NO. 92218-7

SUPREME COURT OF THE STATE OF WASHINGTON

MARIA KRAWIEC,

Petitioner,

v.

RED DOT CORPORATION and DEPARTMENT OF LABOR & INDUSTRIES OF THE STATE OF WASHINGTON,

Respondents.

DEPARTMENT OF LABOR & INDUSTRIES ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

Anastasia Sandstrom
Senior Counsel
WSBA No. 24163
Office Id. No. 91018
800 Fifth Ave., Suite 2000
Seattle, WA 98104
(206) 464-6993

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I. INTRODUCTION

Maria Krawiec failed to meet the statutory requirements for perfecting an appeal to the superior court within 30 days of the Board of Industrial Insurance Appeals' decision. The trial court and Court of Appeals thus properly dismissed her appeal as untimely. Krawiec nevertheless contends that the superior court can ignore these statutory requirements and hear her appeal. This Court should reject her petition for review because well-established precedent requires dismissal when, as here, the appellant fails to perfect her appeal by serving all parties.

Although Krawiec couches this case as presenting issues of conflict and substantial public interest that warrant this Court's review, in truth it presents nothing more than application of settled precedent: dismissal of an appeal based on garden-variety neglect relating to her failure to comply with the service requirements imposed by the Industrial Insurance Act. Krawiec does not dispute that she failed to timely serve the Board, as RCW 51.52.110 requires. Rather, she argues the Court of Appeals decision here conflicts with decisions of the Supreme Court and Court of Appeals. But this case does not conflict with these decisions for at least two reasons: 1) none of those cases hold that superior courts may hear appeals that fail to meet statutory deadlines for filing and service, and 2) case law recognizes that the Legislature may mandate requirements to

perfect an appeal to the superior court acting in its appellate capacity. Accordingly, this case presents no issue for Supreme Court review.

II. ISSUE

Review is not warranted, but if it were granted, the following issue would be presented:

> Did the superior court properly dismiss Krawiec's appeal for failure to timely serve her notice of appeal on all required parties, where RCW 51.52.110 requires both timely filing and timely service in order for an appellant to perfect an appeal and where it is a verity on appeal that Krawiec failed to timely serve her notice of appeal on the Board?

III. STATEMENT OF THE CASE

A. Krawiec Did Not Serve the Board When She Appealed the Board Order

Krawiec sustained an industrial injury during her employment with self-insured employer Red Dot Corporation. CP 56, 158-59. She received benefits under the claim. CP 56, 160. At the Board, Krawiec contested the Department order closing her claim. CP 46.

The Board issued its final order regarding her appeal on October 29, 2012. CP 24; Finding of Fact (FF) 1.1. Krawiec received the order on October 31, 2012. CP 1; FF 1.2. RCW 51.52.110 requires that an appealing party file and serve a notice of appeal within 30 days of receipt of the order. The thirtieth day was November 30, 2012. She filed her appeal of the Board's decision on November 19, 2012, mailing copies to

the Department's attorney, Red Dot, and Red Dot's attorney on that date. CP 1, 13-14; FF 1.3, 1.4. But she did not serve the Board as required by RCW 51.52.110. CP 13-14; FF 1.3, 1.4.

Five months later, on April 19, 2013, Krawiec completed an amended affidavit of service indicating that she served the Board on April 19, 2013. CP 17; FF 1.4. Thus, she served the Board with her appeal 140 days after the statutory deadline. Krawiec does not dispute these facts and has not assigned error to the findings of fact. App. Br. at 1, 4.

B. Because Krawiec Did Not Comply With RCW 51.52.110's Appeal Perfection Mandate, the Superior Court and Court of Appeals Dismissed Her Appeal

Because Krawiec did not perfect her appeal, Red Dot moved to dismiss in superior court. CP 447. The superior court granted the motion, concluding that because Krawiec did not comply with RCW 51.52.110's requirement to serve the Board, she did not perfect her appeal. CP 504-06. The Court of Appeals affirmed.

