SUPREME COURT NO. 101646-8

COURT OF APPEALS NO. 56095-0-II

SUPREME COURT
OF THE STATE OF WASHINGTON

MARK S. LANGHORST,

Petitioners,

v.

WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES,

Respondent.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Mark Langhorst asks this Court to accept review of the Court of Appeals decision designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Division II of the Court of Appeals issued a published decision in Cause No. 56095-0-II ("Opinion") on December 20, 2022. A copy of the decision is in the Appendix at pages A-1 through A-9.

C. ISSUES PRESENTED FOR REVIEW

Whether a reopening application is deemed reopened pursuant to RCW 51.32.160 and 51.52.060 when the Department of Labor and Industries fails to issue a final denial order until 255 days after his reopening application was filed.

D. STATEMENT OF THE CASE

The underlying facts of this claim are not in dispute. On May 31, 2012, the Washington State Department of Labor and Industries ("Department") issued an order allowing Mr. Langhorst's claim for an industrial injury, which occurred on January 26, 2012. CP at 39. Mr. Langhorst's claim was subsequently closed on November 4, 2014. CP at 40. Mr. Langhorst filed a completed application to reopen his claim on April 9, 2019, with the assistance of Dr. Manuel Pinto. CP at 42-43. On June 13, 2019, the Department issued an order denying the reopening application. CP at 44. That same day, Mr. Langhorst protested the Department order rejecting his reopening application. CP at 45.

On June 27, 2019, in response to Mr. Langhorst's protest, the Department issued another order holding its June 13, 2019 order in abeyance. CP at 46. On September 30, 2019, the Department sent a letter to Mr. Langhorst informing him it was scheduling an independent medical examination to address his

reopening application. CP at 48. The Department then issued a final order affirming the reopening denial on December 19, 2019. CP at 47. 255 days elapsed between the Department's receipt of Mr. Langhorst's reopening application and the ultimate denial of his application.

Following unfavorable findings at the Board of Industrial Insurance Appeals ("Board") and Thurston County Superior Court, Mr. Langhorst timely filed an appeal to the Court of Appeals, Division Two. On December 20, 2022, the Court of Appeals issued its decision, refusing to consider Petitioner's arguments because it incorrectly read the "plain meaning" of the statute at issue without considering the larger statutory scheme and the interplay between RCW 51.52.060 and RCW 51.32.160. *See* Appendix, at A-1.Petitioner Mark Langhorst now asks this Court to grant review.

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E. ARGUMENT

Petitioner respectfully requests that this Court grant review of the Opinion because this case presents significant questions of law and involves issues of substantial public interest that the highest court of this state should determine. RAP 13.4(b)(4).

Here, the issue at hand involves substantial public interest in injured workers right to a speedy adjudication of aggravation applications, and the overarching purpose of the Industrial Insurance Act to reduce "to a minimum the suffering and economic loss" for injured workers. RCW 51.12.010. Determination of the Department's authority and injured workers' rights will provide useful guidance to Department workers, the Washington State Attorney General's office, and Industrial Appeals Judges at the Board of Industrial Insurance Appeals. Department delays in making a final determination on reopening applications is, unfortunately, inevitably going to recur. As such, the Supreme Court should accept this petition for

review because it involves a matter of substantial public interest in limiting the Department's ability to delay adjudicating these applications.

1. Protecting injured workers' rights and upholding the purpose of the Industrial Insurance Act are issues of substantial public importance.

The fundamental, statutorily-prescribed purpose of the Industrial Insurance Act is to "reduce to a minimum the suffering" of injured workers. RCW 51.12.010. The Act is remedial and "should be liberally construed, with all doubts resolved in favor of the worker." *Simpson Timber Co. v. Wentworth*, 96 Wn. App. 731, 735-36, 981 P.2d 878 (Wash. Ct. App. 1999). The goal of liberal construction is to ensure "swift and certain relief" for injured workers. *Weyerhaeuser Co. v. Tri*, 117 Wn.2d 128, 139, 814 P.2d 629, 634 (1991). In upholding this purpose the legislature provided a strict deadline for the Department to adjudicate a reopening application or the application is deemed granted. In this case, the Department delayed adjudicating Mr. Langhorst's reopening application

more than 250 days, and the Court of Appeals' decision left Mr. Langhorst without the statutorily prescribed remedy for such delay. This outcome is likely to recur and to affect future similarly situated workers in the future.

