

NO. 48390-4-II

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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ANDREW AHRENS,

Appellant,

v.

DEPARTMENT OF LABOR & INDUSTRIES  
OF THE STATE OF WASHINGTON,

Respondent.

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**BRIEF OF RESPONDENT  
DEPARTMENT OF LABOR AND INDUSTRIES**

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Appendix A: Appellant's Letter, dated August 27, 2013

## I. INTRODUCTION

To effectively administer workers' compensation claims, the Department of Labor and Industries relies on parties to articulate basic disagreement with orders within the time allowed by law before the Department will revisit its decisions. In July 2013, the Department issued an order finding that Andrew Ahrens's industrial injury did not cause a low back condition. Two days later, it issued an order establishing Ahrens's wages at the time of his injury for the purposes of determining wage replacement benefits. Within the appeal period, Ahrens requested reconsideration of the low back order, providing reasons why the industrial injury caused the back condition and including a copy of the low back order.

The Department, however, received no written communication from Ahrens within the appeal period that expressed disagreement with how the Department calculated his wages. Because Ahrens provided nothing that would put the Department on notice that he disagreed with the wage order, that order became a final and binding determination once the appeal period expired. This Court should affirm.

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## II. ISSUE

For a party to contest a Department order, that party must timely request reconsideration in writing by providing information that is reasonably calculated to put the Department on notice that the party disagrees with the challenged order. Ahrens's August 27, 2013 letter disagreed with an order about his low back. Did this low back letter also express disagreement with a separate wage rate order?

## III. STATEMENT OF FACTS

### A. Statutory Background

In workers' compensation cases, the Department issues orders adjudicating the claims. A party may request reconsideration of such an order in writing by the Department. RCW 51.52.050. This is commonly called a "protest" or a "protest and request for reconsideration." A party has 60 days from the day the Department communicated the order to either protest the order to the Department or to appeal the order to the Board of Industrial Insurance Appeals. RCW 51.52.050, .060. If a party fails to timely contest the order, it becomes final and binds the parties. RCW 51.52.060. This is true even if the order contains an error. *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 538, 886 P.2d 189 (1994).

### B. The Department Allowed Ahrens's Industrial Insurance Claim and Issued an Order Setting His Wages at the Time of Injury

Ahrens sustained a work injury on August 16, 2012, and the Department allowed his claim. Clerk's Papers (CP) 80. On July 3, 2013,

the Department issued an order finding that Ahrens did not sustain a lumbar—low back—strain as a result of his industrial injury. CP 130. On July 5, 2013, the Department issued an order setting Ahrens’s wages at the time of his injury. CP 132.<sup>1</sup> This was done in order to determine the amount of wage replacement benefits (*i.e.*, time loss compensation), he should receive. RCW 51.08.178.

**C. In August 2013, Ahrens Protested the Department’s Decision That the Industrial Injury Did Not Cause a Low Back Strain**

On August 27, 2013, Ahrens submitted a “protest and request for reconsideration,” asking the Department to find that the low back strain was causally related to his workplace injury. CP 135. Attaching the July 3 low back order, the letter identified it as the subject of the protest:

I am writing on behalf of the Claimant, Mr. Andrew Ahrens, to protest and request reconsideration of the Department of Labor and Industries Notice of Decision dated July 3, 2013, and which was received by the Claimant on July 8, 2013 (the “Order”).

CP 135.<sup>2</sup>

The letter argued that the July 3, 2013 low back order was incorrect “because Mr. Ahren’s lumbar sprain was caused by his industrial injury.” CP 135. It alleged that the low back strain occurred while Ahrens participated in physical therapy for his workplace injury. CP 135. It noted

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<sup>1</sup> In early July 2013, the Department also issued an order ending time loss compensation benefits (July 1) and canceling an earlier order (July 2).

<sup>2</sup> The letter is attached in Appendix A.



that an independent medical examination determined that the strain was causally related to the workplace injury. CP 135. The letter argued that Ahrens did not have back pain before the industrial injury. The letter specifically requested that the Department reverse the low back order and “issue a new order accepting Mr. Ahrens’ lumbar strain under his claim.” CP 135.

