NO. 47565-1

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

MICHAEL J. COLLINS,

Appellant,

v.

STATE OF WASHINGTON & OFFICE OF THE GOVERNOR, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LABOR & INDUSTRIES IN ITS/THIER OFFICIAL CAPACITY,

Respondents.

BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Constitutional Provisions

I. INTRODUCTION

In this latest case, Michael Collins again challenges decisions made concerning his industrial insurance claim dating back to 1993. The superior court properly dismissed for failure to state a claim Mr. Collins' claims of "constitutional tort," statutory violation, and outrage, all relating to the manner in which Mr. Collins perceives that his industrial insurance claim was handled. There simply is no set of facts under which Mr. Collins could frame a cognizable claim for relief for the perceived wrongs he is now attempting to remedy. The superior court properly dismissed all claims in Mr. Collins' second and third amended complaints.

Washington law does not recognize a cause of action for "constitutional tort" - a claim for damages for violation of the Washington Constitution - unless expressly provided for by statute. There simply is no statutory predicate for any of Mr. Collins' claims purportedly based on a theory of "constitutional tort."

The statutes Mr. Collins cited as bases for claims against the Governor and the Attorney General merely enumerate the powers and duties of those offices and do not provide bases for bringing tort claims against them.

The attempt by Mr. Collins to state a claim for relief based on the tort of outrage was not, even under the broadest and most liberal reading of his complaint, supported by any real or hypothetical set of facts.

Because no set of facts exists under which Mr. Collins would be able to obtain the relief he sought, either under his second or third amended complaints, the trial court properly dismissed this case.

II. RESTATEMENT OF THE ISSUES ON APPEAL

A. Did the trial court correctly dismiss the "constitutional tort" and statutory violation claims in Mr. Collins' second amended complaint?

B. Did the trial court correctly dismiss claims based on the tort of outrage in Mr. Collins' third amended complaint?

III. RESTATEMENT OF THE CASE

The procedural history of this case involves two orders of dismissal for failure to state a claim. Because Mr. Collins' claims were incrementally dismissed by operation of these two orders, each is subject to review in this appeal. The first order, entered on February 27, 2015, granted defendants' motion to dismiss Mr. Collins' second amended complaint with prejudice pursuant to CR 12(b)(6), but granted him leave to file an amended complaint on the following terms:

> Plaintiff may file an amended complaint to attempt to state a legally sufficient claim on or before March 27, 2015, provided that the amended complaint may not assert claims arising from the Washington Constitution, RCW 43.10.030, or RCW 43.06.010, such claims having been dismissed with prejudice by this order.

CP at 276-78.

Thereafter, Mr. Collins filed a third amended complaint, and defendants moved again for dismissal for failure to state a claim for relief. The court granted that motion on April 17, 2015. CP at 321-22.

In keeping with the requirements of CR 12(b)(6), the State of Washington (State)[1] recognizes that this Court must take all allegations of material fact in Mr. Collins' second and third amended complaints as true and construe them in the light most favorable to Mr. Collins, the nonmoving party. The underlying dispute identified by Mr. Collins as the basis of this lawsuit is the manner in which an industrial insurance claim, for an injury he claimed occurred in 1993, was handled in his subsequent efforts to reopen that claim, and in his efforts to have the adjudications of his claims reviewed and investigated by others. CP at 1-18, 84-109, 111-14. Some brief understanding of the facts that led to this lawsuit may be helpful to the Court's understanding of the nature of the dispute.

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[1] The defendants named in one or more of Mr. Collins' complaints are referred to herein collectively as the State of Washington for convenience only. The defendants named below, who are all respondents herein, included the State of Washington, Office of the Governor, Office of the Attorney General, the Washington State Department of Labor and Industries, Eric Brooks, Nancy Adams, Joel Sacks and Evelyn Fielding Lopez.

A. Background On Mr. Collins' Underlying Dispute And Previous Legal Actions

Michael Collins claimed to have incurred an industrial injury in January 1993. CP at 113, 133. That claim was closed on April 19, 1995. CP at 113, 133. Mr. Collins sought to reopen his claim in 2006, claiming an aggravation of his condition. CP at 113, 134. The Department of Labor and Industries reopened his claim, adjudicating it under the standard applicable to a claim that had been closed for more than seven years. Applying that standard, the Department determined that only medical benefits would be appropriate and that additional disability benefits would not be granted. CP at 113.