A. The Court of Appeals erred in interpreting RCW 51.52.060 and RCW 51.32.160 contrary to express legislative intent.

When an individual has a worker's compensation claim that was accepted and subsequently closed, the worker has a right to submit a reopening application if their work injury has worsened. In response to the application, the Department must then issue either an acceptance or denial order. RCW 51.32.160. When a departmental order is issued, a worker - or other enumerated party - may protest the order within 60 days of receipt. RCW 51.52.050. The Department also has the ability to reconsider on its own motion. RCW 51.52.060.

In 1988, the Washington State legislature amended RCW 51.32.160 to address aggravation (otherwise known as reopening) applications that were not timely adjudicated by the

Department. The added language provided that if the Department did not issue a final order denying an application within 90 days of receipt (plus an additional 60 days for good cause), the reopening application would be deemed granted. To circumvent this deadline and remedy, the Department would deny a reopening application with no valid underlying basis, and then reconsider the order on its own motion. *See In re Clyde McCoy*, BIIA Dec., 91 0701 (1991). The handling of a reopening application in this manner made its way before this Court in *Tollycraft Yachts Corp. v. McElroy*. 122 Wn.2d 426, 868 P.2d 503 (1993).

In *Tollycraft*, the Court addressed the interplay of two statutes: RCW 51.32.160 and 51.52.060. As stated, RCW 51.32.160 provided the deadline of up to 150 days to issue a final order on a reopening application or it would be deemed granted. RCW 51.52.060 provides the Department with "authority to reverse or modify its own decisions for a period of up to 180 days." *Tollycraft*, 122 Wn. 2d at 434.

Ultimately, the *Tollycraft* Court held that "once the Department issues an order denying an application to re-open, the requirements of RCW 51.32.160 are satisfied and only the deadlines contained within RCW 51.52.060 [of having 180 days to modify its decisions] constrain the Department's authority to reconsider its decision to deny the application." *Id.* at 439. If this was the state of the law today, Mr. Langhorst's reopening application would not be deemed granted.

However, in response to the *Tollycraft* decision, the legislature amended RCW 51.52.060 in 1995 to include the following language:

> 4)The department, either within the time limited for appeal, or within thirty days after receiving a notice of appeal, may: (a) Modify, reverse, or change an order, decision, or award; or . . . (ii) Hold an order, decision, or award issued under RCW 51.32.160 in abeyance for a period not to exceed ninety days from the date of receipt of an application under RCW 51.32.160. The department may extend the ninety-day time period for an additional sixty days for good cause.

RCW 51.52.060 (underlined language added by amendment). This explicitly duplicated language from RCW 51.32.160 into RCW 51.52.060 is evidence enough in showing that the Department must act on a reopening application within 150 days maximum, regardless of whether or not a party invokes the Department's reconsideration authority. The remedy, though only written in RCW 51.32.160, also applies whether a decision was reconsidered or not. The specific reference to orders under RCW 51.32.160 was not included idly, and the two statutes must be read together. *Employco Personnel Services, Inc. v. The City of Seattle*, 117 Wn.2d 606, 615, 817 P.2d 1372 (1991).

Beyond the language itself, the testimony in support of the Senate Bill clarifies that "[i]t was not the Legislature's intent to allow over 300 days to consider these matters, as is now the reality." CP at 50. Despite this clear statement of legislative intent, the Court of Appeals refused to consider how the statutes were intended to be read together and upheld the decision to deny

Mr. Langhorst's reopening application where he did not receive a final order until 255 days after his application.

This Court has not addressed the interplay of RCW 51.32.160 and 51.52.060 since its decision in *Tollycraft*, nor has it had the opportunity to address the effect of the 1995 amendment to RCW 51.52.060. Review is warranted because the Court of Appeals' approach undermines the purpose of the legislative scheme addressing reopening applications, and the purpose of the Industrial Insurance Act as a whole.

B. Timely decisions aiding in quicker treatment and return to work are beneficial for all parties involved in worker's compensation claims.