IV. REASON WHY REVIEW SHOULD NOT BE GRANTED

This Court held in *Fay v. Northwest Airlines, Inc.*, that to obtain appellate review in superior court of a Board decision a party must both timely file and serve all parties, which includes the Board. 115 Wn.2d 194, 201, 796 P.2d 412 (1990); RCW 51.52.110. Krawiec has not shown that *Fay's* ruling is incorrect and harmful, nor has she shown any reason for

this Court to take review to disturb this well-settled precedent. *See Lunsford v. Saberhagen Holdings, Inc.*, 166 Wn.2d 264, 280, 208 P.3d 1092 (2009) (the Court does not overrule precedent unless there is "a clear showing that an established rule is incorrect and harmful.") (quotation marks and citation omitted). Krawiec has not shown that this case or *Fay* conflicts with this Court's decisions in *ZDI Gaming, Inc. v. Gambling Commission*, 173 Wn.2d 608, 268 P.3d 929 (2012), and *Dougherty v. Department of Labor & Industries*, 150 Wn.2d 310, 76 P.3d 1183 (2003), or with the Court of Appeals' decision in *MHM & F, LLC v. Pryor*, 168 Wn. App. 451, 277 P.3d 62 (2012). *See* Pet. at 5-15. Washington courts have recognized that the Legislature may enact requirements to perfect the appellate jurisdiction of the courts and the Court of Appeals here acted consistently with this bedrock principle. The court's routine application of well-established precedent about appellate jurisdiction does not present an issue of substantial public interest.

A. No Conflict Is Shown by a Decision That Recognizes That a Party Must Perfect an Appeal To Obtain Appellate Review

1. The Court of Appeals' Decision Does Not Broaden *Fay*

"Under RCW 51.52.110, in order to invoke the jurisdiction of the superior court a party appealing a decision of the Board of Industrial Insurance Appeals must file *and* serve notice of the appeal on the Director

and the Board within 30 days after receiving notification of the Board's decision." *Fay*, 115 Wn.2d at 201 (emphasis in original); *see also Hernandez v. Dep't of Labor & Indus.*, 107 Wn. App. 190, 193-94, 196, 26 P.3d 977 (2001) (dismissing case where party failed to timely serve Board). Failure to serve the Board results in dismissal and Krawiec is incorrect that such an interpretation "broaden" *Fay. Fay*, 115 Wn.2d at 201; Pet. at 7. Krawiec argues that RCW 51.52.110 "on its face only requires dismissal for failing to file within 30 days" and "[o]nce you file, you invoke jurisdiction." Pet. at 10. But *Fay* rejected that argument and held that to invoke appellate jurisdiction, a party must comply with the perfection requirement of service. *Fay*, 115 Wn.2d at 197-201.

RCW 51.52.110 provides the exclusive method for obtaining judicial review of the Board's decisions. It provides that an appealing party has 30 days from the date of receipt of the Board's final decision to file an appeal in superior court. To "perfect" an appeal, a party must serve the Board:

> Such appeal *shall* be perfected *by filing* with the clerk of the court a notice of appeal *and by serving a copy thereof by mail, or personally, on the director and on the board.* If the case is one involving a self-insurer, a copy of the notice of appeal shall also be served by mail, or personally, on such self-insurer.

RCW 51.52.110 (emphasis added).

Appellate courts have repeatedly held in workers' compensation cases that dismissal is required where the appellant timely filed a notice of appeal in superior court but did not timely serve the notice of appeal. *Fay*, 115 Wn.2d at 197-201; *Corona v. Boeing Co.*, 111 Wn. App. 1, 8-9, 46 P.3d 253 (2002); *Hernandez*, 107 Wn. App. at 193-94; *Petta v. Dep't of Labor & Indus.*, 68 Wn. App. 406, 409-11, 842 P.2d 1006 (1992); *see also City of Seattle v. Pub. Emp't Relations Comm'n*, 116 Wn.2d 923, 928-29, 809 P.2d 1377 (1991) (affirming dismissal under the Administrative Procedures Act (APA) when the appellant served the notice of appeal on a required party three days late); *Sprint Spectrum, LP v. Dep't of Revenue*, 156 Wn. App. 949, 963, 235 P.3d 849 (2010) (affirming dismissal when party did not timely serve tax board as required under the APA).

The Supreme Court in *Fay* required timely service to perfect an appeal. In *Fay*, a worker timely filed her appeal but failed to serve the notice of appeal on the Department's director (a required party under RCW 51.52.110) within the 30-day appeal period. 115 Wn.2d at 196. The Supreme Court affirmed the trial court's dismissal of the worker's appeal, noting that the worker had "failed to satisfy the requirements of the appeal statute when she neglected to serve notice upon the Director of the Department within the required time period." *Fay*, 115 Wn.2d at 201 (emphasis omitted).

