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Washington State
Supreme Court

ZBIGNIEW M. LASKOWSKI v. STATE OF WASHINGTON
DEPARTMENT OF LABOR
AND INDUSTRIES

THE SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

CAUSE NO. 16-2-04012-34

COURT OF APPEALS, DIVISION II OF STATE OF WASHINGTON NO.

53067-8-II

THE SUPREME COURT OF STATE OF WASHINGTON NO. ~~95785-5~~

97792-5

IN THE SUPREME COURT OF STATE OF WASHINGTON

STATE OF WASHINGTON
DEPARTMENT OF LABOR
AND INDUSTRIES, Respondent

V.

ZBIGNIEW M. LASKOWSKI, Petitioner Pro Se

PETITION FOR REVIEW

ZBIGNIEW M. LASKOWSKI
PETITIONER, PRO SE
PO BOX 6195
OLYMPIA, WA 98507
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	4. COPIES OF PAGES 24 & 25 OF VERBATIM REPORT OF PROCEEDINGS, ZBIGNIEW M. LASKOWSKI V. WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES; THURSTON COUNTY SUPERIOR COURT CASE NO. 16-2-04012-34, ARGUMENT BY MR. BARNES, FEBRUARY 27, 2018	
	5. COPIE OF PAGE 26 OF VERBATIM REPORT OF PROCEEDINGS, ZBIGNIEW M. LASKOWSKI V. WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES, THURSTON COUNTY SUPERIOR COURT	

CASE NO. 16-2-04012-34; ARGUMENT BY MR.
BARNES ON FEBRUARY 27, 2018

6. COPIES OF 2 PAGES OF SOUTH SOUND REDIOLGY
REPORT DATED 3/20/2018 OF ZBIGNIEW
LASKOWSKI, DOB 01/23/1957; MRN # 10461;
REFERRER ROBERT LANG, MD; ADDENDUM
04/04/18 10:38 SIGNED BY DAVID KIM, MD.
7. COPIES OF 6 PAGES OF STIPULATION TO INFORMAL
DEPOSITION NO. M2010-444 IN THE MATTER OF
LICENSE TO PRACTICE AS A PHYSICIAN AND
SURGEON OF JEFFREY E. PEARCE, MD LICENSE NO.
MD00022290
8. COPIE OF 1 PAGE FROM WASHINGTON STATE
DEPARTMENT OF LABOR AND INDUSTRIES
WEBSITE, PROVIDERS WHO CAN TREAT L&I
PATIENTS PRINTED OUT 10/16/2019.

TABLE OF AUTHORITIES

STATUTES

RCW 51.04.050, .060, 020 & 030

RCW 51.04.

RCW 51.08.140

RCW 51.32.220, .225, .240

RCW 51.52.100, .102, .115, .140

RCW 34.05.455, .562

WAC 296-20-01002, -270, -280, -290, -300, -250, -260, -220, -540,
-530, -590, -600, -610, -620, -630, -640, -670, -680

WAC 263-12-093

ASSIGNMENTS OF ERRORS

A. UNPUBLISHED OPINION; COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON NO. 53067-8-II:

PAGE

NO.11-2
"In May 2015..... necessary."
NO.2.....2
"At a conference.... examination."
NO.3.....3
"After completing.....Category IV (4)."
NO.4.....3
"Based on the..... necessary."
NO.5.....4
"Laskowski also.....examination."
NO.6.....4
"Entering....and conclusions."
NO.7.....5
"Because the parties....examination."
NO.8.....6
"Because the parties' agreement.....superior court."
NO.9.....7
"Laskowski makes.....these arguments."
NO.10.....7
"None of Laskowski's.....there are verities on appeal."
NO.11.....7
"Laskowski also appears.....on this point."
NO.12.....8
"Moreover, by.....disagrees with them."

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERRORS:
UNPUBLISHED OPINION; COURT OF APPEALS, DIVISION II OF THE
STATE OF WASHINGTON NO. 53067-8-II:

NO.1 PAGE 1-2

The Department of Labor and Industries closed Claim AB 17747 in

May 2015 without valid medical evaluation, after Independent

Medical Examination administered by Medical Consultants

Network and Dr. Silverman failed, due to disagreement between doctor and Petitioner over pronunciation of Dr. Karges name. The Department decided not to allow another IME to be performed. That was first and the only one out of 7 IMEs performed in this claim which didn't went through.

NO.2 PAGE 2

The language this court use to describe what happen at the conference never appeared at that point. Words "binding medical examination", "bound" never appear or were pronounced.

[EXHIBIT 4]

NO.3 PAGE 3

Diana Kraemer, MD not only increased the category of Petitioner's disability from Category III (3) to IV (4) showing a progress of occupational disease but also indicated curative treatment and necessity of future surgery (please see on page 18, point 3 of Diana Kraemer, MD IME report dated June 28, 2016 for Claim AB 17747, Docket Nos. 15-17653 & 15-17654) [EXHIBIT 3].