In his appeal to the Board of Industrial Insurance Appeals (BIAA), Mr. Collins argued, among other things, that he had never received the April 1995 order closing the claim. The BIIA determined that he had made a sufficient prima facie showing that he had not received the 1995 order to overcome the presumption of the mailings in due course reaching their intended recipient. CP at 112. The BIIA remanded the matter to the Department of Labor and Industries to further adjudicate Mr. Collins' claim as a protest of the April 1995 closure order, rather than a request to reopen a closed claim after seven years. CP at 112-13. The Department

did just that, then closed his claim effective August 3, 2007. CP at 128-29, 133-34.

Since then, Mr. Collins appealed the August 2007 closing of his industrial insurance claim all the way to seeking review from the Washington State Supreme Court. CP at 134. He sued in United States District Court, appealing the dismissal of that case as well. CP at 134. He also sought to reopen his industrial insurance claim in 2010, which was denied. CP at 134.

In the current case, in each iteration of his complaint the essence of his claim is an alleged failure to properly reopen and correct that prior industrial injury claim, in the manner he views to be consistent with orders entered by the BIIA in 2007. He asserts in various forms in his pleadings that the "life blood" of his claims are the orders entered by the BIAA in 2007, and that because of actions by the named individuals in his complaints, he "would never be allowed to have my Industrial injury claim corrected, as mandated by Board of Industrial Insurance Appeals April 18-June 11, 2007 Orders." CP at 2, 27-29, 66-67, 85, 87.

B. Mr. Collins' Second Amended Complaint

In his second amended complaint, Mr. Collins alleged that several state officials acted in a manner that violated the Washington State Constitution. CP at 66-69. First, Mr. Collins asserted that Eric Brooks, a

claims manager for the Department of Labor and Industries, concealed information from an independent medical examiner in connection with the resolution of his claim. CP at 66. Second, Mr. Collins asserted that Nancy Adams, a unit supervisor, wrote a letter to him dated June 6, 2014, that misrepresented "the history, and facts of my claim." CP at 66. Third, Mr. Collins alleged that Joel Sacks, Director of the Department of Labor and Industries, did not complete an investigation of his claim as allegedly required by constitutional duty. CP at 67. As to each of these defendants, Mr. Collins alleged that their actions violated the Wash. Cons., art. I, §§ 3, 30, and 32. CP at 66-67.

In addition to these officials within the Department of Labor and Industries, Mr. Collins asserted claims against the Washington Attorney General Robert Ferguson and Washington Governor Jay Inslee. Mr. Collins alleged that Attorney General Ferguson failed to respond to a February 28, 2014, letter from him demanding investigation of certain complaints about the handling of his industrial injury claim and/or the issuance of a legal opinion. CP at 67-68. Mr. Collins' complaint asserted that this alleged failure violated the Wash. Const. art. I, §§ 3, 30, and 32; Wash Const. art. III, § 21; and RCW 43.10.030. CP at 68. Mr. Collins claimed that Governor Inslee failed to investigate his claims and failed to order the Attorney General to investigate his claims or to issue a legal

opinion. CP at 68-69. Mr. Collins' complaint asserted that these alleged failures violated the Wash. Const. art. I, §§ 3, 30, and 32; Wash. Const. art. III, § 5; and RCW 43.06.010. CP at 69.

As noted above, Mr. Collins' second amended complaint, and more specifically, his claims based on the Washington Constitution, RCW 43.10.030, and RCW 43.06.010, were all dismissed with prejudice by an order dated February 27, 2015. That order left open to Mr. Collins, the opportunity to attempt to state a claim for relief on some other ground by filing an amended complaint. CP at 276-78.

C. Mr. Collins' Third Amended Complaint

Mr. Collins filed a third amended complaint, with a number of exhibits attached, on March 23, 2015. CP at 84-175. In this complaint, he alleged the same operative facts as those alleged in prior complaints, and named as defendants the State of Washington, Office of the Governor, Office of the Attorney General, and Department of Labor and Industries. CP at 84. Counts within the complaint are directed at the actions of six individuals, namely (1) Eric Brooks, described as a Claims Manager in the Washington State Department of Labor and Industries, Division of Industrial Insurance; (2) Nancy Adams, Unit Supervisor, Washington State Department of Labor and Industries, Division of Industrial Insurance; (3) Joel Sacks, Director, Washington State Department of

Labor and Industries; (4) Robert Ferguson, Washington State Attorney General; (5) Evelyn Fielding Lopez, Assistant Attorney General, Washington State Office of the Attorney General; and (6) Jay Inslee, Washington State Governor. CP at 85-88. Mr. Collins characterized his tort legal theory as one for intentional infliction of emotional distress, or as he described it, "malice of intent bad faith conduct." CP at 84-109. Defendants again moved to dismiss under CR 12(b)(6). CP at 279-308. This motion was granted in an order dated April 17, 2015. CP 321-22.

