74413-5

74413-5

No. 74413-5

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

LORI ANN HULL,

Appellant,

v.

PEACEHEALTH,

Respondent.

RESPONDENT'S BRIEF

The Law Office of Gress & Clark

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I. INTRODUCTION

The Respondent, a self-insured employer known as PeaceHealth, (herein, "PeaceHealth") presents this brief in response to the Appellant Lori Ann Hull's (herein, "the claimant") opening brief submitted to this court February 18, 2016, and received by PeaceHealth on February 22, 2016.

The claimant appeals a Superior Court verdict from Whatcom County, WA that reversed an Order from the Board of Industrial Insurance Appeals (herein, "Board") dated December 8, 2014, which had adopted the Proposed Decision and Order from an Industrial Appeals Judge. There were three issues before the Superior Court Judge. First, whether the Board properly considered the fact that PeaceHealth paid for the claimant's treatment of her thoracic outlet syndrome. Second, whether the claimant's thoracic outlet syndrome and sequelae were actually a proximate result of her occupational disease. Third, whether the claimant's mental health condition and her subsequent treatment were proximately related to her occupational disease. The Superior Court Judge ordered that PeaceHealth was not responsible for the claimant's thoracic outlet syndrome and sequelae because they were unrelated to her occupational disease. The judge did not consider the claimant's argument regarding the employer's de facto responsibility based upon its payment of treatment.

In this appeal, the claimant has raised two assignments of error. First, that the Superior court erred in overturning the Board's decision and,

second, the court failed to address one issue. Both of these assignments of error are incorrect. The Whatcom County Superior Court verdict dated December 2, 2015, should be affirmed in its entirety.

II. STATEMENT OF THE ISSUES

A. The Superior Court Judge correctly determined that the claimant's diagnosed thoracic outlet syndrome and sequelae were not proximately caused or related to her previously allowed occupational disease.

B. The Superior Court Judge properly determined that whether PeaceHealth paid for the claimant's treatment of her thoracic outlet syndrome was not admissible substantive evidence as to its responsibility or acceptance of the condition under the occupational disease claim.

III. STATEMENT OF THE CASE

A. Procedural History:

The Department of Labor & Industries (herein, "Department") allowed the claimant's occupational disease claim for bilateral medial epicondylitis on December 3, 2006. Subsequently, over a year later, the claimant developed thoracic outlet syndrome. She now claims the thoracic outlet syndrome was a proximate result of her distinctive conditions of employment as of December 3, 2006.

On September 13, 2013, the Department directed the Employer to accept thoracic outlet syndrome under the claim. PeaceHealth protested this order and, on October 17, 2013, the Department amended the

September 13th order and directed the Employer to also accept pulmonary conditions, balance problems, dysphagia, and cricopharyngeal spasms as a consequence of the claimant's subsequent treatment for thoracic outlet syndrome. The Department had also issued an order on May 1, 2013, directing PeaceHealth to allow an adjustment disorder with depressed mood condition as part of the occupational disease. On October 2, 2013, the Department directed PeaceHealth to authorize and pay for the prescription medication known as Cymbalta for treatment of the claimant's alleged thoracic outlet syndrome. PeaceHealth appealed the May 1, 2013, October 2, 2013, and October 17, 2013, Department orders to the Board.

A hearing was held on May 23, 2014, before an Industrial Appeals Judge. The Industrial Appeals Judge published a Proposed Decision and Order on October 6, 2014 in which she affirmed all of the Department's Orders under appeal. The Employer filed a Petition for Review with the Board on November 18, 2014 and the Board issued an Order Denying the Petition for Review and adopting the Proposed Decision and Order as its own on December 8, 2014. Subsequently, the Employer filed this appeal to the Superior Court in Whatcom County on December 24, 2014 on the basis that the Board incorrectly affirmed the Department's orders.

