a different claim, which was denominated as claim number AZ34855. On July 13, 2017, the Department received a written authorization from Smith stating that David Carson, an attorney, was his representative with regard to claim number AZ34855.

Also on July 13, 2017, Carson faxed to the Department a letter written by Carson. This letter provided:

> **RE: Shawn Smith**
> **Claim #BB76955**
>
> Dear Sir or Madam:
> Please take note that Shawn Smith is now represented by Carson Law Practice. This notice constitutes a protest to all adverse orders.
>
> Should there be any question regarding this claim please contact:
> Dave Carson[2]

Notably, however, this fax did not include a writing by Smith stating that Carson was his representative with regard to claim number BB76955.

On July 17, 2017, Jeannie Carlson, a claim manager at the Department, telephoned Carson and informed him that the Department required an authorization from Smith before the Department could consider Carson to be Smith's representative for claim number BB76955. Carson did not provide the

[2] This letter also provided Carson's telephone number, fax number, and e-mail address.

Department with such an authorization in response to this advisement. Thus, on July 27, Carlson again telephoned Carson, informing him a second time that the Department required an authorization from Smith in order to treat Carson as Smith's representative on this claim. Once again, Carson did not provide the Department with such an authorization.

On August 11, 2017, the Department entered an order rejecting claim number BB76955. In so doing, the Department determined that "the diagnosed condition was not found to arise naturally and proximately out of employment."[3] That same day, the Department mailed a copy of the order to Smith, his medical provider, his employer, and an employer group. The Department did not mail a copy of the order to Carson.

Approximately 14 months later, on October 2, 2018, Carson sent a "secure message" to the Department wherein he requested that the Department reconsider its order rejecting claim number BB76955. On October 9, the Department sent Carson a letter, which stated:

> Based on the fact that the department does not have a release from Mr. Smith for claim BB76955, your secure message of 10/2/18 cannot be construed as a protest for claim BB76955.
>
> A phone call was made on 7/17/17 informing Dave Carson that a signature from Mr. Smith is necessary in order to obtain attorney authorization on claim BB76955.

On October 16, 2018, a paralegal at Carson's law firm faxed to the Department a letter, which was signed by Smith. This letter stated:

[3] RCW 51.08.140 states: "'Occupational disease' means such disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title."

> TO: DEPARTMENT OF LABOR AND INDUSTRIES
> RE: Claim number **BB-76955**
> All future electronic, written, and oral communications are to my attorney representatives at Carson Law Practice regarding my claim files. Please allow digital access to my complete claim or provide a copy of my claim file to Carson Law Practice at the below address.[4]

Additionally, the fax contained a letter, authored by Carson, which stated that Smith was "represented by Carson Law Practice" and that "[t]his notice constitutes a protest to all adverse orders."[5]

On November 5, 2018, the Department entered an order refusing to reconsider its August 2017 order. In so doing, the Department explained that Smith's protest was untimely because the protest was not received within 60 days of the August 2017 order being communicated to Smith. This November 2018 order was mailed to Carson's law firm.

On November 13, 2018, Smith filed a notice of appeal with the Board of Industrial Insurance Appeals (the Board). On October 4, 2019, an industrial appeals judge entered an order dismissing Smith's appeal. On November 18, Smith petitioned for review of the industrial appeals judge's decision. On December 13, the Board granted Smith's petition for review. On January 24, 2020, the Board entered an order affirming the Department's November 2018 order.

On January 28, 2020, Smith appealed the Board's decision to the Pierce County Superior Court. On December 18, the superior court entered an order

[4] This letter provided the address of Carson's law firm.

[5] Both the letter written by Carson and the letter signed by Smith were dated July 13, 2017. However, these letters were not sent to the Department until October 16, 2018.

affirming the Board's decision. In so doing, the superior court entered the following conclusions of law:

> 2. The Department order dated August 11, 2017, was communicated to Shawn R. Smith within the meaning of RCW 51.52.050.
> 3. The protest to the August 11, 2017 Department order received by the Department on October 16, 2018, was not timely within the meaning of RCW 51.52.050.
> 4. As of August 11, 2017, attorney David W. Carson was not Shawn R. Smith's representative within the meaning of RCW 51.04.080 for Claim No. BB-76955. The Department of Labor and Industries was not required to send a copy of the August 11, 2017 order to David W. Carson.
> 5. The order dated November 5, 2018, is correct and is affirmed.

Smith appeals.