The *Fay* Court considered the very argument raised by Krawiec as to whether RCW 51.52.110 requires dismissal only for a late filed appeal, not a late served appeal. *Fay* considered the language in RCW 51.52.110 that provides that if the appealing party "fails to file with the superior court its appeal as provided in this section within said thirty days, the decision of the board . . . shall become final." *Fay*, 115 Wn.2d at 199-200; *Hernandez*, 107 Wn. App. at 196; Pet. at 10. *Fay* rejected the argument that RCW 51.52.110 does not require service because this sentence discusses only the failure to file. This provision "[does] not alter the requirement that an aggrieved party *both file and serve* notice of appeal within 30 days of receiving notice of the Board's decision." *Fay*, 115 Wn.2d at 200 (emphasis added). Thus, the appeal had to be dismissed because the appellant did not comply with RCW 51.52.110's service requirements. *Fay*, 115 Wn.2d at 201.

Fay also noted that the Board had been properly served, recognizing the Board needs to be served, contrary to Krawiec's arguments. *Id.* at 199; *id.* at 201 (directing that "a party appealing a decision of the Board of Industrial Insurance Appeals must file *and* serve notice of the appeal on the Director and the Board within 30 days"); *Hernandez*, 107 Wn. App. at 196 (identifying the Board as a "required party" for service); Pet at 10. Krawiec did not, contrary to her arguments,

make a "minor procedural error." Pet. at 16. She failed to perfect her appeal, and under *Fay*, it must be dismissed.

2. Krawiec Shows No Conflict with *ZDI Gaming*, Which Recognized That Under the Washington State Constitution, the Legislature May Shape Appellate Jurisdiction

Fay and this Court's decision does not conflict with *ZDI Gaming*, as *ZDI Gaming* did not address the question here: failure to comply with statutory filing and service requirements. In addressing such a failure, the courts have consistently given force to the legislative prerequisites to filing and serving administrative appeals.[1]

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[1] *Skinner v. Civil Serv. Comm'n*, 168 Wn.2d 845, 850, 232 P.3d 558 (2010) (all statutory filing and service requirements must be met before appellate jurisdiction is properly invoked); *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit Cy.*, 135 Wn.2d 542, 555, 958 P.2d 962 (1998) (dismissal when petitioner failed to appropriately serve some of the parties); *Union Bay Pres. Coal. v. Cosmos Dev. & Admin. Corp.*, 127 Wn.2d 614, 620-21, 902 P.2d 1247 (1995) (dismissal when party did not perfect appellate jurisdiction when it failed to serve parties of record as required by APA); *City of Seattle*, 116 Wn.2d at 928-29 (dismissal when petitioner served parties three days after APA deadline); *Fay*, 115 Wn.2d at 197-201 (dismissal when director of agency was not served as required by Industrial Insurance Act); *Bock v. State Bd. of Pilotage Comm'rs*, 91 Wn.2d 94, 100, 586 P.2d 1173 (1978) (dismissal when petitioner failed to serve Board of Pilotage Commissioners until 53 days after service under former version of APA); *Wells Fargo Bank, NA v. Dep't of Revenue*, 166 Wn. App. 342, 362, 271 P.3d 268 (2012) (failure to file and serve petition within 30 days of final agency action required dismissal); *Sprint Spectrum*, 156 Wn. App. at 963 (dismissal when tax board not served as required under the APA); *Corona*, 111 Wn. App. at 8-9 (dismissal when party did not serve the Department, the Board, or employer with notice as required by the Industrial Insurance Act); *Hernandez*, 107 Wn. App. at 193-94 (dismissal when party did not serve Board as required by Industrial Insurance Act); *Cheek v. Employ. Sec. Dep't*, 107 Wn. App. 79, 82, 84-85, 25 P.3d 481 (2001) (dismissal when petitioner failed to serve the agency until four days after APA deadline); *Petta*, 68 Wn. App. at 410-11 (dismissal for, inter alia, failure to serve Board as required by the Industrial Insurance Act); *Banner Realty, Inc. v. Dep't of Revenue*, 48 Wn. App. 274, 278, 738 P.2d 279 (1987) (dismissal when taxpayer failed to serve the tax board within 30 days under former version of APA).