**D. In October 2013, Ahrens Requested Reconsideration of the Order Setting His Wages**

On October 15, 2013—more than 60 days after the wage order—Ahrens submitted a new protest and request for reconsideration, asking the Department to reconsider the July 5 wage order. CP 146. The Department issued a revised wage order on January 6, 2014. CP 164. Eight days later, the Department voided the revised wage order, finding that the Department did not have authority to issue it. CP 167. The Department issued an order finding that the July 5 wage order could not be reconsidered because the Department had not received a protest within 60 days. CP 169. The Department also assessed an overpayment of time compensation benefits according to the final wage rate order. CP 171. Ahrens appealed both the “not-timely” order and the overpayment order to the Board of Industrial Insurance Appeals. CP 173-75.

**E. Chronological List of Orders**

<b>Relevant Orders</b>	<b>Date Issued</b>	<b>60 days</b>	<b>Date Protested</b>
Ending time loss compensation (wage replacement benefits)	7/1/13	8/30/13	Not protested or appealed
Canceling 5/28/13 order	7/2/13	8/31/13	Not protested or appealed
Denying responsibility for low back strain	7/3/13	9/1/13	8/27/13
Setting wage rate	7/5/13	9/3/2013	<b>10/15/13 (untimely)</b>
Holding 7/3/13 order in abeyance	9/10/13	11/9/13	Not protested or appealed
Assessing overpayment of time loss benefits	10/1/13	11/30/13	10/15/13
Cannot reconsider 7/5/13 order because no timely protest was received	10/18/13	12/17/13	12/2/13
Correcting wage rate order	1/6/14	3/7/14	Not protested or appealed
Withdrawing 1/6/14 order	1/14/14	3/15/14	Not protested or appealed
Cannot reconsider 7/5/13 order because no timely protest was received	1/15/14	3/16/14	3/14/14 (appealed to Board)
Assessing overpayment of time loss benefits	1/16/14	3/17/14	3/7/14
Affirming 1/16/14 order	6/6/14	8/5/14	6/11/14 (appealed to Board)

**F. The Board and Superior Court Agreed With the Department That the August Letter Did Not Address the Wage Order and the October Letter Was Not Timely**

The Board affirmed the Department on summary judgment, determining that Ahrens's August letter did not put the Department on notice that Ahrens disagreed with the wage order, and that his October

letter was not within the 60 day appeal window. CP 18. The Board remanded the overpayment order to the Department to correct an error in a date, but otherwise affirmed. CP 19. The superior court granted the Department's motion for summary judgment, ruling that no genuine issue of material fact existed as to whether Ahrens timely appealed the wage order and that the Board's order was correct. CP 358-59. Ahrens appeals.

#### IV. STANDARD OF REVIEW

The Court of Appeals reviews the superior court's decision in a workers' compensation case under the ordinary standard of civil review. RCW 51.52.140; *Malang v. Dep't of Labor & Indus.*, 139 Wn. App. 677, 683, 162 P.3d 450 (2007). The appellate court does not review the Board's decision, nor apply the Administrative Procedure Act. *Rogers v. Dep't of Labor & Indus.*, 151 Wn. App. 174, 179-81, 210 P.3d 355 (2009). On review of a summary judgment order, the appellate court's inquiry is the same as the superior court's. *Romo v. Dep't of Labor & Indus.*, 92 Wn. App. 348, 353, 962 P.2d 844 (1998).

The court grants summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). Courts "examine the pleadings to determine if any admissible proof and evidence exists that will create a genuine issue of material fact." *Geppert v. State*, 31 Wn. App. 33, 38-39, 639 P.2d 791 (1982). A material

fact is one on which the outcome of the litigation depends. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). Courts review the facts in a light most favorable to the non-moving party. *Hartley v. State*, 103 Wn.2d 91, 103, 690 P.2d 1163 (1989). But to defeat summary judgment, a party may not rely upon mere conjecture or speculation. *Garcia v. Dep't of Transp.*, 161 Wn. App. 1, 15, 270 P.3d 599 (2011).