The Superior Court held a bench trial and issued an order on December 2, 2015, which found in favor of PeaceHealth on all issues. Specifically, Judge Uhrig held that the claimant's thoracic outlet syndrome

was not proximately caused by the claimant's occupational disease. Furthermore, all sequelae related to the treatment of the thoracic outlet syndrome were unrelated to the occupational disease. He additionally concluded that the Board had erred in admitting evidence regarding payment of services associated with the claimant's thoracic outlet syndrome under Evidence Rule 409 and struck it from the record.

B. Summary of Evidence:

The claimant worked for PeaceHealth as an emergency department registration and admitting specialist when she began feeling symptoms in both elbows. Clerks Papers (herein "CP") at 7. Her job duties included gathering and inputting patient information onto paper and then into the PeaceHealth's computer system. CP at 209-217. The claimant sought medical treatment in November of 2006 for pain in her elbows. She was diagnosed with bilateral medial epicondylitis (golfer's elbow) when she initially filed her industrial insurance claim. CP at 239 & 251. Her bilateral elbow condition was allowed as a condition proximately caused by her distinctive conditions of employment. CP at 94.

After she returned to work in July of 2007, the claimant indicated she performed less reaching in the course of her job duties. CP at 260. However, she subsequently developed symptoms in her left shoulder and underwent a shoulder surgery. Following the surgery, she complained of numbness, tingling, and temperature changes in her left upper arm. CP at 262. After her symptoms did not resolve, the claimant underwent a

thoracic outlet surgery which was followed by alleged muscle spasms and loss of balance. CP at 245. Additionally, the claimant allegedly began to suffer from mental health problems following her second surgery. CP at 246.

Dr. Kremer, a general vascular and thoracic surgeon, conducted an Independent Medical Examination ("IME") on September 2, 2012. CP at 460 and 466. He indicated that the claimant's industrial insurance claim was initially for the bilateral elbow condition and that the thoracic outlet syndrome had not developed until an entire year following the filing date. CP at 477. In his opinion, the claimant's work activities would not have caused thoracic outlet syndrome. CP at 478. He also testified that there was no evidence that claimant's thoracic condition and secondary conditions were proximately caused by the claimant's conditions of employment through November of 2006. CP at 478. He indicated that in February of 2007, roughly four months after the claimant filed her claim, she underwent electrodiagnostic testing which showed no indications of thoracic outlet syndrome. CP at 479. He indicated that usually if someone has thoracic outlet syndrome, the symptoms will manifest when the person is doing the activity that is causing the condition. CP at 480. In the context of how much weight to attribute to each doctor, it is important to note that Dr. Kremer testified that Dr. Johansen is the doctor on "100%" of the contested cases he sees regarding thoracic outlet syndrome. CP at 488.

Dr. Hughes, a family practitioner, evaluated the claimant multiple times and indicated the medical evidence supported a conclusion that her only condition and symptom complex was bilateral medial epicondylitis. CP at 437 and 441. He further indicated that if repetitive activity was going to cause or worsen thoracic outlet syndrome, he would expect the symptoms to be close in time to such an activity. CP at 450. He stated the symptoms, if due to repetitive work activity, would not come on over a year later. CP at 450-451. Finally, he concluded there was no connection between her thoracic outlet syndrome and the elbow condition. CP at 451.

According to Dr. Johansen, the doctor who performed the surgeries, the claimant did not have symptoms consistent with thoracic outlet syndrome when she initially filed the industrial insurance claim for her bilateral elbow condition. CP at 752-756. In fact, Dr. Johansen indicated that the claimant had actually developed her thoracic outlet syndrome sometime after December 3, 2006. CP at 752-753. He further testified that it was "possible" that she had symptoms at that time. CP at 756. He further testified that if the claimant had not overstressed herself, it was more likely than not that she would not have developed thoracic outlet syndrome. CP at 757. He also admitted that he was basing his ultimate opinion on her employment conditions that occurred after the date of claim allowance. CP at 755. During cross-examination, Dr. Johansen admitted that "like all of the consultants, I continue to be uncertain about exactly what is going on with [the claimant]." CP at 765. Of importance

regarding the credibility of Dr. Johansen's testimony is that he is paying for her treatment out of his own pocket. CP at 766.