Moreover, *Fay* and the Court of Appeals' decision here are consistent with the Washington State Constitution and this Court's continued recognition in *ZDI Gaming* and *Skinner* that the Legislature may sculpt the appellate jurisdiction of the superior court. *See ZDI Gaming*, 173 Wn.2d at 619-20; *Skinner*, 168 Wn.2d at 850. "The superior court . . . shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law." Const. art. IV, § 6. Courts have recognized that an appeal from an administrative agency invokes a superior court's appellate jurisdiction. *Skinner*, 168 Wn.2d at 850. "Because an appeal from an administrative body invokes the superior court's appellate jurisdiction, all statutory requirements must be met before jurisdiction is properly invoked." *Skinner*, 168 Wn.2d at 850 (quoting *Fay*, 115 Wn.2d at 197) (quotation marks omitted); *id.* at 857 (recognizing that substantial compliance with service requirements is necessary to invoke appellate jurisdiction).

ZDI Gaming itself recognized that the Legislature could "sculpt" the authority of the superior court regarding "appellate jurisdiction." 173 Wn.2d at 619. Neither *Fay* nor the Court of Appeals decision here conflicts with this proposition.[2]

[2] *ZDI Gaming* did not deal with a statute that related solely to the superior court's appellate jurisdiction, as is the case here. Rather, *ZDI Gaming* dealt with RCW 9.46.095, which applies both to original actions filed in superior court and to the superior

3. Krawiec Shows No Conflict With *Dougherty*, Which Recognized the Appellate Jurisdiction of the Superior Court in Workers' Compensation Matters

The Court of Appeals decision here and the decision in *Fay* does not conflict with *Dougherty* as they involve two different statutory provisions, one related to venue and one related to filing and service perfection requirements.

Krawiec served the Board late and there is no cure for her late service, when the statute requires such service in 30 days. *Fay*, 115 Wn.2d at 197-201; *Hernandez*, 107 Wn. App. at 197. Krawiec argues that *Dougherty* supports her assertion that RCW 51.52.110 does not require dismissal when a party fails to comply with its service provisions and that a prejudice standard applies. Pet. at 8-10. But this Court in *Dougherty* decided how to approach a workers' compensation appeal filed in the wrong county; it did not limit *Fay*'s and other decisions' requirements that a party timely file and serve an appeal. *See Dougherty*, 150 Wn.2d at 313. *Dougherty* did not address or purport to say that failure to comply with the filing and service perfection requirements of RCW 51.52.110 does not merit dismissal. In *Dougherty*, there was no dispute about whether the appellant had timely filed and served his appeal; rather, he filed in the

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court acting in its appellate capacity in reviewing administrative decisions. *See* RCW 9.46.095. The *ZDI Gaming* Court rested its central holding on the proposition that the "original jurisdiction" could not be changed of the superior court, contrary to Krawiec's suggestion. *ZDI Gaming*, 173 Wn.2d at 620; Pet. at 13-14.

wrong county. The narrow question before this Court in *Dougherty* was "whether RCW 51.52.110's designation of the proper county for filing workers' compensation appeals is a grant of *jurisdiction* or whether it identifies *venue*." *Dougherty*, 150 Wn.2d at 313 (emphasis added).

The *Dougherty* Court noted that RCW 51.52.110 "establishes the appellate jurisdiction of the superior courts and also designates the proper venue for those appeals." *Id.* at 316. Specifically, the language in RCW 51.52.110 stating that a worker or aggrieved party "may appeal to superior court" established the superior courts' appellate jurisdiction while RCW 51.52.110's reference to the location of the superior courts where the appeals are to be heard designated venue. *Dougherty*, 150 Wn.2d at 316-17, *Dougherty* thus recognizes that the Legislature may establish standards to perfect appellate jurisdiction. The Court then further held that "RCW 51.52.110's requirements regarding location relate to venue, not jurisdiction." *Id.* at 313. The cure then for filing in the wrong county is to transfer venue. *Id.* at 320.

