NO. 90587-8

SUPREME COURT OF THE STATE OF WASHINGTON

RUDOLPH KNIGHT,

Petitioner,

v.

DEPARTMENT OF LABOR & INDUSTRIES,

Respondent.

DEPARTMENT OF LABOR & INDUSTRIES ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This case involves the application of well-established case law to the facts of this case. This Court already has established the principles to be followed in determining when a worker is entitled to coverage as a traveling employee. *Ball-Foster Glass Container Co. v. Giovanelli*, 163 Wn.2d 133, 177 P.3d 692 (2008). The Court of Appeals applied *Ball-Foster* and decades of precedent that establish that it is the worker's burden to prove entitlement to workers' compensation benefits. Here, Knight was not entitled to benefits for a head injury he suffered after he drove 25 to 30 miles from his hotel to a beach and became intoxicated.

Although employees are entitled to benefits for injuries sustained during work-related travel, *Ball-Foster* held that workers' compensation is unavailable when the employee deviates on "distinctly personal errands" or "personal amusement ventures." Driving to the beach and drinking to the point of intoxication is a personal errand or amusement venture.

II. ISSUE

> Did Knight divert from his course of employment as a traveling employee when no genuine material issue of fact exists whether Knight was intoxicated at the time of his injury?

III. STATEMENT OF THE CASE

A. While in Texas on Business, Rudolph Knight Drove About 30 Miles from His Hotel to a Beach, and Ended Up Getting Out of His Car to Watch Dune Buggies

Rudolph Knight worked as a catastrophic claims adjustor in Washington for State Farm, a job that required him to travel out-of-state frequently. BR Knight 30, 33-35.[1] In the fall of 2008, Knight worked on assignment in Galveston, Texas, processing homeowner and flood claims in Texas City, Texas, resulting from Hurricane Ike. BR Knight 30, 33-35. While working on location, Knight stayed at a hotel in a suburb of Houston and used a company van for travel. BR Knight 43-45, 59, 60-62.

After spending Thanksgiving weekend with his family in Washington, Knight returned to Texas on December 1. BR Knight 43-45, 59, 60-62. He had December 2 off from work and decided to travel about 30 miles from his hotel to a beach on Galveston Island. BR Knight 43-45, 59, 60-62. While he testified that he drove to the beach to survey the general damage to the area, he had already done this at earlier points and did not learn anything new from this trip. BR Knight 47, 73-75.

He sat and walked for about an hour, before driving to another beach at around 1:00 p.m. BR 61, 66, 77-78. While driving, he noticed people driving dune buggies fast into the surf, so he stopped, parked his

[1] The certified appeal board record is cited as "BR," with testimony referenced by the witness's last name.

van on the beach, and got out to watch the dune buggies. BR Knight 51, 62, 66. He admits watching the dune buggies had nothing to do with work. BR Knight 66. Knight remembers nothing else. BR Knight 52.

Knight's wife, Linda Ecklund, however, recalled that Knight called her at around 1:00 p.m. BR Ecklund 22-23. He told her that he saw the dune buggies, hinting that the activity looked fun. BR Ecklund 23. He stated that the people on the dune buggy talked to him, telling him that they liked his hat. BR Ecklund 14. Nothing sounded out of the ordinary, and Ecklund ended the call. BR Ecklund 14, 23-24.

B. Several Hours Later, Medics Found Knight Injured in the Surf, Intoxicated

Around 5:30 p.m., someone alerted 911 that a man on the beach needed aid. BR Garcia 8; BR Wunstel 7-8. Craig Wunstel, a paramedic, found Knight calling for help with waves splashing over him. BR Wunstel 12-13. He and his partner moved Knight out of the surf and into the aid car to provide treatment. BR Wunstel 6, 12-13. Galveston Police Officer Ernesto Garcia arrived to assist and noted that Knight's breath filled the aid car with the odor of alcohol. BR Garcia 6, 12.