Ensuring that the Industrial Insurance Act is liberally construed and that injured workers receive an adequate remedy are issues of substantial public interest. Accessing proper treatment to return our injured workers back to a healthy state where they can continue their work contributions should be a goal that everyone stands behind.

Mr. Langhorst had to wait 255 days –about eight and a half months – to get a final decision on his reopening application. In many cases, private insurance will not provide coverage if there is a chance that the injury is tied to a work injury. Rather than being able to address the injury in a timelier manner, the waiting process without treatment can result in worsened health and long absences from work due to pain. Had the Department acted within the time frame required by the statute – even if after investigation into the matter it ultimately found that Mr. Langhorst's condition was not the result of a worsening work injury – Mr. Langhorst would have had a definitive answer and the potential opportunity to look for other means to begin treatment at least a hundred days sooner.

Instead, the Department denied Mr. Langhorst's medically supported and facially sufficient application two months after it was filed with no additional information or investigation to support its position. After putting the denial in abeyance in response to Mr. Langhorst's protest, the Department took nearly

four months to schedule an independent medical examination to address the application. CP at 48.

If the Department has difficulty meeting its statutorily prescribed deadlines due to a shortage of claims managers or medical examiners, that is an agency issue that needs to be addressed internally. It is not a valid reason to circumvent its legal obligations and force injured worker's to deal with its shortcomings. This Court should grant review so as to properly delineate the responsibility the Department carries in timely addressing reopening applications.

2. An authoritative determination on this matter would provide future guidance to numerous public officers.

The need to clarify the meaning of the Industrial Insurance Act is a matter of continuing and substantial public interest that presents an opportunity to guide the Department of Labor and Industries and its agents in similar, if not identical, issues that are likely to reoccur. *See, e.g., Dunner v. McLaughlin*, 100 Wash.2d 832, 838, 676 P.2d 444 (1984) (law surrounding adult civil

commitment needed clarification because the proceedings were a matter of continuing and substantial public interest). Here, an authoritative determination is needed to enforce the legislature's intent to provide both a substantive right to a speedily adjudicated reopening application, and a remedy for violation of that right, consistent with the purpose of the Industrial Insurance Act.

The Court of Appeals incorrectly stated that the plain meaning of RCW 51.52.060 is clear and there is no need to go beyond it. There are two faults in that statement. First, there have been various approaches to the interpretation and application of RCW 51.52.060 and RCW 51.32.160 by the Board of Industrial Insurance Appeals, neatly demonstrating that the statutes are ambiguous. The Department agrees on this point. *See* RB 16 ("The Board has had inconsistent rulings on [the interplay between RCW 51.52.060 and RCW 51.32.160.]").

Secondly, the court must discern plain meaning from the "text of the statutory provision in question, *as well as* the context

of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *State v. Larson*, 184 Wn.2d 843, 365 P.3d 740 (2015) (internal quotations omitted) (emphasis added). Had the Court of Appeals considered all relevant aspects, it would have found that the "deemed granted" provision of RCW 51.32.160 is incorporated into RCW 51.52.060.

A reopening application that is delayed by Department reconsideration beyond the 150 day deadline imposed by the Legislature is likely to recur repeatedly, and the Court of Appeals' decision permits the Department to engage in such delays without fear of the statutorily imposed remedy. An authoritative determination limiting the Department's ability to delay adjudication of reopening applications through its reconsideration authority will inure to the benefit of all injured workers by securing their right to speedy adjudication of their applications.

3. The issues presented today are highly likely to recur.

Despite the goal of the Act being to reduce suffering to a minimum, many workers are and do suffer at the hands of the system. "[T]he 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." *Dennis v. Dep't of Labor & Indus.*, 109 Wn.2d 467, 470, 745 P.2d 1295 (1987). The Supreme Court has long held that the purpose of the Act is to protect injured workers, and that the process be approachable and navigable by workers on their own, without the necessity of retaining an attorney. *See Nelson v. Dept. of Labor Industries*, 9 Wn.2d 621, 629, 115 P.2d 1014 (Wash. 1941).