This appeal followed.

IV. ARGUMENT

A. Standard of Review

An appellate court applies a *de novo* standard of review to a trial court's decision to dismiss for failure to state a claim under CR 12(b)(6). *Tenore v. AT&T Wireless Servs.,* 136 Wn.2d 322, 329–30, 962 P.2d 104 (1998). This Court may affirm the decision of the trial court where it appears beyond doubt that, even assuming hypothetical facts not part of the record, plaintiff would be unable to prove any set of facts, consistent with the complaint, which would entitle the plaintiff to relief. *Hoffer v. State*, 110 Wn.2d 415, 421, 755 P.2d 781, 785 (1988) *on reconsideration in part,* 113 Wn.2d 148, 776 P.2d 963 (1989).

This court can affirm on any ground finding support in the record. RAP 2.5(a). The appellate courts may decline to review arguments not supported by reference to the record. RAP 10.3(a)(4) and (5); RAP 10.3(g); *Cowiche Canyon Conservancy v. Bosley,* 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

B. The Superior Court Correctly Dismissed Mr. Collins' "Constitutional Tort" And Statutory Violation Claims In His Second Amended Complaint

The trial court properly dismissed Mr. Collins "constitutional tort" and statutory violation claims under CR 12(b)(6), as his claimed injuries were already protected under the Industrial Insurance ACT (IIA), and the constitutional and statutory provisions he cited do not expressly or impliedly provide a right of action in tort or any other right of action for damages.

An action should be dismissed for failure to state a claim only when "it appears beyond doubt that the claimant can prove no set of facts, consistent with the complaint, which would justify recovery." *Lakey v. Puget Sound Energy, Inc.*, 176 Wn.2d 909, 922 n.9, 296 P.3d 860 (2013). In ruling on such a motion, plaintiff's allegations are presumed to be true, and hypothetical facts not part of the formal record may be considered. *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749, 755, 881 P.2d 216 (1994). In other words, a "CR 12(b)(6) motion only warrants dismissal in

the unusual case in which the plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." *Birnbaum v. Pierce County*, 167 Wn. App. 728, 732, 274 P.3d 1070 (2012).

In ruling on a motion to dismiss, the court may properly consider documents whose contents are alleged in the complaint. *Birnbaum*, 167 Wn. App. at 732; *see also Trujillo v. N.W. Trustee Servs., Inc.*, 181 Wn. App. 484, 491-92, 326 P.3d 768 (2014) ("[A]s the rule and case authority plainly indicate '[d]ocuments whose contents are alleged in a complaint but which are not physically attached to the pleading may . . . be considered in ruling on a CR 12(b)(6) motion to dismiss.'") (citation omitted).

Mr. Collins' second amended complaint alleged that certain state officers and employees, through the Governor's Office (Governor Jay Inslee), the Attorney General's Office (Attorney General Robert Ferguson), and the Department of Labor and Industries (Joel Sacks, Nancy Adams, and Eric Brooks), violated his constitutional rights in several respects with regard to his claim for compensation for an industrial injury. CP at 65-69.

Mr. Collins asserted that the Department of Labor and Industries mishandled his claim (Counts I-III), and that the Attorney General's

Office (Count IV) and the Governor's Office (Count V) failed to investigate his complaints in response to letters that he sent to them. CP at 66-69. In support, he relied upon the constitutional guarantee of due process (Wash. Const. art. I, § 3), and other inchoate provisions (Wash. Const. art. I, §§ 30 and 32). CP at 66-69.