## V. ARGUMENT

The only letter Ahrens filed within 60 days of the order setting his wages exclusively argued that the industrial injury caused his low back condition. It made no reference to his wages. Instead he submitted the first written communication that mentioned his wages after the 60 day appeal period had run. Since Ahrens failed to timely protest the wage order, the wage order became final and binding. This Court should affirm the Department's order rejecting Ahrens's late protest.

### A. **The August Protest Letter Did Not Put the Department on Notice That Ahrens Disagreed with the Wage Order**

Orders become final 60 days after the Department communicates them to a party unless a party files a written request for reconsideration with the Department or appeals to the Board. RCW 51.52.050, .060.

Ahrens did not submit a written document that mentioned the wage order within the order's 60 day appeal window. Yet Ahrens argues that the

Department should have construed his August letter addressing a contended low back condition as putting the Department on notice that he also challenged the wage order. Ahrens Br. at 3. But nothing in this letter disputed or even referenced Ahrens's wages or how the Department had calculated them.

Although it may take different forms, a request for reconsideration occurs only when "the Department receives a written document, filed within the time allowed by law, which is reasonably calculated to put the Department on notice that the party submitting the document is requesting action inconsistent with the decision of the Department." *In re Mike Lambert*, No. 91 0107, 1991 WL 11008451, \*1 (Bd. Ind. Ins. App. January 29, 1991); see *In re Misael Lopez Hernandez*, No. 15 16634, 2016 WL 2764168 (Bd. Ind. Ins. App. April 28, 2016); *In re Cortley Everett*, No. 15 15225, 2016 WL 2764166 (Bd. Ind. Ins. App. April 7, 2016).<sup>3</sup> In the significant decision *In re Lorraine Williams*, the Board found that a claimant's letter protesting a closing order was not a valid protest of an overpayment order where it only sought review of the lack of permanent partial disability and contained no statement regarding time loss

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<sup>3</sup> No appellate case has opined on what constitutes a valid protest, but workers' compensation practitioners widely use the Board's test and the parties agree here that the Court should apply it. See Ahrens Br. at 3. Courts defer to the Board's interpretation of the Industrial Insurance Act. *Weyerhaeuser Co. v. Tri*, 117 Wn.2d 128, 138, 814 P.2d 629 (1991).

compensation or an overpayment. *In re Lorraine Williams*, No. 07 24841, 2009 WL 2781034, \*2 (Bd. Ind. Ins. App. May 1, 2009). Similarly, a letter stating that “Claimant ... is protesting the closure of this claim. More information will be forthcoming as soon as possible” was not a valid protest of a segregation order because it did not mention the date of the order nor state disagreement with denial of the segregated condition. *In re Deborah Gottlieb*, No. 12 15613, 2013 WL 2476955, \*3 (Bd. Ind. Ins. App. February 25, 2013). In Ahrens’s case, although the August letter was a written document and filed within the time allowed by law, it was not reasonably calculated to put the Department on notice that Ahrens disagreed with how the Department calculated his wages.

The August letter did not reference the July 5 wage order. It made no reference to Ahrens’s wages; nor was a copy of the wage order attached to the protest. Nothing in the August 27, 2013 letter reasonably put the Department on notice that Ahrens challenged the decision setting his wage rate. The letter only addressed, and requested action inconsistent with, the Department’s decision to find that the industrial injury did not cause any low back strain. This Court should agree with the Department, Board, and superior court that Ahrens’s August letter did not appeal the wage order. And the protest filed October 15 was too late: any protest of

the July 5 wage order was due 60 days after the order was communicated—approximately by September 3.