It is certainly not the first time that the convoluted procedural rules of the Department, not made easily digestible by the Industrial Insurance Act, are utilized by the Department so as to block an injured worker's benefits. An injured worker should

not be held responsible for the Department's delays and slow moving process.

While the Department may state that bureaucratic delays are the norm and not a valid issue of public interest to bring before the Court, that does not mean that statutorily required deadlines may be ignored where enacted. Certain aspects of the Department's decision-making process may indeed be free of any time frames, but the Legislature recognized which circumstances may require more timeliness and enacted statutes accordingly. *See* RCW 51.52.090 (an appeal shall be deemed granted if not denied within thirty days after notice is filed with the board), RCW 51.52.106 (a petition for review shall be deemed granted if not denied within twenty days after filing) and RCW 51.32.095 (if the department takes no action within fifteen days of a worker-approved vocational plan developed with a vocational professional, it is deemed approved). Similarly, reopening applications were found to require stricter guidelines and a deemed granted provision. As currently construed, requests

for reconsideration essentially circumvent the legislatively enacted deadline, and the express limitation on reconsideration provided by RCW 51.52.060(4)(b). The plain language of RCW 51.52.060(4)(b) does not establish a limitation on the Department's authority with no remedy; RCW 51.32.160 is explicitly referenced and the remedies within it continue to apply.

The Act is meant to be liberally construed in favor of the injured worker, and to prevent workers from continuously being punished for the Department's actions. This Court should grant review and find that Mr. Langhorst's reopening application was deemed granted when the Department failed to act within its statutorily prescribed time frame.

F. CONCLUSION

The last time that this Court considered the law in question was 30 years ago. In response to the Court's decision in *Tollycraft*, the Legislature amended RCW 51.52.060 and made

abundantly clear that the deemed granted provisions of RCW 51.32.160 limits the Department's reconsideration authority under RCW 51.52.060. Despite this conspicuous legislative directive to prevent adjudicatory delay and the understanding that the Act must be liberally construed in favor of an injured worker, the Court of Appeals proceeded to incorrectly find that Mr. Langhorst's argument was barred by the plain language of RCW 51.52.060. To ensure adherence with the law as written and protect workers in a way that is beneficial for all parties involved in worker's compensation claims, this Court should accept review, reverse the Court of Appeals decision and find that Mr. Langhorst's reopening application was deemed granted when the Department exceeded its 150 day limit on issuing a final decision.

This document contains 2796 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 19th day of January, 2023.

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G. APPENDIX

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Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

MARK S. LANGHORST, Appellant, v. WASHIGNTON STATE DEPARTMENT OF LABOR AND INDUSTRIES, Respondent.	No. 56095-0-II PUBLISHED OPINION

VELJACIC, J. — Mark Langhorst appeals the superior court's decision affirming the Board of Industrial Insurance Appeal's (BIIA) decision. The BIIA had affirmed the Department of Labor and Industries' (Department) order denying Langhorst's application to reopen his claim for industrial injury. Langhorst argues that his reopening application should be deemed granted as a matter of law because the Department, after his motion for reconsideration, did not issue a final order regarding his application until 255 days after it was submitted, which he asserts violates RCW 51.52.060.[1]

There is no "deemed granted" remedy in RCW 51.52.060, and Langhorst's proposed statutory interpretation requires going beyond the plain meaning to add language not present in the statute. Therefore, we affirm the superior court's decision to affirm the BIIA's order, which denied Langhorst's reopening application.

[1] RCW 51.52.060, among other things, sets timelines for the Department to render a final order, decision, or award after an appeal.

FACTS

The facts underlying this appeal are not in dispute. On May 31, 2012, the Department issued an order allowing Langhorst's claim for an industrial injury that occurred on January 26, 2012. Langhorst's claim was subsequently closed on November 4, 2014. Langhorst applied to reopen his claim on April 9, 2019. On June 13, 65 days after Langhorst filed his application, the Department denied the application because "[t]he medical record show[ed] the conditions caused by the injury have not worsened since the final claim closure." Clerk's Papers (CP) at 44.