Paramedic Wunstel and Officer Garcia noted that Knight was intoxicated. BR Wunstel 18, 22, 29-30, 42; BR Garcia 12-13. Paramedic Wunstel believed Knight was intoxicated based on his slurred speech, his

response to treatment, and Knight's own words. BR Wunstel 23, 29-30. Although Knight was initially minimally responsive, he became increasingly alert on the way to the hospital. BR Wunstel 19-20, 22-24. Knight told Paramedic Wunstel that he drank "a lot" of alcohol. BR Wunstel 19-20, 22-24. This statement was consistent with Paramedic Wunstel's observations. BR Wunstel 23-24, 27, 30, 45. Knight last remembered getting tired and passing out on the beach. BR Wunstel 24.

Upon arriving at the hospital, the intake nurse noted that Knight had a "strong smell of alcohol," and the treating physician, Dr. Blake Chamberlain, recalls that Knight's breath had a strong smell of alcohol. BR Chamberlain 71, 108-09, 113-14. Knight told Dr. Chamberlain that he had "a lot" to drink, which was consistent with Dr. Chamberlain's observations of Knight's strong odor of alcohol, his slurred speech, and his sleepiness. BR Chamberlain 71-73, 79, 111-12. Knight told Dr. Chamberlain that he was "riding in dunes." BR Chamberlain 73. Neither Dr. Chamberlain nor Paramedic Wunstel noticed visible signs of significant trauma. BR Wunstel 18; BR Chamberlain 72. Paramedic Wunstel noticed that Knight was cold and wet, but no one diagnosed him with hypothermia. BR Wunstel 13, 18, 24, 34; BR Chamberlain 107.

Dr. Chamberlain diagnosed Knight with alcohol intoxication about two hours after Paramedic Wunstel first located Knight. BR Chamberlain

79, 93. Dr. Chamberlain ordered a blood alcohol test, but he mis-keyed the entry, so the test never occurred. BR Chamberlain 74-75. Dr. Chamberlain testified that while blood alcohol tests may confirm a person's level of intoxication, doctors regularly make clinical diagnoses in the absence of those tests. BR Chamberlain 95-97.

Although Dr. Chamberlain saw no sign of trauma, he ordered CT scans of the head and neck to rule out a fracture or brain injuries. BR Chamberlain 72, 79. The CT of the head revealed a subarachnoid hemorrhage. BR Chamberlain 79, 89-90, 111.

After he was transferred to another hospital, testing indicated that a brain injury, rather than an aneurysm, caused Knight's subarachnoid hemorrhage. BR Chamberlain 81-82. Bruising on Knight's face indicated that he suffered a contrecoup injury, which occurs when blunt trauma causes the brain to "slosh" and knock against the sides of the skull. BR Chamberlain 81-85. This injury could be sustained by falling on sand, but not by receiving a blow to the head. BR Chamberlain 85. There is no way to know for sure how Knight was injured. BR Shaffer 11.

Although his condition initially improved, Knight's condition worsened after a brain angiogram, and he developed speech problems and a wandering eye. BR Chamberlain 86-88, 90, 111. Dr. Chamberlain

explained that either the angiogram or initial trauma could have caused the worsening. BR Chamberlain 87-88, 101-02.

C. The Department Rejected Knight's Claim for Benefits, and the Board, Superior Court, and Court of Appeals Agreed

Knight applied for workers' compensation benefits. BR 2. The Department rejected his claim, and Knight appealed to the Board of Industrial Insurance Appeals. BR 2. The Board affirmed, finding that Knight's head injury resulted from becoming intoxicated, collapsing on the beach, and striking his head on the sand. BR 2. The Board concluded that Knight distinctly departed from his course of employment when he decided to become intoxicated. BR 2-3.

Knight appealed to superior court. CP 1. The superior court granted summary judgment to the Department, concluding that Knight abandoned his employment by driving to the beach to watch the dune buggies and by drinking to intoxication. CP 97.

The Court of Appeals affirmed, holding that Knight bore the burden to prove that he was a covered employee when he was injured. *Knight v. Dep't of Labor & Indus.*, ___ Wn. App. ___, 321 P.3d 1275, 1280-82 (2014). Because there is evidence that he was intoxicated and that he would otherwise have to rely on speculation about what happened

when he was injured, he could not meet his burden. *Id.* at 1282. Knight now seeks review.