Dr. Madhani, a Board-certified orthopedic surgeon, conducted an IME on of the claimant on September 26, 2012 along with Dr. Wong, who did not testify. CP at 351-356. Dr. Madhani testified that the claimant's pulmonary condition, balance problems, dysphagia, and cricopharyngeal spasms, were all unrelated to claimant's bilateral elbow epicondylitis or even the shoulder condition. CP at 363-365, and 377. Dr. Cox, a board certified internal medicine doctor who regularly deals with pulmonary disease, conducted an IME of the claimant on September 28, 2012. CP at 307. He indicated that the claimant's diaphragm dysfunction had resolved and he was unable to explain her pulmonary condition, except to state that it did not develop secondary to the bilateral elbow condition. CP at 331-333.

Dr. Friedman, a board certified psychiatrist and trained psychoanalyst, conducted an independent examination of the claimant. CP at 389-391. He indicated that the claimant was somatically preoccupied and had expressed a disability conviction. CP at 404. He further indicated her mood disorder was multi-factorial and there was no evidence of it being causally related to the bilateral elbow condition for which the claim was allowed. CP at 412 and 417. Dr. Friedman conclusively stated that the Cymbalta was unrelated to any aspect of her employment. CP at 39.

IV. ARGUMENT

A. Standard of Review:

a. *Burden of Proof:*

The Court of Appeal's review is the same as the trial court and is based solely on the evidence presented to the Board. *Dep't of Labor & Indus. v. Avundes*, 95 Wn.App. 265, 269–70, 976 P.2d 637 (1999). However, the Court of Appeals does not sit in the same position as the trial court and, therefore, it only reviews "whether substantial evidence supports the trial court's factual findings and then review, de novo, whether the trial court's conclusions of law flow from the findings." *Rogers v. Dep't of Labor & Indus.*, 151 Wn.App. 174, 180; 210 P.3d 355 (2009) (quoting *Watson v. Dep't of Labor & Indus.*, 133 Wn.App. 903, 909; 138 P.3d 177 (2006).

Once there is an appeal to Superior Court, there must be substantial evidence to support the Board's finding before it can be considered prima facie correct. *Jepson v. Dep't of Labor & Indus*, 89 Wn.2d 394, 573 P.2d 10 (1977). Essentially, when the Employer presented a prima facie case showing the Department order was incorrectly affirmed; the claimant must provide substantial evidence in order for the court to presume that the Board was correct. As Judge Uhrig concluded, the claimant did not meet that burden. The Superior Court found that the preponderance of evidence favored the employer. Accordingly, until the claimant provides a prima facie case showing the Superior Court order was incorrect, there is a presumption it is correct.

b. *The claimant's misapplication of the "Liberal Construction" statute contained within the Industrial Insurance Act:*

In her brief, the claimant cites RCW 51.52.010 and points out that injured workers are the intended beneficiaries of the Industrial Insurance Act and its provisions must be liberally construed with all doubts resolved in favor of the injured worker (Appellant's Opening Brief, at 10). The Employer understands that the liberal interpretation applies only to ambiguities within the statutory construction of the Industrial Insurance Act. However, the Claimant alleges two errors by the trial court and neither of the errors is based on interpretations of the Industrial Insurance Act, nor do they require any statutory construction. Rather, the claimant's alleged errors involve the weighing of evidence and evidentiary decisions. There is no liberal interpretation of facts or evidence rules in favor of one party under this statute. Accordingly, the aforementioned "liberal interpretation" in favor of the claimant does not apply to any issue or assignment of error within this appeal.