**B. Ahrens’s Theories Lack Merit: the Meaning of a Protest Is Not a Question of Fact and the Subjective Impressions of the Parties Are Irrelevant**

The Legislature requires a protest to be in writing, showing that the Legislature wants the Department to reconsider matters based on the written document. RCW 51.52.050. What a written document says is a question of law, not fact. Although Ahrens argues that it is a question of fact to determine the meaning of a protest—he cites no authority for this proposition. It is his responsibility to do so. RAP 10.3(6). A court may generally assume that where a party has cited no authority, counsel has found none after a diligent search. *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962). In fact, when determining the meaning of similar things, the court has done so as a matter of law. *E.g.*, *Columbia Physical Therapy, Inc., P.S. v. Benton Franklin Orthopedic Associates, P.L.L.C.*, 168 Wn.2d 421, 429, 228 P.3d 1260 (2010) (meaning of orders determined de novo).

In considering the protest as a matter of law, the only relevant information for the court to consider is the document itself and the Department order that it allegedly protested. Ahrens argues that there is a material issue of fact as to whether the August letter was a valid protest

because, allegedly, “two different individuals” believed that the letter put the Department on notice that Ahrens requested action on the wage order. Ahrens Br. at 3. The two individuals are, apparently, Ahrens’s attorney Patrick Reddy, who sent the October letter inquiring about the wage order, and the Department claims manager who issued an amended wage order in January 2014, before vacating the same order a little more than a week later. Ahrens Br. at 4. But speculation on the subjective impressions of these two individuals is irrelevant in determining whether Ahrens submitted a timely written document articulating his disagreement with the wage order. *See Hendrickson v. Tender Care Animal Hosp. Corp.*, 176 Wn. App. 757, 762, 312 P.3d 52 (2013) (to defend against summary judgment, party may not rely on speculation or argumentative assertions that unresolved factual issues remain).

The Department administers the Industrial Insurance Act by issuing orders; a party contests those orders by written documents. RCW 51.52.050. By providing for a system of contesting orders in writing, the Legislature provided for an objective process. Ahrens agrees that the *Lambert* test applies: it provides for an objective test—that of reasonableness. *See Ahrens Br. at 3; Lambert*, 1991 WL 11008451, \*1. Under *Lambert*, the question is whether the written communication was “reasonably calculated” to put the Department on notice that Ahrens



disputed the order, not what the parties thought subjectively about the letter. *Lambert*, 1991 WL 11008451, \*1.

The court has already rejected a claimant's attempt to introduce the Department's deliberative process as evidence. In *McDonald v. Department of Labor & Industries*, 104 Wn. App. 617, 623, 17 P.3d 1195 (2001), the court held that "the processes L&I employed in reaching its ultimate decision denying the application to reopen are irrelevant." There, on appeal of a Department's denial of a request to reopen a claim, the court rejected the worker's contention that the Department's initial decision to reopen his claim should be treated as an admission of a party opponent. *Id.* The only question before the court was the underlying legal question of whether the injury proximately caused the worsening of his medical conditions, so the Department's thought process was irrelevant. *Id.*; see *Nationscapital Mortg. Corp. v. State Dep't of Fin. Inst.*, 133 Wn. App. 723, 762-63, 137 P.3d 78 (2006) ("Courts should not probe the mental processes of administrative officials in making a decision.").

Here, the deliberative processes of the Department, including the subjective impressions of the claims manager in issuing an amended wage order, were irrelevant in determining whether there was a timely protest in the first place. As the *McDonald* court held, when the Department has reason to reconsider an aspect of claim adjudication, it is permitted to

issue a new order. The earlier order is then not an admission, but a nullity. See *McDonald*, 104 Wn. App. at 623.<sup>4</sup>

Ahrens is also wrong that the Department should consider the subjective intent of the person (here Ahrens's attorney, Reddy). Ahrens's intent is expressed by the written document. RCW 51.52.050. Likewise, Ahrens is wrong in suggesting that the Department should have assumed that the low back protest addressed all orders issued within 60 days of its August protest letter or else affirmatively asked for clarification. Ahrens Br. at 5. "Neither the Department nor employers can be held to a standard that requires that any written communication received within 60 days of a final order must be determined to be a protest of that final order." *In re Robert Burton, Jr.*, No. 01 13817, 2002 WL 1885019, \*2. (Bd. Ind. Ins. App. November 5, 1998). This would create an unreasonable burden on Department personnel. Claims managers would have to revisit each Department determination in response to any communication from a party, even when that communication fails to even mention the subject matter of the order. Ahrens Br. at 5. Here the worker was represented by counsel and the protest letter received by the Department ably articulated the basis of Ahrens's disagreement with the Department decision to find that the industrial injury did not cause any low back strain. The Department had no