II

Smith contends that the superior court erred by concluding that the Department was not required to send a copy of its order rejecting claim number BB76955 to Carson. This is so, Smith avers, because Carson satisfied the dictates of RCW 51.04.080 by providing the Department with a written notice of appearance for claim number BB76955 before the Department entered its order rejecting this claim. We disagree. RCW 51.04.080 required Smith himself to set forth in writing the name and address of his representative and communicate this to the Department.

A

Washington's Industrial Insurance Act, Title 51 RCW, governs judicial review of workers' compensation cases. Rogers v. Dep't of Labor & Indus., 151 Wn. App. 174, 179, 210 P.3d 355 (2009). We review the superior court's

decision, not the Board's order. RCW 51.52.140. As with the superior court's review of an administrative appeal, our review is based solely on the evidence and testimony presented to the Board. RCW 51.52.115; Bennerstrom v. Dep't of Labor & Indus., 120 Wn. App. 853, 858, 86 P.3d 826 (2004).

We review the superior court's decision in the same manner as other civil cases. Mason v. Georgia-Pac. Corp., 166 Wn. App. 859, 863, 271 P.3d 381 (2012). Specifically, we review whether substantial evidence supports the superior court's factual findings and whether the superior court's conclusions of law flow from those findings. Rogers, 151 Wn. App. at 180. We view the record in the light most favorable to the party who prevailed in superior court. Rogers, 151 Wn. App. at 180. Additionally, the superior court's construction of a statute is a question of law, which we review de novo. Mason, 166 Wn. App. at 863.

> The goal of statutory interpretation is to discern and carry out legislative intent. Seven Gables Corp. v. MGM/UA Entm't Co., 106 Wn.2d 1, 6, 721 P.2d 1 (1986). To determine legislative intent, we first look to the language of the statute. We must give meaning to every word in a statute. In re Recall of Pearsall-Stipek, 141 Wn.2d 756, 767, 10 P.3d 1034 (2000). Absent ambiguity, a statute's meaning is derived from the language of the statute and we must give effect to that plain meaning as an expression of legislative intent. Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). If the meaning of a statute is plain on its face, the inquiry ends. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). A statute is ambiguous if susceptible to two or more reasonable interpretations. Armendariz, 160 Wn.2d at 110. However, a statute is not ambiguous merely because of different conceivable interpretations. Armendariz, 160 Wn.2d at 110.

Bennett v. Seattle Mental Health, 166 Wn. App. 477, 483-84, 269 P.3d 1079 (2012).

B

The statute at issue provides:

> 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. Claimants' written notices, orders, or payments may be forwarded to the claimant in care of a representative before an order has been entered if the claimant sets forth in writing the name and address of the representative to whom the claimant desires this information to be forwarded.

RCW 51.04.080.

Here, the superior court concluded:

> As of August 11, 2017, attorney David W. Carson was not Shawn R. Smith's representative within the meaning of RCW 51.04.080 for Claim No. BB-76955. The Department of Labor and Industries was not required to send a copy of the August 11, 2017 order to attorney David W. Carson.

Conclusion of Law 4.

Smith contends that the superior court's reading of RCW 51.04.080 "ignore[s] the nature of the attorney-client relationship" because "[a]ttorneys may perform acts on behalf of their clients, even where a statute or court rule expressly says a party must do it."[6] Additionally, Smith asserts that all of the rules and laws regarding lawyers' obligations to their clients, tribunals, and third persons provide adequate protection to any claimant who is represented by a lawyer before the Department.[7] Therefore, according to Smith, Carson's notice

[6] Br. of Appellant at 24.

[7] In support of this argument, Smith cites to various authority. First, Smith cites to a statutory provision of Title 2 RCW, which provides, in part:

> An attorney and counselor has authority:
>
> (1) To bind his or her client in any of the proceedings in an action or special proceeding by his or her agreement duly made, or entered upon the minutes of the court; but the court shall disregard all agreements and stipulations in relation to the conduct of, or any of the proceedings in, an action or special

of appearance for claim number BB76955, which was sent to the Department before the Department entered its order rejecting this claim, satisfied the requirements of RCW 51.04.080.

Notably, however, the Department permits nonlawyers to represent claimants. See WAC 263-12-020(3). Plainly, the requirements and privileges that apply specifically to lawyers do not necessarily apply to nonlawyer representatives. Given that both lawyers and nonlawyers may represent claimants before the Department, we first determine whether the legislature had the authority to promulgate a rule that applied equally to all representatives, regardless of whether those representatives are lawyers or nonlawyers.