Mandating that service is required to perfect appellate jurisdiction is consistent with the fact that no similar cure exists for late *service*. The Legislature specifically provided in RCW 51.52.110 that an appeal is not perfected until the appellant files a notice of appeal in superior court *and* serves the director, the Board, and the self-insured employer. As *Petta*

recognized, allowing an appellant to serve a notice of appeal late would render RCW 51.52.110's language meaningless. *Petta*, 68 Wn. App. at 411. Conversely, allowing a party to cure a venue error by transferring the case to the proper venue does not render the venue requirement meaningless, since the statute still has the effect of mandating that the case be heard in the correct venue.

RCW 51.52.110 contains mandatory language requiring a party to perfect his or her appeal by serving the required parties within the time limit. The language that a party "shall" perfect an appeal by serving the director and the Board imposes a mandatory obligation to serve the notice of appeal within the 30-day time limit. In contrast, the venue requirement is not included in the sentence that specifies how an appeal is perfected: "[s]uch appeal shall be perfected *by filing* with the clerk of the court a notice of appeal and *by serving* a copy . . . on the director and on the board." RCW 51.52.110 (emphasis added). Showing that they are mandatory requirements, the statute couples perfection by service with perfection by filing, and venue is not included in these mandatory perfection requirements.

Contrary to Krawiec's arguments, there is no inconsistency in the Legislature's use of "shall" in the context of venue and in the context of service. *See* Pet. at 12. The *Dougherty* opinion nowhere states that "shall"

is "directory" throughout RCW 51.52.110, contrary to Krawiec's assertion. *Dougherty*, 150 Wn.2d 310; Pet. at 11. Although *Dougherty* concluded that dismissal of the appeal was not warranted when the appeal was filed in the wrong county, it did not do so based on the notion that the statute's use of "shall" was merely permissive. Rather, it concluded that although the statute requires filing an appeal in a given county, the requirement is one of venue rather than jurisdiction. *Dougherty*, 150 Wn.2d at 316-17. Krawiec notes the statutory construction principle that the court presumes that terms used in the same enactment have the same meaning. Pet at 11. Her premise that *Dougherty* construed the word "shall" is incorrect, but in any event, the court reads the term "shall" in the perfection requirement in the context of what the Legislature is accomplishing in this provision. Language in a statute must be read in context of the entire statute and construed in a manner consistent with the general purposes of statute. *Sprint Spectrum*, 156 Wn. App. at 959.

Here the Legislature specified how to "perfect[]" an appeal. To perfect means "[t]o take all legal steps needed to complete, secure, or record (a claim, right, or interest)." *Black's Law Dictionary* 1318 (10th ed. 2014). To accomplish perfection, the Legislature intended "shall" to be mandatory. It is well established that "shall" imposes a mandatory requirement unless a contrary legislative intent is apparent. *Erection Co. v.*

Dep't of Labor & Indus., 121 Wn.2d 513, 518, 852 P.2d 288 (1993). The intent is to establish a service deadline, as *Fay* recognized. 115 Wn.2d at 197-201. This intent distinguishes this case from *Niichel v. Lancaster*, where the Court decided that the Legislature did not intend for "shall" to be mandatory under the terms of that distinctive statute. 97 Wn.2d 620, 623, 647 P.2d 1021 (1982), *cited at* Pet. at 12. As *Fay* determined, the Legislature intended mandatory perfection requirements and *Dougherty* did not hold otherwise.

4. Krawiec Shows No Conflict with *MHM & F*

MHM & F does not speak to the question of whether a party must comply with statutory deadlines for appealing administrative orders, nor whether the Legislature can shape the appellate jurisdiction of the superior court. 168 Wn. App. 451. Instead, that case involved an original action in superior court regarding unlawful detainer. *Id.* at 457. Contrary to Krawiec's implication, *MHM & F* did not state that *ZDI Gaming* overruled *Fay*. Pet. at 14. *MHM & F* does not cite *Fay*, and does not address the principle acknowledged in *Fay* and here: failure to comply with statutory filing and service deadlines for appeals of administrative decisions results in dismissal. 168 Wn. App. 451. Nor does this Court overrule cases sub silentio, and *ZDI Gaming* did not state it was overruling *Fay*. *See State v.*

Studd, 137 Wn.2d 533, 548, 973 P.2d 1049 (1999); *ZDI Gaming*, 173 Wn.2d 608.