1. The IIA Provides Mr. Collins' Exclusive Remedy

Mr. Collins "constitutional tort" theory is simply an effort to circumvent the exclusive remedy provision of the IIA, Title 51 RCW. With very narrow exceptions, there is no basis for a tort claim for injuries subject to the exclusive remedy provision of the IIA. *See Cena v. State*, 121 Wn. App. 352, 357-58, 88 P.3d 432 (2004). The reason for this is simple. The IIA is a self-contained system that provides exclusive procedures and remedies that apply to workers, employers and the Department. *Brand v. Dep't of Labor & Indus.*, 139 Wn.2d 659, 668, 989 P.2d 1111 (1999); *see also Rector v. Dep't of Labor & Indus.*, 61 Wn. App. 385, 810 P.2d 1363 (1991) ("An industrial insurance claim, however, is governed by explicit statutory directives and not by the common law.")

The cornerstone and most fundamental provision of the IIA is the exclusive remedy provision found in RCW 51.04.010, as adopted with the creation of the Industrial Insurance Act, Laws of 1911, ch. 74, § 1.

> The state of Washington, . . . exercising herein its police and sovereign power, declares that *all phases of the premises are withdrawn from private controversy*, and *sure and certain relief* for workers, injured in their work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this title; and to that end *all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this title provided.*

RCW 51.04.010 (emphasis added); *see also*, RCW 51.32.010 (payment of benefits under the IIA is "in lieu of any and all rights of action whatsoever against any person whomsoever").

The exclusive remedy provision of Title 51 RCW is "sweeping and comprehensive" and "of the broadest and most encompassing nature." *Tallerday v. Delong*, 68 Wn. App. 351, 356, 842 P.2d 1023 (1993). "A worker who receives workers' compensation benefits under the act has no separate remedy for his or her injuries except where the act specifically authorizes a cause of action." *Tallerday*, 68 Wn. App. at 356. Accordingly, the trial court's jurisdiction over matters arising under the IIA was limited by the terms of the IIA. RCW 51.04.010, RCW 51.52.110 and .115; *Shufeldt v. Dep't of Labor & Indus.*, 57 Wn.2d 758, 760, 359 P.2d 495 (1961) ([The superior court] has no original jurisdiction. It can decide only matters decided by the administrative tribunals.")

The IIA provided Mr. Collins with a primary remedy for the allegedly improper denial of his claim. RCW 51.04.010. Because a comprehensive statutory scheme exists that provides for compensation for industrial injuries, and in the absence of a statutory basis for bringing a claim based on a "constitutional tort" theory, the trial court had no need to recognize a generalized "constitutional tort" cause of action for Mr. Collins' claims. *Reid v. Pierce County*, 136 Wn.2d 195, 213-14, 961 P.2d 333 (1998) (refusing to recognize private right of action for violation of Wash. Const. art. I, § 7 where adequate common law remedies exist).

2. There Is No Independent Basis For A Claim Based On "Constitutional Tort"

Here, the superior court gave Mr. Collins the benefit of every doubt in evaluating his claims on defendants' CR 12(b)(6) motion, including the potential for the existence of claims based on his "constitutional tort" theory. Even giving Mr. Collins the benefit of every doubt on the potential factual bases for his "constitutional tort" claims in his second amended complaint, and assuming that such a tort claim could survive the scope of the IIA, there is no legal basis under which an independent claim of "constitutional tort" could survive dismissal under CR 12(b)(6).

3. No Basis For Claims of Statutory Violation

Washington courts have consistently refused to recognize damages claims for violation of the Constitution in the absence of legislation setting forth the contours of such a claim. *See Spurrell v. Bloch*, 40 Wn. App. 854, 860-61, 701 P.2d 529 (1985) ("The constitutional guarantee of due process, Wash. Const. art. I, § 3, not of itself, without aid of augmenting legislation, establish a cause of action for money damages against the state in favor of any person alleging deprivation of property without due process."); *Sys. Amusement, Inc. v. State*, 7 Wn. App. 516, 518-19, 500 P.2d 1253 (1972) ("Acts violative of the clause may be declared void by courts, but the clause does not, of itself, provide remedy of reparation."); *see also Blinka v. Washington State Bar Ass'n*, 109 Wn. App. 575, 591, 36 P.3d 1094 (2001) (affirming summary judgment dismissal of constitutional tort claim, holding that Washington courts have consistently refused to recognize such claims).