Her unexplained notion that central canal stenosis at L 3-4 level is not cover by claim AB 17747 it could be a consequence of ex-parte communication (RCW 34.05.455) with ALJ William P. Gilbert from whom she took orders and most likely she was not ready to implicate other doctors of malpractice. The

role of ALJ William P. Gilbert delegated at the Board of Industrial Insurance Appeals to financial division speaks its volume. Since John Barnes, AAG revealed hoax called "high ACE" or "high average current earnings", which he used since early '90 and the Petitioner started following his tip in calculation of workers compensation benefits, Board assign AJL William P. Gilbert who retaliated, by simply holding medical part of the AB 17747 claim against its financial aspects.

NO.4 PAGE 3

The Board of IIA illegally and against laws of WAC 263-12-093(1)(a)(c)(2)(a)(b)(4), and RCW 51.52.100 bypassed all these requirements. Diana Kraemer, MD as any other witness supposed to be sworn and testify (RCW 51.52.100), specially about all the irregularities which accrued in her June 28, 2016 report.

NO.5 PAGE 4

Board of IIA decisions are bounded by the content of laws as: WAC 263-12-093, RCW 51.52.100, and RCW 34.05.455(1)(2)(5). Bypassing them by deliberate omission creates injustice on the Board's part.

NO.6 PAGE 4

An agreement to use Diana Kraemer, MD, today's in question,

expertise, never meant to be unlawfully interrupted by ex-parte communication with ALJ William P. Gilbert. If not Hon. Carol Murphy disclosure during second day of the trial at the Thurston County Superior Court, not one including the Petitioner, wouldn't know about ALJ Gilbert criminal/ethical infraction. [EXHIBIT 4]

NO.7 PAGE 5

Again, the Board of Industrial Insurance Appeals didn't comply with the rules the legislature wants us to follow. Judge, active member of WSBA (WAC 263-12-093) supposed to write Proposed Decision and Orders. There couldn't be any other reason for absence of Proposed Decision and Orders than refusal to do so by ALJ William P. Gilbert, who already risked disbarment by his peers for unlawful act of ex-parte communication with Diana Kraemer, MD.

NO.8 PAGE 6

The Court of Appeals, Division II without due diligence affirmed superior court Findings and Conclusions. Consider that Petitioner didn't agree to ALJ William P. Gilbert ex-parte communication (see RCW 34.05.455) what breached the parties' agreement and because Proposed Decisions and Orders were never written by qualified judge and consulted with the parties to this litigation before the Board issued its order. [EXHIBIT 4]

NO.9 PAGE 7

Between October 2015 till April 2017 Petitioner was under regular medical care of Kevin Berry, MD who not only wrote letter to ALJ Brian Watkins, Acting Deputy Chief Judge [EXHIBIT 1] but also, the BIIA regularly was receiving chart notes informing the Board and Department of Labor and Industries of current medical conditions of Petitioner, Zbigniew Laskowski. With instructions and orders possibly received from ALJ William P. Gilbert letter from Dr. Berry written on May 17, 2016 (short note on page 14 of June 28, 2016 IME report states: [EXHIBIT 2] "Dr. Berry writes to Judge Brian Watkins. That letter is read but not dictated into this report." Chart notes submitted from the Rehabilitation of Issaquah clinic never were added to the Petitioner file and remain ignored. This Court wrongly stated that Petitioner relies on records created after the date of Dr. Kraemer June 28, 2016 IME report, where clearly date 05/17/2016 of the letter from attending physician Dr. Berry showed that it was received by the Board month and half early before IME report from Dr. Kraemer. Other documents/chart notes and radiology reports from Dr. Trent Tredway of Seattle (12/2016), Dr. Christoph Hofstetter of University of Washington Neurosurgery Department (10/2017) or Dr. Robert Lang (03/2018-2019) are another proof of ongoing

medical problems of Petitioner's spine, once called fixed by Diana Kraemer, MD.

NO.10 PAGE 7

This Court may possibly miss on the fact that Thurston County Superior Court decision was directly appealed to Supreme Court of the State of Washington, so that's why the Court of Appeals, Division II calls it "verities on appeal".

NO.11 PAGE 7

The Petitioner argument is supported by WAC 263-12-093 which the Court of Appeals, Division II seems only recognize of some parts of it.

NO.12 PAGE 8

Petitioner (Laskowski) challenges Dr. Diana Kraemer IME report dated June 28, 2016 and will continue to do so, because irregularities mainly created by the lack of integrity of the doctor and lack of oath never administrated when depositions were taken to answer questions which never got a chance to be asked.
(see RCW 51.52.100)

GROUNDS FOR REVIEW

The Petitioner, Zbigniew M. Laskowski, whose mailing address is: Po Box 6195, Olympia WA 98507, petitions the Supreme Court of the State of Washington for review of the Washington State Court

of Appeals, Division II, of Unpublished Opinion in the matter of Case No. 53067-8-II filed September 24, 2019.