Langhorst requested reconsideration on June 18, seeking Department review of the June 13 order. In his handwritten protest, Langhorst stated he wanted to seek a second opinion about his medical condition aside from that of the provider he had relied on in his application to reopen. On June 27, in response to Langhorst's protest, the Department issued another order, stating that it was reconsidering its June 13 denial. On September 30, the Department sent a letter to Langhorst informing him it was scheduling an independent medical examination to address his reopening application. On December 19, the Department, after reconsideration, affirmed the denial of Langhorst's application. This was 184 days after the June 18 protest, and a total of 255 days from the date of the application to reopen.

Langhorst appealed to the BIIA, which affirmed the Department's denial. In its order, the BIIA noted that "[t]he critical undisputed fact in this appeal is the Department issued a timely order denying Mr. Langhorst's application to reopen his claim under RCW 51.32.160(1)(d)." CP at 3.

The Board reasoned, "If, as here, a party has protested an order in which the Department denied reopening issued under RCW 51.32.160, the Department has fulfilled its obligation under RCW 51.52.060(4)(b)(ii)[2] and can reconsider its decision." CP at 3. Thus the application was not deemed granted.

Langhorst then appealed the BIIA's order to superior court, asserting that the court should reverse the Department's order denying his reopening application and remand to the Department to conclude that Langhorst's April 9, 2019 reopening application is deemed granted. Langhorst's basis for this argument was that the statutory remedy in RCW 51.32.160 of a deemed granted reopening application applied to his application because the remedy was incorporated by reference into RCW 51.52.060. In other words, Langhorst argued that he should be entitled to the same remedy for the Department's "late" response to his motion for reconsideration, as he would be entitled to for a late response to an application to reopen.

At the hearing, the court noted that it "would be rewriting or adding to the statute if it were to say that there is a 'deemed granted' provision in [RCW] 51.52.060." Report of Proceedings at 26. The superior court affirmed the BIIA, concluding that "Mr. Langhorst's application to reopen his claim filed on April 9, 2019, is not deemed granted under RCW 51.32.160, RCW 51.52.050, or RCW 51.52.060." CP at 81.

Langhorst appeals the superior court order.

[2] RCW 51.52.060(4)(b)(ii) provides that the Department, within 30 days after receiving a notice of appeal, may, "[h]old an order, decision, or award issued under RCW 51.32.160 in abeyance for a period not to exceed ninety days from the date of receipt of an application under RCW 51.32.160. The department may extend the ninety-day time period for an additional sixty days for good cause."

ANALYSIS

Langhorst argues that his reopening application should be granted by operation of law because the Department did not issue a final order denying the application until 255 days after its receipt by the Department. Specifically, Langhorst argues that RCW 51.52.060 should be interpreted to require that the Department issue a final order within 150 days (90 days plus 60 additional days for good cause) of the Department's receipt of a reopening application or be deemed granted. We disagree.

I. REOPENING A WORKERS' COMPENSATION CLAIM

A. Standard of Review

In an industrial insurance case, the superior court reviews the issues de novo and only considers evidence and testimony included in the certified Board record. RCW 51.52.115; *Spohn v. Dep't of Lab. & Indus.*, 20 Wn. App. 2d 373, 378, 499 P.3d 989 (2021). On appeal, we review the superior court's decision and order, not the BIIA's decision and order. *Spohn*, 20 Wn. App. 2d at 378; *see also* RCW 51.52.140. The rules governing civil appeals apply equally to the superior court's order. *Spohn*, 20 Wn. App. 2d at 378; RCW 51.52.140.

B. Legal Principles

RCW 51.52.050 provides procedural remedies for those aggrieved by a decision of the BIIA. That statute reads, in relevant part: "Whenever the department has taken any action or made

any decision relating to any phase of the administration of this title the . . . person aggrieved thereby may *request reconsideration of the department*, or *may appeal to the [BIIA]*." RCW 51.52.050(2)(a) (emphasis added).[3]

The Industrial Insurance Act (IIA) under RCW 51.32.160(1)(d) establishes a worker's right to a speedy adjudication of a reopening application, which is filed after a workers' compensation claim has closed. To reopen a claim, a worker must demonstrate that a condition caused by the injury objectively worsened after the claim was closed. *Hendrickson v. Dep't of Lab. & Indus.*, 2 Wn. App. 2d 343, 353-54, 409 P.3d 1162 (2018). The relevant part of RCW 51.32.160 reads:

> If an order denying an application to reopen filed on or after July 1, 1988, is not issued within ninety days of receipt of such application by the self-insured employer or the department, such application *shall be deemed granted*. However, for good cause, the department may extend the time for making the final determination on the application for an additional sixty days.