IV. REASONS WHY REVIEW SHOULD BE DENIED

Knight presents no reason warranting Supreme Court review. As Knight concedes, this Court laid out the standards regarding traveling employees in *Ball-Foster*. Pet. at 1. Although Knight attempts to create a conflict with this decision, he ignores this Court's holding and the procedural posture in which it was decided. No conflict exists, and the Court of Appeals properly followed the decision. Knight proposes a novel burden shifting scheme, which is inconsistent with *Ball-Foster* and with decades of precedent that place the burden on the appealing worker to show entitlement to benefits. Not only is the Court of Appeals decision consistent with this precedent, it did not conflict with other appellate decision. RAP 13.4(b)(1) & (2). The Court of Appeals decision furthers the purpose of the Industrial Insurance Act and comports with summary judgment standards, such that it does not involve an issue of substantial public importance. RAP 13.4(b)(4). This Court should deny review.

A. Consistent with *Ball-Foster*, the Court of Appeals Correctly Held that Knight Was a Traveling Employee until He Distinctly Departed from His Employment by Traveling 30 Miles to the Beach and Drinking to the Point of Intoxication

The Court should deny Knight's petition because the Court of Appeals correctly applied this Court's decision in *Ball-Foster*. There is no conflict with this decision under RAP 13.4(b). Knight deviated from being a traveling worker when he became intoxicated.

1. A traveling employee is not continuously covered if he departs on a distinctly personal errand

Holding that the Industrial Insurance Act did not cover Knight when he distinctly departed from the course of employment by becoming intoxicated does not conflict with *Ball-Foster*. The *Ball-Foster* Court explained the parameters of when a traveling employee is acting in the course of employment, and thus entitled to benefits, versus when the worker distinctly departed from the course of employment to no longer receive benefits. There, a worker from Pennsylvania traveled to Seattle to complete mason work, and was struck by a moving car while crossing the street in front of his hotel while walking to a nearby park. *Ball-Foster* 163 Wn.2d at 137-39. The Department allowed the claim. *Id.* at 139-140.

This Court held that the worker was a traveling employee who did not distinctly depart on a personal errand and thus entitled to compensation. *Ball-Foster*, 163 Wn.2d at 153-54. Entitlement to benefits

occurs "if the injury arises out of a risk that is sufficiently incidental to the conditions and circumstances of the particular employment." *Ball-Foster*, 163 Wn.2d at 142. The rationale is that when a job requires travel, the risks associated with eating, sleeping, and attending to personal needs become incidental to the job, even though the employee is not actually working at the time of injury. *Id.*

Traveling employees do generally receive coverage, but "like any other type of employee" a traveling employee can lose the right to compensation by departing on a personal errand. *Id.* at 143. The inquiry is whether the employee pursued normal creature comforts and reasonably comprehended necessities, or strictly personal amusement ventures, focusing on whether the injury relates to a risk incidental to employment or from an entirely independent act. *Id.* at 143-44. *Ball-Foster* holds that a traveling employee who departs from his course of employment—like any other type of worker—loses the right to compensation by distinctly departing from the course of employment.

Contrary to Knight's arguments, *Ball-Foster* does not hold that a worker is covered continuously when he or she travels. *See* Pet. at 9.[2] Rather a traveling employee must prove, like any other worker, that he or

[2]One name in other jurisdictions of the "traveling employee rule" is the "continuous coverage rule." *Ball-Foster*, 163 Wn.2d at 142. This is a misnomer because workers who embark on distinctly personal activities are not covered even if they are still on the trip. *Id.* at 142-43.

she was in the course of employment and did not depart from it. How one determines whether a worker is within the course of employment is subject to standards of the traveling employee doctrine, and under *Ball-Foster,* a worker who pursues a distinctly personal activity is not covered. *Ball-Foster*, 163 Wn.2d at 142-43. The *Ball-Foster* Court explained that coverage "does not require coverage for every injury," like personal errands, and that the traveling employee must remain in the course of employment. *Id.* at 143.