> proceeding unless such agreement or stipulation be made in open court, or in presence of the clerk, and entered in the minutes by him or her, or signed by the party against whom the same is alleged, or his or her attorney;
>
> (2) To receive money claimed by his or her client in an action or special proceeding, during the pendency thereof, or after judgment upon the payment thereof, and not otherwise, to discharge the same or acknowledge satisfaction of the judgment.

RCW 2.44.010.

Additionally, Smith cites to several appellate opinions. The first set of these opinions provide that lawyers owe a fiduciary duty to their clients. See Perez v. Pappas, 98 Wn.2d 835, 840-41, 659 P.2d 475 (1983); Kelly v. Foster, 62 Wn. App. 150, 154-55, 813 P.2d 598 (1991). The second set of these opinions provide that lawyers are entitled to make their own decisions with regard to their representation as long as those decisions do not affect the merits of the cause or prejudice a substantial right of the client. See Barton v. Tombari, 120 Wash. 331, 336, 207 P. 239 (1922); Fite v. Lee, 11 Wn. App. 21, 29, 521 P.2d 964 (1974). Additionally, Smith cites to an opinion wherein the court stated that "[a]bsent fraud, the actions of an attorney authorized to appear for a client are generally binding on the client." Russell v. Maas, 166 Wn. App. 885, 889-90, 272 P.3d 273 (2012).

Finally, Smith cites to several provisions of the Rules of Professional Conduct (RPC). In particular, Smith cites to RPC 1.2(a), which states: "A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation." Smith also cites to RPC 3.3(a)(1), which provides that lawyers shall not knowingly make a false statement of fact or law to a tribunal. Additionally, Smith cites to RPC 4.1(a), which provides that lawyers shall not knowingly make a false statement of material fact or law to a third person. Furthermore, Smith cites to RPC 8.4(c), which provides that it is professional misconduct for a lawyer to "engage in conduct involving dishonestly, fraud, deceit or misrepresentation."

C

It is well established that a statute may be overinclusive as long as the statute is rationally related to a legitimate state interest. Indeed, our Supreme Court has explained that "'perfection is by no means required' and . . . a statute may survive rational basis review even if it 'is to some extent both underinclusive and overinclusive.'" Campbell v. Dep't of Soc. & Health Servs., 150 Wn.2d 881, 901, 83 P.3d 999 (2004) (internal quotation marks omitted) (quoting Vance v. Bradley, 440 U.S. 93, 108, 59 L. Ed. 2d 171 (1979)). As such, "[a] classification does not fail because it is not made with mathematical nicety." Campbell, 150 Wn.2d at 901 (citing Heller v. Doe, 509 U.S. 312, 321, 113 S. Ct. 2637, 125 L. Ed. 2d 257 (1993)). Put differently, "[t]he law may be overinclusive, underinclusive, illogical, and unscientific and yet pass constitutional muster." United States v. Pickard, 100 F. Supp. 3d 981, 1005 (E.D. Cal. 2015).

To be clear, Smith does not claim that RCW 51.04.080 is constitutionally deficient. However, the authority quoted above clarifies that, in enacting RCW 51.04.080, the legislature was constitutionally authorized to impose a requirement that applies equally to both lawyers and nonlawyer representatives. Indeed, there are various legitimate state interests that are promoted when claimants themselves are required to set forth in writing the name and address of the claimant's representative, regardless of whether that representative is a lawyer or a nonlawyer. For example, such a requirement encourages claimants themselves to decide whether they pay the costs associated with representation. Additionally, because a claimant may elect to have a representative for one claim

and not a separate claim, such a requirement provides clarity to the Department when it processes various claims. Furthermore, having one preliminary procedure that applies equally to both lawyer representatives and nonlawyer representatives promotes administrative efficiency. Thus, the legislature was authorized to impose a requirement that applies equally to all representatives, whether they be lawyers or nonlawyers.

D

Having clarified that the legislature possesses the authority to impose a requirement on claimants themselves to set forth in writing the name and address of the claimant's representative, regardless of whether that representative is a lawyer or a nonlawyer, we next determine whether RCW 51.04.080 in fact imposes such a requirement.

The plain language of the statute makes clear that, when a claimant desires to have a Department order forwarded to the claimant's representative, the claimant must personally convey to the Department a writing signed by the claimant that sets forth the representative's name and address. Indeed, the statute states that, at each claim's inception, "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 (emphasis added). The statute then provides a means by which a claimant may request that an order be forwarded to the claimant's representative. In particular, the statute provides that an order "may be forwarded to the claimant in care of a representative before an order has

been entered if *the claimant* sets forth in writing the name and address of *the representative* to whom *the claimant* desires this information to be forwarded." RCW 51.04.080 (emphasis added).