5. Krawiec Shows No Conflict With the Case Law on Substantial Compliance

The long line of substantial compliance cases shows that courts recognize that the Legislature may establish filing and service requirements to invoke the appellate jurisdiction of the superior court. *E.g.*, *Skinner*, 168 Wn.2d at 850, 854-57. And they show that a party must comply with the actual objectives of the statute to perfect appellate jurisdiction, but may stumble with procedural imperfections. *See City of Seattle*, 116 Wn.2d at 928-29 (holding that substantial compliance did not occur where the appellant served the notice of appeal on a required party three days late).[3] Failing to serve the required party of the Board is not a procedural imperfection, contrary to Krawiec's arguments, but a failure to comply with the actual objectives of the statute to have timely service. *See* Pet. at 10. Krawiec argues that the purpose of the statute was to obtain the Board record and because this was accomplished, she substantially complied with the statute. Pet. at 18. But she ignores that well-established case law provides that she must timely serve the Board to substantially

[3] Contrary to Krawiec's representation, *City of Seattle* did not involve a case where the notice of appeal was filed late; although the appeal was timely filed, the Court dismissed the appeal because, like the present case, it was *served* late. Pet. at 18; *City of Seattle*, 116 Wn.2d at 925-26 (City filed appeal on thirtieth day but served appeal late).

comply with RCW 51.52.110. *Fay*, 115 Wn.2d at 199, 201 (holding "a party appealing a decision of the Board of Industrial Insurance Appeals must file *and* serve notice of the appeal on the Director and the Board within 30 days after receiving notification of the Board's decision"); *Hernandez*, 107 Wn. App. at 197 (party who does not serve the Board does not substantially comply with statute). She also ignores that although the Legislature may have as one purpose the transmittal of the record, an equally important purpose of a service requirement is to have timely notice of the appeal.

To determine whether there is substantial compliance with a service requirement "the relevant inquiry is whether the party to be served has received actual notice of appeal or the notice was served in a manner reasonably calculated to give notice to the opposing party." *Skinner*, 168 Wn.2d at 855. Noncompliance with a statutorily mandated deadline is not substantial compliance. *See Petta*, 68 Wn. App. at 409-10. One either complies with a deadline or one does not. *City of Seattle*, 116 Wn.2d at 928-29.

When Krawiec served the Board five months late, she did not provide timely actual or constructive notice of her appeal. *Fay* specifically rejected an argument that there was substantial compliance when the appellant failed to timely serve a required party, and Krawiec's arguments

urging such a result should be rejected. 115 Wn.2d at 199, 201; Pet. at 16-18. This is consistent with well-established case law that parties must actually comply with statutory requirements. *Humphrey Indus., Ltd. v. Clay St. Assocs., LLC*, 170 Wn.2d 495, 504, 242 P.3d 846 (2010) (substantial compliance requires actual compliance with respect to the substance essential to the statute's reasonable objectives).

Krawiec did not comply with the statute, and review should not be granted to revisit *Fay's* and many other cases' holdings requiring compliance with the deadline.

B. Krawiec Shows No Issue of Substantial Public Interest Where the Long-Settled Expectation of the Parties Is That RCW 51.52.110 Requires Service

There is no issue of substantial public interest presented by the decision here. This decision merely applies the well-settled requirement that a party serve other parties to perfect an appeal. The Legislature may provide requirements to perfect an appeal, as it has done in workers' compensation cases by requiring an appellant to serve the Board with the notice of appeal.

There are several reasons to serve the Board with the notice of appeal. It allows for timely transmission of the record to the superior court. Additionally, the Board needs to know if the Board order is final in order to calculate interest under RCW 51.52.135 and WAC 263-12-160.

Cena v. Dep't of Labor & Indus., 121 Wn. App. 915, 925, 91 P.3d 903 (2004). RCW 51.52.135 charges the Board to fix interest when a worker prevails in certain claims at the Board. As decided in *Cena*, the Board cannot fix interest if there is a pending superior court appeal. *Cena*, 121 Wn. App. at 925; WAC 263-12-160. The Board must know as soon as possible after the 30-day appeal deadline whether to fix interest because workers may be entitled to interest. If the Board does not receive a notice of an appeal within 30 days, it knows that it can fix interest. This allows workers to timely receive an interest payment, which advances the Industrial Insurance Act's purpose to reduce economic loss. RCW 51.12.010. It also means that further interest does not accrue, which advances the purposes of protecting the state fund and reducing costs for self-insured employers. *See Chavez v. Dep't of Labor & Indus.*, 129 Wn. App. 236, 241, 118 P.3d 392 (2005) (noting role of Department as trustee of industrial insurance funds). Enforcing the 30-day deadline to serve the Board gives effect to the Legislature's intent to have interest handled expeditiously.