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<sup>4</sup> In any event, the claims manager appropriately vacated the January 2014 wage order because the Department had no authority to issue it. CP 167.

reason to believe this letter was anything other than what it purported to be: a request to have a low back condition included in Ahrens's injury claim.<sup>5</sup>

The Department received 109,363 new claims in 2015. *L&I Facts and Figures* (2015), <http://lni.wa.gov/news/files/LNIFactsAndFigures.pdf>. Each year it issues tens of thousands of orders and receives thousands of protests. In order to effectively administer the Industrial Insurance Act, it cannot inquire into the subjective intent of a party protesting an order. The Industrial Insurance Act mandates "sure and certain relief" for workers. RCW 51.04.010. If the process of administering claims was bogged down with inquiries of this sort, injured workers would suffer. Requiring parties to articulate disagreement with orders before the Department will revisit them allows for more efficient processing of protests and quicker Department determinations, benefiting all workers.

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<sup>5</sup> Nor does any alleged "confusion" created by the Department in issuing four orders excuse the untimely filing of a protest to the wage order. Ahrens Br. at 5. The Department issued a total of four orders in July 2013 and did not issue another order on this claim until September 2013. CP 103-04. Ahrens cites no authority for the proposition that "confusion" should form the basis for relief and this Court should not consider it. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (courts do not consider arguments unsupported by authority). Ahrens may be making a backdoor attempt for the application of equity, but the "predicates for equitable tolling are bad faith, deception, or false assurances by the defendant and the exercise of diligence by the plaintiff," and neither element is present here. *Millay v. Cam*, 135 Wn.2d 193, 206, 955 P.2d 791 (1998).

## VI. CONCLUSION

There was only one written communication from Ahrens to the Department after the July 5 wage order, within the 60 days allowed by law for a protest or appeal. That letter requested only that the Department take action by considering a low back strain to be related to the industrial injury. The letter did not reference the wage order nor request action inconsistent with that order. Since that letter was not a valid protest of the wage order, the trial court correctly concluded that the order was final and binding and that the Department was entitled to judgment as a matter of law.

RESPECTFULLY SUBMITTED this 17th day of August, 2016.

ROBERT W. FERGUSON  
Attorney General

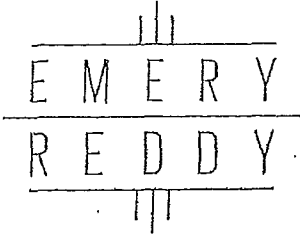


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# **APPENDIX A**

Brief of Respondent

ALL IN 8/27/2013 10:07:09 AM Pacific Daylight Time



Seattle Office  
600 Stewart Street  
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P » 206.442.9106  
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August 27, 2013

VIA FACSIMILE to (360) 902-4567

Kathryn L. Tarr  
Department of Labor & Industries  
Division of Industrial Insurance  
PO Box 44291  
Olympia, WA 98504

Re: Claimant: Andrew Ahrens  
Date of Injury: August 16, 2012  
DLI Claim No: AQ61809

PROTEST AND REQUEST FOR RECONSIDERATION

Dear Kathryn:

I am writing on behalf of the Claimant, Mr. Andrew Ahrens, to protest and request reconsideration of the Department of Labor & Industries Notice of Decision dated July 3, 2013, and which was received by the Claimant on July 8, 2013 (the "Order"). A true and correct copy of the Order is attached to this correspondence. The Order reversed the Department's Notice of Decision dated March 18, 2013. A true and correct copy of the March 18, 2013 Order is attached to this correspondence.

The Order is incorrect because Mr. Ahern's lumbar sprain was caused by his industrial injury. Mr. Ahrens injured his back while in physical therapy for his bilateral knee condition accepted under his open workers' compensation claim. Additionally, an independent medical exam dated February 28, 2013 determined that the sprain was causally related to his August 16, 2012 workplace injury.