B. <u>The Superior Court Judge correctly determined that the claimant's diagnosed thoracic outlet syndrome, pulmonary condition, balance problems, dysphagia, and/or cricopharyngeal spasms were not proximately caused or related to her previously allowed occupational disease</u>

a. *The proper context of the "Attending Physician" rule:*

The claimant cites *Hamilton v. Dep't of Labor & Indus.*, 111 Wn.2d 569; 761 P.2d 618 (1998) to argue that her attending physician, Dr. Johansen, should get special consideration. In her brief, the claimant goes

on to essentially argue that all other medical testimony was irrelevant because Dr. Johanson was her attending physician. However, what the claimant left out of her brief is that the *Hamilton* decision also states that this rule "does not require the [fact finder] to give more weight or credibility to the attending physician's testimony but to give it careful thought." *Hamilton*, at 618.

In other instances, the Washington Appellate Courts have stated that the fact finder is supposed to give careful thought to the testimony of *every* witness. *McClelland v. ITT Rayonier, Inc.*, 65 Wn.App. 386, 394 n. 1, 828 P.2d 1138 (1992)(emphasis added). Furthermore, in *Boeing Co. v. Harker-Lott*, the court stated the instruction is of no value to a trier of fact given it does not require them to give greater weight or credibility to the testimony of a treating physician, merely careful thought during deliberations. *Boeing Co. v. Harker-Lott*, 93 Wn.App. 181, 188, 968 P.2d 14 (1998) (citing *McClelland v. ITT Rayonier, Inc.*, at 394).

b. *The claimant's thoracic outlet syndrome was not proximately caused by her occupational disease:*

Pursuant to RCW 51.08.140, an "occupational disease" means such disease or infection that arises naturally and proximately out of employment. A valid claim for occupational disease is a claim for exposure to distinctive conditions of employment causing a disease to develop. *Dennis v. Department of Labor & Indus.*, 745 P.2d 1295; 109 Wn.2d 467 (1987). Thus, the claimant's condition must arise naturally and

proximately out of her distinctive conditions of employment as of the date of claim allowance, December 3, 2006.

In order to satisfy the "naturally" requirement, the claimant must prove that her particular work conditions more probably caused her disease than conditions in everyday life or all employments in general. *Dennis*, at 481. Additionally, the disease must be a natural incident of conditions of that worker's particular employment rather than coincidentally occurring incidents. *Id.* Regarding the "proximately" requirement, a cause must be proximate in the sense that there is no intervening cause, and but for the exposure in the employment, the disease would not have been contracted. *Simpson Logging Co. v. Dep't of Labor & Indus.*, 32 Wn.2d 472, 202 P.2d 448 (1949). According to the *Dennis* court, "the causal connection between a claimant's physical condition and his or her employment must be established by competent medical testimony which shows that the disease is probably, as opposed to possibly, caused by the employment." 109 Wn.2d 467, at 477 (citing *Ehman v. Dep't of Labor & Indus.*, 33 Wn.2d 584; 206 P.2d 787 (1949)). Finally, the occupational disease must be a "natural consequence or incident of distinctive conditions of his or her particular employment." *Dennis*, at 481. Essentially, a direct causal connection must exist between the claimant's thoracic outlet syndrome and her working conditions in order for it to qualify as an occupational disease.

The claimant's occupational disease claim was allowed by the Department in the form of bilateral elbow epicondylitis that arose naturally and proximately out of claimant's distinctive conditions of employment as of December 3, 2006. PeaceHealth does not dispute the existence of the bilateral epicondylitis as that was the condition the claimant had in 2006 when the claim was allowed. That allowance was final and binding. However, the claim was not allowed for the claimant's subsequent thoracic outlet syndrome, which manifested well after the fact. The medical evidence overwhelming shows that there is no proximate relationship between the claimant's conditions of employment through December 3, 2006 and her thoracic outlet syndrome, which was treated in March of 2009.