2. Drinking to the point of intoxication is not a travel related risk, but rather is a distinctly personal errand

Here, the Court of Appeals correctly applied *Ball-Foster* by holding that although Knight was a traveling employee, he distinctly departed from his employment by becoming intoxicated. Whether in the normal work setting or while traveling, drinking alcohol to the point of intoxication is not a normal creature comfort. Under *Ball-Foster*, the injury must "have its origin in a travel related risk" and courts must assess whether the injury is "fairly attributable to the increased risks of travel. *Ball-Foster*, 163 Wn.2d at 144. Coverage does not apply when the employee substantially deviates on "strictly personal amusement ventures," which means that a compensable injury must have "its origin in a risk created by the necessity of sleeping or eating away from home." *Id.*

at 143, 144, 150 (quotations omitted). There is nothing travel or work-related about drinking to the point of intoxication on a day off. While a traveling employee could reasonably consume a drink or two, especially with a meal, drinking to the point of intoxication is not a travel-related risk.[3]

There is no material dispute that Knight was intoxicated. Multiple medical professionals testified that he appeared to be intoxicated, while Knight could only speculate that he was not intoxicated. Following *Ball-Foster*, Knight distinctly departed from his work-related travel when he drove about 30 miles from his hotel, walked on a beach, and drank to the point of intoxication. The Court of Appeals correctly followed this Court's precedent, so no conflict exists.

The Court of Appeals decision is not only consistent with *Ball-Foster*, it is also consistent with the purpose of the Industrial Insurance Act to provided benefits for covered workers. While the Act is remedial and to be liberally construed in the worker's favor, well-settled case law holds claimants bear the strict standard of proof that they are entitled to benefits. *Cyr v. Dep't of Labor & Indus.*, 47 Wn.2d 92, 97, 286 P.2d 1038

[3]Board decisions recognize that on-the-job intoxication may constitute abandonment. *In re Michael Pate, Dec'd*, No. 97 1977, 1999 WL 568539 (Wash. Bd. Ind. Ins. Appeals June 28, 1999); *In re Brian Kozeni, Dec'd*, No. 63,062, 1983 WL 470521 (Wash. Bd. Ind. Ins. Appeals November 28, 1983). *In re Austin Prentice, Dec'd*, No. 50,892, 1979 WL 180289 (Wash. Bd. Ind. Ins. Appeals July 27, 1979). These decisions do not apply here as they are in in the context of work performance, not judging whether someone is on a personal amusement venture for the purposes of determining traveling employee coverage. The inquiry here is whether the activity of alcohol consumption had its origin in a travel related risk.

(1955); *Ehman v. Dep't of Labor & Indus.*, 33 Wn.2d 584, 595, 206 P.2d 787 (1949); *Jenkins v. Dep't of Labor & Indus.*, 85 Wn. App. 7, 14, 931 P.2d 907 (1996). Providing a remedy for injured workers is not furthered by allowing coverage for individuals who engage in a personal amusement ventures by becoming intoxicated on a beach 30 miles from their hotel. Holding that traveling employees must prove they were injured in the course of employment, the Court of Appeals followed the Act's purpose.

B. Consistent with *Ball-Foster*, the Court of Appeals Correctly Held that Knight Bore the Burden to Demonstrate He Did Not Distinctly Depart from His Course of Employment by Drinking to Intoxication

The Court of Appeals also correctly held that Knight bore the burden to prove that his intoxication was not a distinct departure from his course of employment. *Ball-Foster* does not provide a burden-shifting presumption regarding traveling employees, contrary to Knight's claims otherwise. *Ball-Foster* held that "like any other type of employee," a traveling employee can depart on a personal errand and thus lose the right to compensation. 163 Wn.2d at 143. When appealing the denial of benefits, the claimant must prove that he or she acted within the course of employment. *See* RCW 51.32.010 (worker must be injured in course of employment for workers' compensation coverage); RCW 51.52.050(2) (appealing party has "the burden of proceeding" to show prima facie case

for relief sought in appeal); WAC 263-12-115(2) (appealing party has burden of proof).

This burden includes proving that an exclusionary basis does not apply. For example, in *Mercer*, this Court held that the appealing party, a survivor, had the burden to show that her spouse did not commit suicide in a way that triggered the statutory bar to benefits in the case of suicide. *Mercer v. Dep't of Labor & Indus.*, 74 Wn.2d 96, 101, 442 P.2d 1000 (1968). Similarly, in *Stafford*, a case about crime victims compensation, an act administered under workers' compensation appeal standards, the Court held that "[s]trict proof of one's right to CVC benefits demands a showing that the victim of a criminal act comes within the statute's terms and is not excluded by its limitations." *Stafford v. Dep't of Labor & Indus.*, 33 Wn. App. 231, 236-37, 653 P.2d 1350 (1982); *see also Superior Asphalt & Concrete Co. v. Dep't of Labor & Indus.*, 19 Wn. App. 800, 804, 578 P.2d 59 (1978) (burden on survivor to show decedent was not on frolic at time of death).[4]