RCW 51.32.160(1)(d) (emphasis added).

RCW 51.32.160(1)(d) requires the Department to act on the application within 90 days of receipt, plus an additional 60 days for good cause, for an aggregate total of 150 days. RCW 52.32.160(1)(d). If the Department does not deny the application within that time period, the application is deemed granted. RCW 52.32.160(1)(d). The purpose of this statute "is to protect

[3] Both parties to this case point out the inconsistency with which the BIIA has applied RCW 51.52.050 and .060. The two cases highlighting this discrepancy are: *In re Short*, No. 95 4522 (Wash. Bd. of Indus. Ins. Appeals Dec. 20, 17 1996), http://www.biia.wa.gov/SDPDF/954522.pdf, and *In re Brown*, No. 96 4577 (Wash. Bd. of Indus. Ins. Appeals Aug. 20, 1996), http://www.biia.wa.gov/SDPDF/964577.pdf. In *Short*, the BIIA said that the time limitations of RCW 51.52.060 applied to requests for reconsideration in RCW 51.52.050. *Short*, No. 95 4522 at 2-3. In *Brown*, the BIIA made a distinction between the two statutes by holding that: "the provisions of RCW 51.52.060(4) apply only to circumstances in which an abeyance order is issued in response to the filing of an appeal or the Department is acting on its own motion to further investigate the matter" because "[t]he provisions of RCW 51.52.060(4) do not apply when a party has requested the Department to further consider the matter under the authority of RCW 51.52.050." *Brown*, 96 4577 at 1.

injured workers from arbitrary and unpredictable bureaucratic delay . . . by establishing a statutory remedy, the automatic granting of an application to re-open, whenever the Department fails to act within the prescribed time period." *Tollycraft Yachts Corp. v. McCoy*, 122 Wn.2d 426, 434, 858 P.2d 503 (1993). As the IIA is remedial in nature, courts liberally construe it in the worker's favor. *Wilber v. Dep't of Lab. & Indus.*, 61 Wn.2d 439, 446, 378 P.2d 684 (1963).

When a worker disagrees with a Department decision, they may file a protest, also known as a request for reconsideration, or they may appeal to the BIIA. RCW 51.52.050(2)(a). A timely request for reconsideration automatically places the Department order in abeyance and obligates the Department to reconsider its decision. *In re Haugen*, No. 91 1687 at 2 (Wash. Bd. of Indus. Ins. Appeals May 28, 1991), http://www.biia.wa.gov/SDPDF/911687.pdf; *Puget Sound Energy, Inc v. Lee*, 149 Wn. App. 866, 888, 205 P.3d 979 (2009) ("[a]lthough the [BIIA's] decisions are not binding on the courts, it is appropriate for us to consider the [BIAA's] interpretation of the laws it is charged with enforcing, in addition to the relevant case law.").

RCW 51.52.060 addresses the authority of the Department to reconsider an order it has issued, as Langhorst requested in this case. This statute constrains the Department's authority to reconsider its decision to deny the application by providing time limitations. *Tollycraft*, 122 Wn.2d at 439 n.8. The relevant part of that statute reads:

> The department, either within the time limited for appeal, or within thirty days after receiving a notice of appeal, may: . . . (ii) Hold an order, decision, or award issued under RCW 51.32.160 in abeyance for a period not to exceed ninety days from the date of receipt of an application under RCW 51.32.160. The department may extend the ninety-day time period for an additional sixty days for good cause.

RCW 51.52.060(4)(b).