Mr. Ahrens was not experiencing back pain at the time of his injury. Any prior back pain was aggravated and lit up by his August 16, 2012 workplace injury. The Claimant requests that the Department reverse the Order and issue a new order accepting Mr. Ahrens' lumbar strain under his claim.

Thank you for your prompt attention to this matter.

Yours very truly,

EMERY | REDDY, PLLC

Jason J. Hoeft

JJH:avm

Emery | Reddy, PLLC

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STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES  
DIVISION OF INDUSTRIAL INSURANCE  
PO BOX 44291  
OLYMPIA, WA 98504-4291

MAILING DATE 03/18/2013  
CLAIM NUMBER A061809  
INJURY DATE 08/16/2012  
CLAIMANT AHRENS ANDY R

EMPLOYER BERG EQUIPMENT  
UBI NUMBER 600 033 990  
ACCOUNT ID 276, 854-00  
RISK CLASS 518  
SERVICE LOC Tacoma

ANDY AHRENS  
% EMERY REDDY, PLLC  
600 STEWART STREET STE 1100  
SEATTLE WA 98101-1269

NOTICE OF DECISION

The Department of Labor and Industries is responsible for the condition diagnosed as lumbar strain, determined by medical evidence to be related to the accepted condition under this industrial injury for which this claim was filed.

Supervisor of Industrial Insurance  
By Kathryn L Tarr  
Claims Manager  
(360) 902-4366

MAILED TO: WRKER/ATTY - ANDY AHRENS, % EMERY REDDY, PLLC  
600 STEWART STREET STE 1100, SEATTLE WA 98101-1269  
EMPLOYER - BERG EQUIPMENT AND SCAFFOLDING  
2130 EAST D STREET, TACOMA WA 98421  
PROVIDER - HEUSCH WENDY L DO  
RAINIER ORTHOPEDIC INSTITU, 3801 5TH ST SE STE 110, PUYALLU

RECEIVED

MAR 19 2013

EMERY/REDDY, P L L

THIS ORDER BECOMES FINAL 60 DAYS FROM THE DATE IT IS  
COMMUNICATED TO YOU UNLESS YOU DO ONE OF THE FOLLOWING: FILE  
A WRITTEN REQUEST FOR RECONSIDERATION WITH THE DEPARTMENT OR  
FILE A WRITTEN APPEAL WITH THE BOARD OF INDUSTRIAL INSURANCE  
APPEALS. IF YOU FILE FOR RECONSIDERATION, YOU SHOULD INCLUDE THE  
REASONS YOU BELIEVE THIS DECISION IS WRONG AND SEND IT TO:  
DEPARTMENT OF LABOR AND INDUSTRIES, PO BOX 44291, OLYMPIA, WA  
98504-4291. WE WILL REVIEW YOUR REQUEST AND ISSUE A NEW ORDER.  
IF YOU FILE AN APPEAL, SEND IT TO: BOARD OF INDUSTRIAL INSURANCE  
APPEALS, PO BOX 42401, OLYMPIA WA 98504-2401 OR SUBMIT IT ON AN  
ELECTRONIC FORM FOUND AT [HTTP://WWW.BIIA.WA.GOV/](http://www.BIIA.WA.GOV/).

STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES  
DIVISION OF INDUSTRIAL INSURANCE  
PO BOX 44291  
OLYMPIA, WA 98504-4291

MAILING DATE 07/03/2013  
CLAIM NUMBER AQ61809  
INJURY DATE 08/16/2012  
CLAIMANT AHRENS ANDY R

RECEIVED

JUL 08 2013

EMERY/REDDY, PLLC

EMPLOYER BERG EQUIPMENT  
UBI NUMBER 600 033 990  
ACCOUNT ID 276, 854-00  
RISK CLASS 51B  
SERVICE LOC Tacoma

ANDY AHRENS  
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SEATTLE WA 98101-1269

NOTICE OF DECISION

This order corrects and supersedes the order(s) of 3/18/2013.