[4]Knight cites to private insurance case law, which is an entirely different regime than that created by the Industrial Insurance Act. Pet. at 12. Likewise, his citation to foreign jurisdictions should be disregarded as this Court has repeatedly emphasized that the Washington statutory scheme is unique. *See Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 815-16, 16 P.3d 583 (2001); *Dennis v. Dep't of Labor & Indus.*,109 Wn.2d 467, 480, 745 P.2d 1295 (1987).

Knight misstates *Ball-Foster*'s holding when he argues that the Court held employers bear the burden to prove that a traveling employee distinctly departed from the course of employment. *See* Pet. at 11. While *Ball-Foster* reviewed the employer's assertions, it was an employer appeal, which means the employer had the burden to show that the Board incorrectly affirmed the Department's award of benefits. *Ball-Foster*, 163 Wn.2d at 140; RCW 51.52.050(2)(a), .115; WAC 263-12-115(2).

Further, the Legislature specified in RCW 51.52.050(2) that it is the appealing party's burden to show that the Department's order is incorrect (here the claimant).[5] *See also* WAC 263-12-115(2). The Legislature explicitly provided for two situations where the burden shifts to the Department: when a claimant engages in willful misrepresentation and when firefighters seek benefits for certain injuries. RCW 51.52.050(2)(c); RCW 51.32.185; *see also Raum v. City of Bellevue*, 171 Wn. App. 124, 141, 286 P.3d 695 (2012), *review denied*, 176 Wn.2d 1024 (2013). By expressing these exceptions, the Legislature implied the exclusion of others, so it has not identified the travelling employee doctrine to be a burden shifting scheme. *See In re Det. of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597 (2002) (under principle of *expressio unius*

[5] RCW 51.52.050(2)(a) provides that "[i]n an appeal before the board, the appellant shall have the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal."

est exclusio alterius, the specific inclusion of certain conditions excludes the implication of others). Likewise, at superior court the appealing party (here Knight) must prove the Board is incorrect, without any special burden shifting in the case of traveling employees. RCW 51.52.115.

That it is the appealing claimant's burden to show that he or she is in the course of employment is consistent with well-established law. For decades, the Courts have held that claimants are held to a "strict proof" of their right to receive benefits. *Cyr* 47 Wn.2d at 97; *Kirk v. Dep't of Labor & Indus.*, 192 Wash. 671, 674, 74 P.2d 227 (1937); *Superior Asphalt*, 19 Wn. App. at 804; *see also Lightle v. Dep't of Labor & Indus.*, 68 Wn.2d 507, 510, 413 P.2d 814 (1966); *Robinson v. Dep't of Labor & Indus.*, 181 Wn. App. 415, 326 P.3d 744 (2014), *review pending* (2014).

As the Court of Appeals noted, *Superior Asphalt* is instructive regarding the burden of proof with respect to intoxication. There, the employee used a company car to commute three to four hours home for the weekend. *Superior Asphalt*, 19 Wn. App. at 802. About 12 hours after leaving work and six miles from home, he collided with another car and died. *Id.* His blood alcohol level was 0.23. *Id.* The Court held that the worker's spouse was not entitled to benefits because she could not prove that the employee ended his frolic when the injury occurred and that

"[i]t was appellant's burden to prove her right to receive benefits under the act." *Id.* at 804.

Although Knight now tries to distinguish *Superior Asphalt* by arguing that a commuting worker is generally not in the course of employment, the Court of Appeals correctly explained that there is no meaningful difference between a commuting employee who has no evidence showing he was not on a frolic at the time of his injury and a traveling employee who has no evidence showing he was not on a distinct departure at the time of injury. *See* Pet. at 12-13. Stated differently, if a worker bears the burden to prove that intoxication did not cause his injury when commuting home, then a travelling employee similarly has the same burden of proof when evidence shows he was intoxicated. That holding makes sense, particularly where the *Ball-Foster* Court looked to the coming and going rule to explain the contours of the traveling employee doctrine. *Ball-Foster*, 163 Wn.2d at 143. In both situations, the employee engages in a frolic from work-related activities and thus bears the burden to establish the injury occurred in the course of employment.[6]

[6]Knight's argument that the Court of Appeals decision will make it impossible for traveling employees to secure benefits when the mechanism for the injury is unknown is specious. Pet. at 13-14. The cause of injury can be unknown but a worker can still be entitled to benefits if there is no evidence of a distinct departure. Here, there was evidence of intoxication.