Several doctors provided testimony during the Board appeal. All but one indicated the claimant's thoracic outlet syndrome was unrelated to her employment conditions. Dr. Hughes indicated the medical evidence supported a conclusion that her only condition and symptom complex was bilateral medial epicondylitis. He further indicated that if repetitive work activity was going to cause or worsen thoracic outlet syndrome, he would expect the symptoms to be close in time to the work activity. Dr. Kremer, who indicated that the electro-diagnostic testing in February of 2007 would preclude a thoracic outlet syndrome diagnosis for occupational exposures occurring prior to December 3, 2006, echoed this sentiment. Dr.

Hughes backed up Dr. Kremer and explained that the symptoms, if due to repetitive work activity, would not manifest more than a year later.

Moreover, the claimant did not provide evidence establishing a causal link between her employment and the thoracic outlet syndrome. Each doctor testified that the condition would have manifested in a timeframe closer to her actual employment if her working conditions had caused thoracic outlet syndrome. There was not a single doctor that was able to explain the claimant's theory regarding how the condition did not manifest until more than a year after she had stopped working. Deductive reasoning suggests that her thoracic outlet syndrome was caused by something unrelated to her employment due to the large, unexplainable time gap.

The claimant relies on Dr. Johansen's testimony, but he even admitted that he was basing his opinion on working conditions that occurred in 2007 and 2008. Dr. Johansen's approach is incorrect. In order for the thoracic outlet syndrome to be covered under this occupational disease claim, it must arise naturally and proximately from the claimant's work exposures that occurred prior to the date of manifestation. Accordingly, the claimant's thoracic outlet syndrome should not be allowed under this claim because there is no evidence of any causal connection between the distinctive conditions of her employment prior to the date of manifestation.

PeaceHealth presented substantial medical evidence supporting a conclusion that the claimant's thoracic outlet syndrome was not proximately caused by the distinctive conditions of her employment. The burden was on the claimant to rebut the PeaceHealth's prima facie case; a burden that was not met with the testimony of Dr. Johansen who admitted he did not understand what was going on with the claimant's various conditions.

c. *The sequelae related to the claimant's thoracic outlet syndrome is, likewise, not proximately related to the industrial injury*:

The claimant alleges that the sequelae related to her thoracic outlet syndrome, which includes a pulmonary condition, balance problems, dysphagia, and cricopharyngeal spasms, and the various alleged mental health conditions should all be covered under this occupational disease claim. Based on the testimony of Dr. Friedman, the employer disagrees with the claimant's contentions regarding her mental health. It is clear that any mental health condition would not be proximately related to the distinctive conditions of her employment. However, the employer acknowledges that the remaining conditions were secondary to negative outcomes she had from the treatment performed by Dr. Johansen regarding her thoracic outlet syndrome. As discussed in subsection (b) above, the thoracic outlet syndrome was not proximately related to the conditions of her employment as of December 3, 2006. Accordingly, any

conditions secondary to the thoracic outlet syndrome are proximately unrelated to this occupational disease claim.

C. The Superior Court Judge properly determined that whether PeaceHealth paid for the claimant's treatment of her thoracic outlet syndrome was not admissible substantive evidence as to its responsibility or acceptance of the condition under the occupational disease claim

The claimant produced evidence during the Board hearing that PeaceHealth paid for a thoracic outlet syndrome surgical release procedure and then argued that the accepted the condition and any secondary conditions resulting from the procedure because it paid for the treatment. PeaceHealth objected to this testimony and underlying argument regarding payment. CP at 181, 246 & 271. Ultimately, in Superior Court, Judge Uhrig indicated that PeaceHealth's arguments should prevail because the evidence was inadmissible pursuant to ER 409. Furthermore, the court held that payment for medical treatment or service for a condition does not remove the requirement that such a treatment be proximately related to the industrial injury/occupational disease. PeaceHealth contends that the trial court correctly determined that the evidence was inadmissible and that its payment of treatment did not equate to acceptance of the condition.