The Department of Labor and Industries is not responsible for the condition diagnosed as: lumbar sprain, determined by medical evidence to be unrelated to the industrial injury for which this claim was filed.

The department will not pay bills for medical treatment of lumbar sprain.

Supervisor of Industrial Insurance  
By Kathryn L Tarr  
Claim Manager  
(360) 902-4366

MAILED TO: WRKER/ATTY - ANDY AHRENS, % EMERY REDDY, PLLC  
600 STEWART STREET STE 1100, SEATTLE WA 98101-1269  
EMPLOYER - BERG EQUIPMENT AND SCAFFOLDING  
2130 EAST D STREET, TACOMA WA 98421  
PROVIDER - HEUSCH WENDY L DO  
RAINIER ORTHOPEDIC INSTITU, 3801 5TH ST SE STE 110, PUYALLU

THIS ORDER BECOMES FINAL 60 DAYS FROM THE DATE IT IS COMMUNICATED TO YOU UNLESS YOU DO ONE OF THE FOLLOWING: FILE A WRITTEN REQUEST FOR RECONSIDERATION WITH THE DEPARTMENT OR FILE A WRITTEN APPEAL WITH THE BOARD OF INDUSTRIAL INSURANCE APPEALS. IF YOU FILE FOR RECONSIDERATION, YOU SHOULD INCLUDE THE REASONS YOU BELIEVE THIS DECISION IS WRONG AND SEND IT TO: DEPARTMENT OF LABOR AND INDUSTRIES, PO BOX 44291, OLYMPIA, WA 98504-4291. WE WILL REVIEW YOUR REQUEST AND ISSUE A NEW ORDER. IF YOU FILE AN APPEAL, SEND IT TO: BOARD OF INDUSTRIAL INSURANCE APPEALS, PO BOX 42401, OLYMPIA WA 98504-2401 OR SUBMIT IT ON AN ELECTRONIC FORM FOUND AT [HTTP://WWW.BIIA.WA.GOV/](http://www.BIIA.WA.GOV/).

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 08/27/2013 BY 60321 AM/Pacific Dev/INT/TMS

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NO. 48390-4-II

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

ANDREW AHRENS,

Appellant,

v.

WASHINGTON STATE  
DEPARTMENT OF LABOR AND  
INDUSTRIES,

Respondent.

CERTIFICATE OF  
SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served the Brief of Respondent Department of Labor and Industries with Appendix A, and this Certificate of Service in the below described manner.

**Via E-Filing to:**

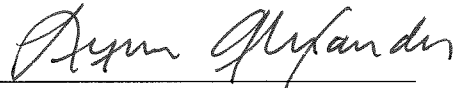
David Ponzoha  
Court Administrator/Clerk  
Court of Appeals, Division II  
950 Broadway, Suite 300  
Tacoma, WA 98402-4454

//  
//

**Via First Class United States Mail, Postage Prepaid to:**

Jason J. Hoefft  
Emery Reddy, PLLC  
600 Stewart Street, Suite 1100  
Seattle, WA 98101  
**Attorney for Appellant Andrew Ahrens**

DATED this 17th day of August, 2016.



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LYNN ALEXANDER  
Legal Assistant  
Office of the Attorney General  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104  
(206) 464-7740

# WASHINGTON STATE ATTORNEY GENERAL

**August 17, 2016 - 12:37 PM**

## Transmittal Letter

Document Uploaded: 7-483904-Respondent's Brief.pdf

Case Name: Andrew Ahrens v. Department of Labor and Industries

Court of Appeals Case Number: 48390-4

**Is this a Personal Restraint Petition?** Yes  No

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

Brief of Respondent Department of Labor and Industries with Appendix A and Certificate of Service

Sender Name: Lynn E Alexander - Email: [lynna@atg.wa.gov](mailto:lynna@atg.wa.gov)

A copy of this document has been emailed to the following addresses:

[katyd@atg.wa.gov](mailto:katyd@atg.wa.gov)