The Court of Appeals decision did not conflict with summary judgment standards, contrary to Knight's suggestion. Pet. at 16. The Court of Appeals appropriately placed the burden on Knight, even though the Department moved for summary judgment. Following summary judgment standards, the moving party first bears the burden to show the nonexistence of a genuine issue of material fact. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). If a defendant moves for summary judgment, showing the absence of evidence to support the plaintiff's case, the burden shifts to the plaintiff to sufficiently show an essential element. *Sligar v. Odell*, 156 Wn. App. 720, 725, 233 P.3d 914 (2010) (citing *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989)). A party cannot use speculation or conjecture to defeat the motion. *Boguch v. Landover Corp.*, 153 Wn. App. 595, 610, 224 P.3d 795 (2009); CR 56(e).

Here, as the claimant seeking benefits, Knight undoubtedly had the burden to show his entitlement to benefits. As the defendant, the Department sought summary judgment, providing evidence of Knight's intoxication, meaning that he could have distinctly departed from his course of employment by becoming intoxicated. That evidence included that (1) Knight told medics and doctors that he drank "a lot;" (2) he smelled of alcohol; and (3) Dr. Chamberlain diagnosed Knight with

alcohol intoxication. BR Wunstel at 20, 22-24; BR Chamberlain 71-72, 74, 79, 111-12. The Court of Appeals correctly recognized that the burden shifted to Knight to counter the Department's evidence. In response, he relied only on speculation and conjecture, which is does not overcome summary judgment. The evidence thus was that he was intoxicated, and there was no evidence that he was not intoxicated—so the Court of Appeals did not need to infer that Knight drank too much. It is not a genuine issue of material fact. *See Orris v. Langley*, 172 Wn. App. 61, 288 P.3d 1159 (2012), *review denied*, 177 Wn.2d 1020 (2013) (evidence of toxicology report raised factual issue). Contrary to Knight's arguments, the Court of Appeals correctly applied summary judgment standards. The Court of Appeals decision does not conflict with *Ball-Foster* or any other decision, raising no issue under RAP 13.4(b)(1) and no issue of public interest under RAP 13.4(b)(4). This Court should deny review.[7]

V. CONCLUSION

After the Department presented evidence showing Knight's intoxication, Knight needed to present evidence that his intoxication did not cause his injury. He failed to do so. The Court should deny Knight's

[7]This Court should deny Knight's attorney fee request. Attorney fees may be awarded to a worker who prevails in court only if (1) the Board decision is "reversed or modified" and (2) the litigation's result affected the Department's "accident fund or medical aid fund." RCW 51.52.130(1); *Pearson v. Dep't of Labor & Indus.*, 164 Wn. App. 426, 445, 262 P.3d 837 (2011). Allowing review does not reverse or modify the Board's decision, and it does not affect the Department's accident or medical aid fund. And Knight's arguments on the merits lack merit.

petition for review, as the Court of Appeals correctly applied appellate case law. The Court of Appeals also followed the purpose of the Industrial Insurance Act and correctly applied summary judgment standards, so there is no issue of substantial public interest meriting review.

RESPECTFULLY SUBMITTED this 29th day of September, 2014.

ROBERT W. FERGUSON
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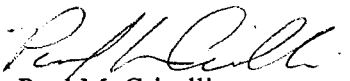

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SUPREME COURT OF THE STATE OF WASHINGTON

RUDOLPH KNIGHT, Appellant, v. 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, she caused to be served the Department's Answer to Petition for Review and this Certificate of Service in the above described manner.

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Supreme Cause Number:
COA Cause Number: 69514-2-I

Dear Mr. Carpenter,

Attached please find the Department's Answer to Petition for Review to be filed in the above-referenced case. Please let me know if you have any questions. Thank you.

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