Further, the Board also needs to know when its orders are final when considering related Department orders in the claim. *E.g.*, *Reid v. Dep't of Labor & Indus.*, 1 Wn.2d 430, 436, 96 P.2d 492 (1939); *In re Jason Honsowetz*, No. 08 18940, 2009 WL 6268512 (Wash. Bd. Indus.

Ins. Appeals Dec. 4, 2009). For example, the Board cannot consider a case involving the reopening of a workers' compensation claim when a superior court appeal from an order closing the claim is still pending. *Reid*, 1 Wn.2d at 436.

Finally, the Board would decline to consider a CR 60 motion if a party has filed a superior court appeal. In short, providing notice to the Board within 30 days allows the Board to carry out its statutory responsibilities. This public policy decision by the Legislature should not be second-guessed by a party who neglected to comply with statutory requirements for perfecting her appeal.

Krawiec seeks to have the Court overlook her failure to comply with the Legislature's perfection requirements. What Krawiec is really attempting is a backdoor request for equitable tolling of the filing and service deadline. Even if the doctrine is available in this setting, Krawiec makes no claim that equity should apply, and in any event, she could not meet its requirements. *See* App. Br. at 1; Pet. at 1-2. Equitable tolling provides a method for relief from filing and service deadlines if the individual case warrants its application. "The predicates for equitable tolling are bad faith, deception, or false assurances by the defendant and the exercise of diligence by the plaintiff." *Millay v. Cam*, 135 Wn.2d 193, 206, 955 P.2d 791 (1998).

Courts typically permit equitable tolling to occur only sparingly, and "should not extend it to a garden variety claim of excusable neglect." *Benyaminov v. City of Bellevue*, 144 Wn. App. 755, 761, 183 P.3d 1127 (2008) (quotation marks and citations omitted). Here, Krawiec cannot meet the requirements necessary to obtain equitable tolling, and her attempt to circumvent this by arguing the superior court had "discretion" to overlook her failure to comply with the filing and service perfection deadline should be rejected.

V. CONCLUSION

The Court of Appeals applied a long and unbroken line of cases dismissing administrative appeals that do not comply with statutory deadlines for filing and service. No conflict among appellate opinions exists. In addition, courts recognize that the Legislature may provide requirements to perfect an appeal. No need exists to revisit that recognition. Krawiec failed to follow the Legislature's requirements and her appeal was properly dismissed.

RESPECTFULLY SUBMITTED this 8th day of October, 2015.

ROBERT W. FERGUSON
Attorney General

A. Sandstrom

ANASTASIA SANDSTROM
Assistant Attorney General
WSBA No. 24163

NO. 92218-7

SUPREME COURT OF THE STATE OF WASHINGTON

MARIA KRAWIEC, Appellant, v. RED DOT CORPORATION AND DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Respondents.	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 below described manner:

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Ronald R. Carpenter
Supreme Court Clerk
Supreme Court
Supreme@courts.wa.gov

//

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//

Via First Class United States Mail, Postage Prepaid to:

Cameron T. Riecan
Tacoma Injury Law Group, Inc., P.S.
3848 S Junett Street
Tacoma, WA 98409-5623

Ryan Miller
Thomas G. Hall & Associates
PO Box 33990
Seattle, WA 98133-0990

DATED this 8th day of October, 2015.

SHANA PACARRO-MULLER
Legal Assistant
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7740

OFFICE RECEPTIONIST, CLERK

To: Pacarro-Muller, Shana (ATG)
Cc: Sandstrom, Anastasia (ATG)
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Subject: 92218-7; Maria Krawiec v. Red Dot Corporation and DLI

RE: Maria Krawiec v. Red Dot Corporation and DLI
Case Number: 92218-7

Dear Mr. Carpenter:

Attached for filing is the Department's Answer to Petition for Review and Certificate of Service in the above referenced matter.
Thank you,

Shana Pacarro-Muller
Legal Assistant to
Anastasia Sandstrom, Assistant Attorney General
WSBA No. 24163
Office Id No. 91018
AnaS@atg.wa.gov
(206) 464-6993