This consistent refusal to allow tort lawsuits based on alleged constitutional violations finds its roots in sound principles of judicial restraint. Without legislative guidance, courts are generally "in a poor position to say what should or should not be compensation for violation of a state constitutional right and what limitations on liability should be imposed." *Blinka*, 109 Wn. App. at 591 (citation omitted). Further, when

there are sufficient remedies available from other sources, such as the common law, Washington courts have held that it is unnecessary to recognize claims arising directly under the Constitution. *Reid v. Pierce County*, 136 Wn.2d at 213-14. Here, Mr. Collins had sufficient remedies available under the IIA and there was no statutory authority for the "constitutional tort" he sought to pursue. The superior court properly dismissed his "constitutional tort" claims.

In addition to the alleged constitutional violations, Mr. Collins' second amended complaint asserted claims against the Attorney General's Office and the Office of the Governor based on alleged violations of statutes. As to the Attorney General's Office, the statute alleged to have been violated was RCW 43.10.030, and as to the Governor, it was RCW 43.06.010. Neither of these statutes establishes the basis for a cause of action in damages. Each of the statutes is entitled "General powers and duties," and simply list the powers of the Governor and the Attorney General, respectively. A decision made within the scope of these general powers and duties is not subject to a claim for damages in tort. To the contrary, the exercise of general powers and duties of the Governor or the Attorney General are not generally appropriate bases for bringing a claim for damages. *See Cougar Bus. Owners Ass'n v. State*, 97 Wn.2d 466, 472, 488-89, 647 P.2d 481 (1982) (Governor's decision to declare a state of

emergency was not actionable; "A cause of action for damages . . . is not the proper mode to challenge the Governor's actions."); *Berge v. Gorton*, 88 Wn.2d 756, 759-62, 567 P.2d 187 (1977) (affirming dismissal pursuant to CR 12(b)(6) of claim for damages against Attorney General for alleged violation of RCW 43.10.030).

For all of these reasons, the trial court properly dismissed Mr. Collins' second amended complaint.

C. The Superior Court Correctly Dismissed Mr. Collins' Third Amended Complaint For Failure To State A Claim.

After dismissal of his second amended complaint, Mr. Collins recast his claims in a third amended complaint, this time without reference to the Washington Constitution or the two statutes he cited in his prior complaint. The operative facts largely remained the same, although he added allegations concerning the conduct of an additional individual, now-former Assistant Attorney General Evelyn Fielding Lopez, who was alleged to have provided "express assurances" to Mr. Collins that a legal opinion concerning his claims "would be forthcoming," and then failed to act on those express assurances. CP at 87.

The legal theories espoused in Mr. Collins' third amended complaint were based on the assertion that the various defendants acted with malice to intentionally deprive him of the ability to present his

industrial injury claim or to investigate the reasons why he was being deprived of that ability.

Although Mr. Collins is entitled to a broad reading of his factual allegations, including hypothetical facts, his third amended complaint and the documents to which that complaint refers, simply do not provide evidence of the type of extreme conduct that would support a claim for the tort of outrage. The evidence referenced in Mr. Collins' third amended complaint reveals only routine handling of an industrial injury claim, there is no suggestion of personal animus toward Mr. Collins, or any hint of conduct that any reasonable person could find went beyond the bounds of decency. CP at 118, 125-26, 128, 133-34, 140-42, 159-61, 175, 301-02.

The trial court properly considered whether the facts, when viewed in the light most favorable to Mr. Collins, would support a claim for the tort of outrage, as such a claim is not precluded by the IIA, provided that it arises from intentional conduct. *Cena v. State*, 121 Wn. App. at 357 n.10; *Birklid v. Boeing Co.*, 127 Wn.2d 853, 864-66, 872, 904 P.2d 278 (1995) (exclusive remedy for claims of negligent and reckless conduct provided by the Industrial Insurance Act). A careful reading of Mr. Collins' third amended complaint and the documents that it references, show no evidence of the type of intentional and outrageous conduct that would support a claim for the tort of outrage.

The specific variant of the tort of outrage necessary to overcome the exclusive remedy provision of the IIA requires pleading and proof of the following elements: (1) extreme and outrageous conduct, (2) intentional infliction of emotional distress, and (3) actual result to the plaintiff of severe emotional distress. *Kirby v. City of Tacoma*, 124 Wn. App. 454, 472, 98 P.3d 827 (2004) (citing *Birklid*). The type of extreme and outrageous conduct necessary to establish liability for the tort of outrage must be "So outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Grimsby v. Samson*, 85 Wn.2d 52, 59, 530 P.2d 291 (1975) (quoting *Restatement (Second) of Torts* § 46, cmt. D (1965)). By contrast, "liability in the tort of outrage 'does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.'" *Id.*

Although the elements of the tort of outrage are usually jury questions, the court must initially determine if reasonable minds could differ on whether the conduct is extreme enough to result in liability. *Kirby*, 124 Wn. App. at 473 (citing *Dicomes v. State*, 113 Wn.2d 612, 630, 782 P.2d 1002 (1989)).