II. LANGHORST'S APPLICATION SHOULD NOT BE DEEMED GRANTED BECAUSE RCW 51.52.060 DOES NOT PROVIDE FOR SUCH A REMEDY

A. Legal Principles

We review questions of statutory interpretation de novo. *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010). The goal of statutory interpretation is to ascertain and give effect to the legislature's intent. *Birgen v. Dep't of Lab. & Indus.*, 186 Wn. App. 851, 857, 347 P.3d 503 (2015). "To determine legislative intent, we first look to the plain language of the statute." *Id*. To decipher the plain language, we look at the meaning of the provisions in question as well as the context of the statute and related statutes. *Id*. The generally accepted principle of law is that absent a statutory definition, a term must be accorded its plain and ordinary meaning. *Louisiana-Pac. Corp. v. Asarco Inc.*, 131 Wn.2d 587, 602, 934 P.2d 685 (1997).

B. The Plain Language of RCW 51.52.060 Does Not Provide for a "Deemed Granted" Remedy.

Langhorst asks that we interpret RCW 51.52.060 to provide that orders on reconsideration that do not issue within 150 days of a reopening application are "deemed granted." We disagree with Langhorst's approach. Assuming without deciding that RCW51.52.060 applies, it does not contain any language that provides that reconsideration petitions are "deemed granted" in any circumstances. Such a remedy simply does not appear in the statute. *See* RCW 51.52.060. While both parties here recognize, as do we, that there is no time limit for the Department to rule on a petition for reconsideration, and no remedy for exceeding such a time limit, this is a problem the legislature must remedy. "[W]e cannot rewrite or modify the language of a statute under the guise of statutory interpretation or construction." *Garcia v. Dep't of Soc. & Health Servs.*, 10 Wn. App. 2d 885, 916, 451 P.3d 1107 (2019).

Langhorst asserts that the deadline to respond to reopening applications was incorporated into RCW 51.52.060 through the reference to RCW 51.32.160. According to Langhorst, the same deemed granted remedy in RCW 51.32.160 should apply because the statutes run concurrently. But again, as discussed above, to determine legislative intent, we first look to the plain language of the statute. *Birgen*, 186 Wn. App. at 857. In doing so, we do not add words where the legislature has chosen not to include them. *Id*. at 858. Here, there is no explicit deemed granted provision in RCW 51.52.060 and we decline to add one.

Notably, Langhorst discusses the legislature's amendment of RCW 51.52.060 that added the 90 and 150 day time limits, but he ignores that the legislature had the opportunity to add a deemed granted provision at that time as well, but chose not to. *Birgen*, 186 Wn. App. at 858. We decline to adopt Langhorst's interpretation.

A large portion of Langhorst's brief relies on interpreting the legislative intent behind the 1995 amendment to RCW 51.52.060. But where the plain language of the statute is unambiguous, as it is in this case, there is no need not consult legislative history to resolve the nonexistent ambiguity. *State v. Velasquez*, 176 Wn.2d 333, 336, 292 P.3d 92 (2013). Accordingly, Langhorst's review of legislative history is inapplicable. We do not adopt Langhorst's interpretation of RCW 51.52.060 to include a deemed granted remedy.

III. WRIT OF MANDAMUS

Langhorst argues that the Department's interpretation that RCW 51.52.060 lacks a remedy cannot be the proper interpretation because that would mean a worker has only the writ of mandamus as a remedy, and that remedy is inadequate for violation of a statutory timeline. Langhorst argues that requiring a worker to proceed with a constitutional writ in superior court is imposing a burden on workers inconsistent with the purposes of the IIA. But whether the existing

remedy is adequate or inadequate is immaterial. The lack of a remedy in RCW 51.52.060 is a situation the legislature must resolve if it sees fit.

Whether or not the writ procedure is burdensome on an aggrieved worker does little to dispense with the clear rules of statutory interpretation addressed above, that prevent our addition to the unambiguous language of RCW 51.52.060. Burdensome or not, RCW 51.52.060 lacks a remedy provision; certainly, it lacks a "deemed granted" provision.

CONCLUSION

We affirm the superior court's decision to affirm the BIIA's order denying Langhorst's reopening application.

Veljacic, J.

We concur:

Maxa, P.J.

Worswick, J.P.T.

NO. 59095-0-II

COURT OF APPEALS FOR DIVISION II
OF THE STATE OF WASHINGTON

MARK LANGHORST, Petitioner, v. THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Respondent.	CERTIFICATE OF SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, he caused to be served the Petition for Review of Petitioner Mark Langhorst and this Certificate of Service in the below described manner:

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