a. *The Superior Court properly excluded information regarding PeaceHealth's payment of treatment for thoracic outlet syndrome under Evidence Rule 409*

Washington Evidence Rule 409 states that "furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury." Of note, the

Washington ER 409 is an exact replica of the Federal rule. According to the Advisory Committee for the Federal Rules of Evidence, the rationale for this rule is that "generally, evidence of payment of medical, hospital, or similar expenses of an injured party by the opposing party, is not admissible, the reason often given being that such payment or offer is usually made from humane impulses and not from an admission of liability, and that to hold otherwise would tend to discourage assistance to the injured person." 20 A.L.R.2d 291, 293 (1951).

The claimant argues that ER 409 is not applicable in this circumstance because workers' compensation is a no-fault, administrative system. (Appellant's Opening brief, at 12). However, later on the same page, she argues that the payment of surgery is only being used to show that PeaceHealth is responsible for the condition and complications related to the surgery. *Id.* Setting aside the glaring contradiction, this clearly is what ER 409 is intended to prevent. ER 409 is designed to prevent creating an inference that payment is based on responsibility or liability. Here, the claimant is clearly trying to use PeaceHealth's payment of medical treatment to show it is responsible for a host of conditions that would otherwise not be covered under her workers' compensation claim.

When the trial court did not consider PeaceHealth's payment of surgery for thoracic outlet syndrome as substantive proof of its acceptance of the condition, it was correct in doing so. Moreover, for the same reasons, the payment would also be inadmissible to show responsibility

for the sequelae. Accordingly, the trial court did not err and its judgment should be affirmed.

b. *The Industrial Insurance Act precludes admission of payment of treatment as evidence of an employer's acceptance for the condition*

Pursuant to RCW 51.32.190, an employer's payment of compensation under the Industrial Insurance Act binds neither party to future obligations. More specifically, RCW.51.32.190(2) states that "the payment of compensation shall not be considered a binding determination of obligations of the self-insurer as to *future compensation* payments." For context, the term "compensation" appears frequently in the Industrial Insurance Act. The Washington State legislature has defined compensation to include "proper and necessary medical and surgical services." RCW 51.36.010(2)(a). In the case at hand, the claimant is arguing that the employer's payment for treatment of an unrelated condition binds it to accept legal responsibility for all subsequent outcomes of that treatment. However, under the plain text of the Industrial Insurance Act cited above, PeaceHealth's payment of surgical treatment for the claimant's thoracic outlet syndrome shall not be a binding obligation as to future compensation. Specifically, PeaceHealth disputes the "future compensation" referred to within RCW 51.32.190(2).

PeaceHealth, a self-insured employer, believes that the law on this issue is quite clear, but for further guidance, the court should note that state-insured employers are treated exactly the same as self-insured

employers in this scenario under the Industrial Insurance Act. Pursuant to RCW 51.32.210, when an employer insured with the Department provides benefits, "the payment of [benefits] under this title, prior to the entry of an order by the department . . . shall be not considered a binding determination of the obligations of the department under this title." RCW 51.32.210 strengthens the already clear-cut provisions contained in RCW 51.32.190. Whether an employer is self-insured, or insured with the State, there is no payment of benefits that binds the employer to accept a condition without an expressed final and binding order from the Department. Accordingly, any treatment for the thoracic outlet syndrome paid for by PeaceHealth prior to the Department directed it to pay was provisional in nature and is not binding as to its future obligations.

In her brief, the claimant further presents a fallacious slippery-slope argument, by claiming that an employer could potentially provide years of payments for a condition, then retroactively decide that the condition was not related to the injury or occupational disease, and seek reimbursement. (Appellant's Opening brief, at 14). To the contrary, pursuant RCW 51.32.230, which states that "any overpayments previously recovered . . . shall be limited to six months' overpayments." The unjust-scenario envisioned by the claimant is addressed and dealt with by existing provisions contained within the Industrial Insurance Act.