When interpreting a statutory provision, courts "must give meaning to every word in a statute." Bennett, 166 Wn. App. at 483. Additionally, "[d]ifferent statutory language should not be read to mean the same thing: '[w]hen the legislature uses different words in the same statute, we presume the legislature intends those words to have different meanings.'" Ass'n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd., 182 Wn.2d 342, 353, 340 P.3d 849 (2015) (second alteration in original) (quoting In re Pers. Restraint of Dalluge, 162 Wn.2d 814, 820, 177 P.3d 675 (2008) (Sanders, J., dissenting)). The statutory language at issue draws a clear distinction between the claimant and the claimant's representative. As such, we interpret those terms to mean different things.

Accordingly, RCW 51.04.080 authorizes only claimants themselves—and not the claimant's representative—to set forth in writing the name and address of the claimant's representative. Because the Department was not provided with such a writing by Smith before the Department entered its order rejecting Smith's claim, the Department was not required to forward a copy of that order to Carson.

E

We note that this is not the only time that the legislature has imposed a requirement that must be satisfied by parties themselves and that cannot be satisfied by a party's lawyer. In a different context, parties themselves must sign

a notice requesting a trial de novo following a superior court mandatory arbitration proceeding:

> Following a hearing as prescribed by court rule, the arbitrator shall file his or her decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. *The notice must be signed by the party*. Such trial de novo shall thereupon be held, including a right to jury, if demanded.

RCW 7.06.050(1) (emphasis added).

Thus, when a party's attorney signed the notice requesting a trial de novo following a mandatory arbitration proceeding, we explained that the de novo trial request was a nullity because the request "did not comply with the requirement that a request for a trial de novo must be signed by the party." Mangan v. Lamar, 18 Wn. App. 2d 93, 96-97, 496 P.3d 1213 (2021); accord Hanson v. Luna-Ramirez, 19 Wn. App. 2d 459, 462, 496 P.3d 314 (2021). These cases demonstrate that the legislature is aware that it has the authority to impose a requirement on parties themselves that cannot be satisfied by the party's representative. That is what occurred in this instance. Because the plain language of RCW 51.04.080 requires claimants themselves to set forth in writing the name and address of the claimant's representative, we must enforce this plain meaning. See Bennett, 166 Wn. App. at 483-84.

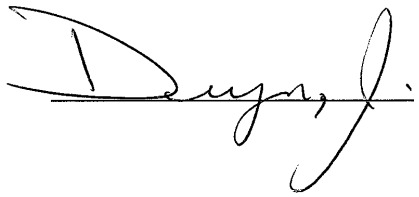
F

Smith asserts that his interpretation of RCW 51.04.080 best harmonizes with other statutory provisions of the Industrial Insurance Act. In support of this

argument, Smith cites to RCW 51.32.160,[8] RCW 51.52.060,[9] and RCW 51.24.030.[10] According to Smith, "[a]ll of these statutes explicitly require action by the claimant, injured worker, or beneficiary. Yet attorneys may perform these actions in the name of and on behalf of their clients."[11] However, RCW 51.32.160 and RCW 51.52.060 are inapposite because they apply after the Department enters an order. Additionally, RCW 51.24.030 is of no aid to Smith because it has nothing to do with a claimant's claim before the Department. Instead, this statute regards notifying the Department of a separate claim that is before a different tribunal. These citations do not inform our analysis.

For all of the reasons set forth above, the superior court did not err.

Affirmed.



[8] RCW 51.32.160 provides, in part:
(1)(a) If aggravation, diminution, or termination of disability takes place, the director may, upon the application of the beneficiary, made within seven years from the date the first closing order becomes final, or at any time upon his or her own motion, readjust the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment.

[9] RCW 51.52.060 provides, in part:
(1)(a) Except as otherwise specifically provided in this section, a worker, beneficiary, employer, health services provider, or other person aggrieved by an order, decision, or award of the department must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within sixty days from the day on which a copy of the order, decision, or award was communicated to such person, a notice of appeal to the board.

[10] RCW 51.24.030 provides, in part:
(1) If a third person, not in a worker's same employ, is or may become liable to pay damages on account of a worker's injury for which benefits and compensation are provided under this title, the injured worker or beneficiary may elect to seek damages from the third person.
(2) In every action brought under this section, the plaintiff shall give notice to the department or self-insurer when the action is filed.

[11] Reply Br. of Appellant at 10.

WE CONCUR: