NO. 89667-4

SUPREME COURT OF THE STATE OF WASHINGTON

DONALD M. SLAUGH,

Appellant,

v.

DEPARTMENT OF LABOR AND INDUSTRIES
FOR THE STATE OF WASHINGTON,

Respondent.

DEPARTMENT OF LABOR & INDUSTRIES' ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

STEVE VINYARD
Assistant Attorney General
WSBA #29737
Office Id. No. ~~90122~~ 91022
P.O. Box 40121
7141 Cleanwater Dr. SW
Olympia, WA 98504-0121
(360) 586-7715

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

I. INTRODUCTION

The Department of Labor and Industries (Department) opposes further review of this workers' compensation appeal. *See Slaugh v. Dep't of Labor & Indus.*, __ Wn. App. __, 312 P.3d 676 (2013). The Court of Appeals, following well-accepted rules regarding the proper interpretation of statutes, concluded that a proviso in RCW 51.36.010(4) that allows the Department to provide further treatment on a discretionary basis, and which is found within a clause of the statute that applies only to permanently and totally disabled workers, only applies to permanently and totally disabled claimants, and not to those, like Donald Slaugh, whose disability is only partial.[1]

Slaugh claims the Court of Appeals erred and cites to RAP 13.4(b)(4), but he presents no argument under RAP 13.4(b) as to why this case warrants review. Review is not warranted. This case involves the routine interpretation of statutory language, and Slaugh fails to show that the Court of Appeals erred, let alone that this case presents any issue that merits this Court's review.

[1] RCW 51.36.010 was amended after Slaugh was injured (and after the Department issued the order which is the subject of the current appeal) in ways that do not impact the issues raised by this appeal. However, as a result of the amendments, the statute was divided into subsections, and the statutory language that is relevant here was placed in RCW 51.36.010(4).

II. ISSUE PRESENTED

Discretionary review is not merited in this case, but if review were granted, the following issue would be presented:

1. Does the provision in RCW 51.36.010(4) that allows the supervisor to authorize further treatment on a purely discretionary basis apply to claims that have been closed with permanent partial disability awards, when the provision that authorizes such care is in a clause of a statute that only relates to workers who have been placed on pensions?

III. STATEMENT OF THE CASE

Slaugh was injured in 2003 while working for Lockheed Martin, a self-insured employer. Certified Appeal Board Record (BR) 57. The Department directed the employer to allow his claim for workers' compensation benefits. BR 57. Slaugh's claim was eventually closed in September 2009 with a permanent partial disability award for respiratory impairment. BR 57-58, 62.

In 2010, the Department issued an order that observed the claim had been closed (through a previously issued order) and concluded that the supervisor of industrial insurance may not, as a matter of law, authorize further medical treatment to a worker whose claim has been closed with a permanent partial disability award under RCW 51.36.010(4). BR 66. This is consistent with the Department's long-standing understanding of that statute, as explained in a 1978 advice memorandum it received from

the Attorney General's office. BR 136-47. As the 1978 advice memorandum explains, the key sentence in RCW 51.36.010(4) is divided into three main clauses, each of which are separated by semi-colons, and each of which relates to a different form of disability. BR 136-47. Since the proviso that allows the Department to provide further medical treatment is contained in the last clause of the statute, which relates to permanently and totally disabled workers, the proviso only applies to such injured workers. BR 136-47.

Slaugh appealed the Department's decision to the Board of Industrial Insurance Appeals (Board). BR 58. The Board reversed the Department and directed the supervisor to make a decision as to whether to provide Slaugh with further medical treatment. BR 1, 54-59.

The Department appealed to the Franklin County Superior Court. CP 98-107. The superior court reversed the Board's decision and affirmed the Department, concluding that RCW 51.36.010(4) does not authorize the Department to provide further treatment on a claim that has been closed with an award of permanent partial disability because the portion of that statute that authorizes the Department to provide further treatment on a discretionary basis applies only to claims that have been closed with pensions. CP 12-16.

Slaugh appealed to the Court of Appeals, which affirmed. The Court of Appeals, relying on well-established rules relating to the interpretation of statutes, concluded that the proviso in RCW 51.36.010(4) that allows the supervisor of industrial insurance to authorize further treatment on a discretionary basis, and which comes immediately after a portion of the statute that discusses permanently and totally disabled workers, only applies to permanently and totally disabled workers and thus does not apply to workers, like Slaugh, who are permanently and partially disabled. *Slaugh*, 312 P.3d at 677.

The Court of Appeals concluded that the fact that the statute is divided into three main clauses, each of which are separated by semi-colons, each of which applies to a different type of disabled worker, and each of which contains its own exception or proviso, pointed to the conclusion that the Legislature intended for each clause to be modified only by the exception or proviso that is contained within that main clause. *Slaugh*, 312 P.3d at 679-81.

Furthermore, the Court of Appeals noted that, under the last antecedent rule, a proviso is generally presumed to only modify the phrase that immediately preceded it, rather than the entire statute. *Id.* at 681. Since the proviso that allows the supervisor to provide treatment on a discretionary basis comes immediately after language in the statute that

applies to totally and permanently disabled workers, the last antecedent rule provides further support for the conclusion that that proviso applies only to totally and permanently disabled workers. *Slaugh*, 312 P.3d at 681.

IV. ARGUMENT

A. The Court of Appeals' Analysis Of RCW 51.36.010(4) Is Consistent With The Case Law And Other Legal Authorities Governing The Interpretation Of Statutes Under The Plain Language Standard, And Slaugh Fails To Show That Any Authority Conflicts With The Court's Opinion

The Court of Appeals properly concluded that the proviso that Slaugh attempts to rely upon applies only to totally and permanently disabled workers, and not to those, like Slaugh, who are permanently and partially disabled. *Slaugh*, 312 P.3d at 679-81. This conclusion follows from the rules governing the interpretation of statutes under the plain language standard—as set forth in the case law, the code reviser's guide, and other authorities—and from the language and structure of that statute. Indeed, Slaugh does not contend that review is warranted based on the notion that the Court of Appeals' decision is in conflict with any decisions of either the Supreme Court or the Court of Appeals, nor is any such conflict apparent. *See* RAP 13.4(b)(1), (2).

The key sentence of RCW 51.36.010(4) provides:

> In all accepted claims, treatment shall be limited in point of duration as follows: In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease: PROVIDED, That after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his or her more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll: PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the state board of pharmacy as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury.

Thus, the statute has three main clauses, which are separated by semi-colons, and each of which applies to a different form of disability. The first clause applies to workers who are permanently and partially disabled, the second clause applies to workers who are temporarily disabled, and the last clause applies to workers who are permanently and

totally disabled. The statute sets a different test for determining the extent of treatment that is available for workers experiencing each of those forms of disability, and each of those tests is modified by either an exception or a proviso.

Under the plain language of the first clause of RCW 51.36.010(4), workers who are permanently and partially disabled—like Slaugh—do not receive further treatment "beyond the date when compensation shall be awarded him or her." The exception to this is if "the worker returned to work before permanent partial disability award is made," and, "in such case" treatment shall not "extend beyond the time when monthly allowances to him or her shall cease." RCW 51.36.010(4). Thus, for permanently partially disabled workers, the only exception to the general rule regarding their eligibility for treatment is that, if the worker returns to work before receiving such an award, the worker's treatment may end even before the permanent partial disability award is made. *See id.*

The second clause provides that workers who are temporarily and totally disabled shall not receive treatment "beyond the time when monthly allowances to him or her shall cease." RCW 51.36.010(4). This rule is subject to the proviso that "after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the

supervisor of industrial insurance to be necessary to his or her more complete recovery." RCW 51.36.010(4). This proviso applies only to workers who are temporarily and totally disabled, not to workers who are permanently and partially disabled. *Id.*

Finally, the third clause provides that a permanently and totally disabled worker shall not receive treatment "beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll." *Id.* Like the second clause, the third clause also contains a proviso: "the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or . . . to alleviate continuing pain which results from the industrial injury." RCW 51.36.010(4). Under this plain language, further treatment is only provided to those who are permanently and totally disabled, not to those who receive permanent partial disability awards.

The grammar of the statute leads to this reading of the statute. The court considers rules of grammar as part of a court's plain language analysis. *See State v. Bunker*, 169 Wn.2d 571, 577-78, 238 P.3d 487 (2010). The fact that the three main clauses of the key sentence within the

statute are separated by semi-colons indicates that each of those clauses functions as a grammatically independent unit. Statute Law Comm., Office of the Code Reviser, *Bill Drafting Guide 2013* pt. IV(1)(b).[2] Each clauses is modified only by the exception or the proviso that is contained within it. *See id.* This means that the provision for further medical treatment only applies to the instance of permanent and total disability, as that clause is an independent unit.[3]

B. None Of Slaugh's Arguments Raise An Issue of Substantial Public Interest That Warrants This Court's Review

Slaugh makes several arguments against the Court of Appeals' decision but none of them warrant the review of this Court. While Slaugh briefly asserts that the case presents issues of substantial public importance, he offers no legal arguments under that standard, and, instead, argues that the decision was incorrect. *See* Pet. at 12. That is not the proper standard to determine whether review is warranted, and, in any event, Slaugh fails to show error, let alone an error warranting this Court's review.

First, Slaugh argues that the length of the court's opinion, as well as the fact that it cites to several (well-accepted) statutory principles and

---

[2] Available at http://www.leg.wa.gov/CodeReviser/Pages/bill_drafting_guide.aspx#part4

[3] As the Court of Appeals discussed, other rules of grammar, such as the last antecedent rule, also support this conclusion. *See Slaugh*, 312 P.3d at 681.

rules that support its decision, demonstrates that RCW 51.36.010(4)'s meaning cannot be said to be plain.[4] Pet. at 5, 8. However, Slaugh cites to no legal authority supporting either of those notions, and as such they do not merit this Court's review. Pet. at 5, 8; *see Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

Furthermore, Slaugh's arguments conflate the issue of whether a statute is complex with whether it is ambiguous. A sentence that is complex may require a careful reading. Nonetheless, a complex statute is unambiguous if only one interpretation of it is reasonable. *See Estate of Haselwood v. Bremerton Ice Arena, Inc.*, 166 Wn.2d 489, 498, 210 P.3d 308 (2009). That is the case here.

Second, Slaugh argues that the Court of Appeals distorted the meaning of RCW 51.36.010(4) by "reformatting" it. Pet. at 6. However, as the decision explains, this "reformatting" did not alter the meaning of the statute, and merely made it easier to follow the court's analysis. *Slaugh*, 312 P.3d at 679.

Third, Slaugh argues that a court should not analyze a statute based on its punctuation alone, as this can lead to an incomplete understanding of it. Pet. at 7-8. However, here, the Court of Appeals did not base its

[4] As the employer observed, Slaugh overstates the length of the decision in making this assertion, as much of the decision is devoted either to providing introductory information or to refuting Slaugh's various arguments. *See* Lockheed Martin Answer at 14.

analysis of RCW 51.36.010(4) solely on the statute's punctuation. *See Slaugh*, 312 P.3d at 679-81. Rather, the decision properly incorporated its discussion of the statute's use of punctuation into its overall assessment of the statute's language and structure. *See id.*

Fourth, Slaugh argues that the Court of Appeals' treatment of the colons in the statute is incorrect, citing Irene Hutchison's *Standard Handbook for Secretaries* (1979) and *Stuart v. East Valley Consolidated School District No. 361*, 61 Wn.2d 571, 575, 379 P.2d 369 (1963). Pet. at 6-7. Neither authority supports Slaugh. Under *Stuart*, a colon introduces information that is explanatory and restrictive rather than information that relates back to the entire sentence. *Stuart*, 61 Wn.2d at 575. Thus, it does not support Slaugh's argument. Similarly, under Hutchison, a colon introduces information for which "the previous words in the sentence have prepared the reader." Hutchison, *Standard Handbook for Secretaries* 239. Since the colons at issue here are contained in clauses that are separated by semi-colons, the logical inference is that the colons introduce material that relates only to the previous language within that clause. Hutchison, *Standard Handbook for Secretaries* 239.

Fifth, Slaugh argues that the fact that the proviso within the third clause of the statute is preceded by "Provided, However" rather than "Provided" indicates that the proviso applies to every clause in the statute

and not just to the third clause. Pet. at 10. However, Slaugh does not support this argument with a citation to legal authority, nor does he explain why—as a matter of logic—"Provided, However" would have a different meaning than "Provided". *See* Pet. at 10. The Court of Appeals properly rejected the argument, and it does not warrant further review. *See Slaugh*, 312 P.3d at 681.

Finally, Slaugh argues that his interpretation of RCW 51.36.010(4) should be adopted because the Industrial Insurance Act is subject to liberal construction. Pet. at 8-9. However, the liberal construction standard does not apply when a statute's meaning is plain, and, here, for the reasons noted above, RCW 51.36.010(4) plainly does not support Slaugh. *Harris v. Dep't of Labor & Indus.*, 120 Wn.2d 461, 474, 843 P.2d 1056 (1993). Furthermore, the liberal construction standard cannot be used to justify a strained or unrealistic interpretation of a statute, and Slaugh's proposed interpretation of it is strained and unrealistic in light of RCW 51.36.010's overall language and structure. *See Senate Republican Campaign Comm. v. Pub. Disclosure Comm'n*, 133 Wn.2d 229, 241-43, 943 P.2d 1358 (1997).

Slaugh attempts to bolster his liberal construction argument by noting that the Board—which is composed of people who presumably possess reasonable minds—disagreed with the Department's interpretation

of RCW 51.36.010(4). Pet. at 9-10. However, properly framed, the issue is not whether the Board is comprised of human beings who can generally be said to be reasonable, but whether the *interpretation of the statute* at which the Board arrived is a reasonable one, in light of the language of the statute and the rules that govern a court's plain language analysis. *See Estate of Haselwood*, 166 Wn.2d at 498 (defining an ambiguous statute as one that is capable of more than one reasonable interpretation). Here, reviewing the language and structure of RCW 51.36.010(4) in the context of the applicable legal standards leads to only one reasonable interpretation: the relief Slaugh seeks is not authorized by the statute.

V. CONCLUSION

For the reasons discussed above, the Department asks this Court to deny review.

RESPECTFULLY SUBMITTED this 24 day of January, 2014.

ROBERT W. FERGUSON
Attorney General

STEVE VINYARD
WSBA No. 29737
Assistant Attorney General
Labor and Industries Division
Office Id. No. 90122
P.O. Box 40121
7141 Cleanwater Dr. SW
Olympia, WA 98504-0121
(360) 586-7715

OFFICE RECEPTIONIST, CLERK

From: Gross, Debora (ATG) <DeboraG1@ATG.WA.GOV>
Sent: Friday, January 24, 2014 10:08 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: Vinyard, Steve (ATG); dll@calbomschwab.com; lmann@wallaceklormann.com
Subject: 89667-4; Slaugh, Donald M. v. DLI
Attachments: Slaugh_DeptAnswer2PFR_FINAL_896674.pdf; Slaugh_DeclMailing_896674.pdf

Attached for filing is the Department's Answer to Petition for Review and Declaration of Mailing.

Debora A. Gross

Legal Assistant Supervisor
Office of the Attorney General
Labor & Industries Division
PO Box 40121
Olympia, WA 98504-0121
(360) 586-7751