In ruling on the motion to dismiss the third amended complaint, the trial court properly considered documents filed as exhibits to defendants'

motion to dismiss, whose contents were alleged in the complaint, but were not filed as exhibits to the complaint. *Birnbaum*, 167 Wn. App. at 732; *see also Trujillo,* 181 Wn. App. at 491-92, 326 P.3d 768 (2014) ("[A]s the rule and case authority plainly indicate '[d]ocuments whose contents are alleged in a complaint but which are not physically attached to the pleading may . . . be considered in ruling on a CR 12(b)(6) motion to dismiss.'") (citation omitted).

Although it is clear that Mr. Collins is frustrated with the industrial insurance process, nothing alleged in his third amended complaint remotely approaches the kind of extreme and intentional conduct required for liability under a theory of outrage. What the pleadings and documents attached show is that Mr. Collins' industrial insurance claim was reopened for a time in 2006, and was closed again in 2007 following an IME. CP at 111-14, 116, 118-130. Although Mr. Collins is clearly displeased with the outcome, and has demanded that the result be reviewed or investigated by others in one form or another over the past eight years, there is nothing in the record to support his conclusory allegations that there was intentional and malicious conduct directed toward him in any of the steps in that process.

It is not sufficient for a plaintiff to simply allege in conclusory fashion that a defendant acted with malicious intent. The character of

conduct itself must be extreme and uncivilized. *Dicomes v. State*, 113 Wn.2d 612, 630, 631, 782 P.2d 1002 (1989) (citing *Restatement (Second) of Torts* § 46, cmt. D (1965)). In *Dicomes*, the plaintiff was terminated from employment, based upon an "intentionally prepared false report created for the sole purpose of embarrassing, humiliating and then terminating Ms. Dicomes." *Id.* at 630. The Supreme Court expressly rejected this argument as sufficient to establish "outrageous" conduct:

> [E]ven if the purpose of the study was to terminate plaintiff, the fact of the discharge itself is not sufficient to support a claim of outrage . . . . It is the manner in which the discharge is accomplished that might constitute outrageous conduct. Here DOL discharged plaintiff by privately delivering a termination letter, and briefly *responding* to media inquiries regarding the dismissal. This cannot be considered atrocious and intolerable in a civilized society.

Id. (Internal citation omitted) (emphasis in original). The Supreme Court held that even if the alleged conduct "rose to the level of malice . . . no claim of outrage could be stated." *Id.*

There is nothing in Mr. Collins' third amended complaint, the exhibits he has submitted, or the documents that he has cited that provide evidence of outrageous and intentional conduct. Granting Mr. Collins all favorable inferences from his pleadings and the content of the records on which those pleadings are based, show only that the Department of Labor and Industries processed Mr. Collins' industrial insurance claim, and that

the authorities to whom he subsequently appealed declined to pursue the specific investigations that Mr. Collins demanded. Even assuming each of these acts to be incorrect, they are not outrageous or uncivilized as a matter of law.

For these reasons, the trial court's order dismissing Mr. Collins' third amended complaint should be affirmed.

V. CONCLUSION

Mr. Collins' claims in his second and third amended complaints do not state any cognizable claim for relief. His claims for constitutional torts and statutory violations are not viable claims, especially in light of the comprehensive statutory remedies available under the Industrial Insurance Act. His claims based on the tort of outrage cannot survive, as nothing in his third amended complaint or any of the records he submitted to the court to support that complaint, suggest that there was outrageous conduct to support that claim under any plausible factual scenario. The dismissal of his claims should be affirmed.

RESPECTFULLY SUBMITTED this 21st day of October, 2015.

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DECLARATION OF SERVICE

I declare that I caused a copy of this document to be served on all parties or their counsel of record via US Mail as follows:

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DATED this 21st day of October, 2015, at Tumwater, WA.

/s Jodie Thompson
JODIE THOMPSON, Legal Assistant

WASHINGTON STATE ATTORNEY GENERAL

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