Finally, if the court were to accept the claimant's argument regarding payment it would violate public policy. Providing payment of

needed treatment is consistent with the goal of the Industrial Insurance Act, which is to provide the injured employee with "sure and speedy relief." *Weyerhaeuser Co. v. Tri*, 117 Wn.2d 128, 138; 814 P.2d 629 (1991) (quoting *Favor v. Dept. of Labor & Industries*, 53 Wn.2d 698, 703, 336 P.2d 382 (1959). If the Court were to hold that an employer accepts responsibility for a condition by simply providing payment for treatment, employers would be far less likely to provide upfront payment for treatment until its responsibility is established via a final and binding Department order.

c. *The "Compensable Injury" doctrine does not apply in this situation*

The well-settled compensable injury doctrine dictates that consequences or complications of treatment for a workers' compensation injury are considered part of the underlying injury, absent an intervening and superseding cause. *Anderson v. Allison*, *Ross v. Erickson Construction Co.*, 89 Wash. 634 (1916)12 Wn. 2d 487 (1942). That doctrine is not applicable in the current situation because the underlying condition in the claimant's circumstances is bilateral epicondylitis. For example, if the claimant developed a secondary condition as a consequence a surgery related to the bilateral epicondylitis, then the doctrine would potentially apply. However, the thoracic outlet syndrome and its sequelae were not of consequence to the bilateral epicondylitis. Thus, the compensable injury doctrine does not apply.

As part of her argument, the claimant contends that because she filed an occupational disease claim and then, as a result of her seeking medical treatment, was eventually also diagnosed with thoracic outlet syndrome, then it should be covered under the claim. (Appellant's Opening Brief at 13). This is not so. A factual analogy to this situation would be a situation in which a worker suffers a broken leg at work, files an industrial claim, and then a year into physical therapy is diagnosed with asthma. In no plausible scenario would the employer be responsible for the asthma under the industrial injury claim. Likewise, in the current situation, the claimant filed an occupational disease claim for bilateral epicondylitis. More than a year into the claim being open for the bilateral elbow condition, she was diagnosed with thoracic outlet syndrome which eventually caused the several secondary conditions. If she wants PeaceHealth to accept responsibility for the thoracic outlet syndrome, the claimant needed to prove by a preponderance of the evidence that the condition was proximately caused by her distinctive conditions of employment. As discussed in section (B), she did not meet that burden.

V. CONCLUSION

The trial court reviewed the Board record in its entirety, listened to oral argument from each party, and determined that the claimant's thoracic outlet syndrome (and all sequelae) was not proximately caused by her

distinctive conditions of employment. This conclusion is supported by substantial evidence contained within the record. The claimant's argument on appeal relies on the testimony of Dr. Johansen, who was inherently unreliable as discussed above. Finally, the claimant's argument regarding the payment of treatment holds no water in the context of the expressed statutory provisions laid out in the Rules of Evidence and Industrial Insurance Act.

Respectfully submitted this 21st day of March, 2016.

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COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON

LORI ANN HULL, Appellant, v. PEACEHEALTH, Respondent.	No. 74413-5 PROOF OF MAILING BRIEF OF RESPONDENT

The undersigned states that on March 21, 2016, I deposited in the United States mail, with proper postage prepaid, Brief of Respondent as attached, addressed as follows:

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I further certify that I filed the original of the foregoing with:

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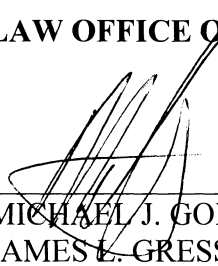
by mailing it by Federal Express (overnight) on March 21, 2016.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

DATED: March 21, 2016.

Respectfully submitted,

LAW OFFICE OF GRESS & CLARK, LLC



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