At the issue is above mentioned Unpublished Opinion. Copies of it are attached to this Petition for Review.

The parties in the hearing are Petitioner herein and the Washington State Department of Labor and Industries.

This Petition for Review is timely filed with the proper court.

Petitioner has exhausted administrative remedies and is aggrieved by the decision of the Court of Appeals, Division II.

The Petitioner is in title to relief because:

The Petitioner, Zbigniew M. Laskowski, filed appeals with Board of Industrial Insurance Appeals (Board) from Department of Labor and Industries (Department) order ending the time-loss benefits on May 11, 2015 and from the second order dated May 14, 2015, without additional permanent partial disability. The parties agreed on Diana Kraemer, MD perform IME (Independent Medical Examination).

Dr. Kraemer issued her opinion that the Petitioner was not in need of farther medical treatment for his 2006 industrial injury but upgraded the lumbo-sacral impairment rating to Category IV. The Petitioner appealed Board of Industrial Insurance Appeals Order on Agreement of Parties dated September 12, 2016 because Dr. Diana Kraemer IME Report lack of admissibility and compliance with RCW 51.52.100, RCW 51.52.102 and RCW 51.52.115. (RCW 51.52.100 Proceedings before the board – Contempt: “Hearings shall be held in the county of the residence of the worker or beneficiary, or in the county where the injury

occurred, at the place designated by the board. Such a hearing shall be de novo and summary, but not witness testimony shall be received unless he or she shall first have been sworn to testify the truth, the whole truth and nothing but the truth in the matter being heard or unless his or her testimony shall have been taken by deposition according to the statutes and rules relating to superior court of this state”.

Dr. Diana Kraemer second IME report dated June 28, 2016 does not consists with what she wrote in her first 2012 IME report with regards to the treatment recommendation. She puts time limits in her newest 2016 IME Report, naming the year 2007, the last year when the Department should bare the medical and financial responsibility: “The conditions of the Lumbar sprain and lumbar radiculopathy is accepted as related to the Claim AB 17747. Therefore, MRI imaging, the surgery of January 25, 2007, and the treatment and imaging through December, 2007, are thought to be related to Claim AB 17747.” (page 423 CABR)

“There is no recommended treatment related to Claim AB 17747.

Mr. Laskowski is a candidate for lumbar decompression for treatment of central canal stenosis at L3-L4, unrelated to Claim AB 17747” (mid page 424 of CABR).

It has to be noted that Dr. Diana Kraemer when second time opinionated in this claim, decided to prejudice against the lumbar integral segment L3-L4 by excluding it and insisting that it shouldn't be consider part of the claimant lumbar.

To continue surprise potential readers (page 424-425 of CABR) Dr. Diana Kraemer wrote: "There is no progression related to the industrial injury that would alter those recommendations."

Farther on the same page (page 425 of CABR) Dr. Diana Kraemer equated impairment rating in this claim to Category IV (4) using WAC 296-20-280, what changed the previous category by Drs. DeVita and Smith IME of 2008, by the whole one (1) Category of impairment rating.

Farther Dr. Diana Kraemer stated that she used "The Doctor's Worksheet for Rating Dorso-Lumbar and Lumbosacral Impairment" in accordance with WAC 296-20-280 (without forwarding copies of Worksheet), at the same not leaving doubt that Lumbar of the Petitioner's spine is not the only condition allowed for treatment in Claim AB 17747.

Next, I would like to direct the Court's attention to Dr. Diana Kraemer June 28, 2016 Independent Medical Examination report where she states as follow: "10. Correct surgery: Mr. Laskowsky has expressed concern that the wrong interspace was operated on. This is reasonable concern, since he has a common anomaly with 6-non-rib-bearing lumbar vertebrae. These are numbered according to different paradigms in this multiple imaging and operative reports. For clarification, all operative

procedures were performed at the second interspace above the Sacrum.”

The Petitioner would like to direct the Court’s attention to the mid of page 394 of CABR where Dr. Jeffery Pearce, the Neurosurgeon who performed the first surgery on Petitioner’s lumbar, then not threaten any more by statute of limitation in this matter, in his chart notes dated 09/28/2015 reviled:” I reviewed an MRI scan of the thoracic and lumbar spine from 07/08/13. This was before his prior fusion. In the lumbar spine he had a previous decompression at the second interspace. He did have facet effusions and sagittally-oriented facets that certainly could have been unstable. I do not have the flexion/extension x-rays. He had mild spinal and lateral recess stenosis with minimal retrolisthesis at the third mobile interspace. A myelo CT following the fusion on 06/10/14 demonstrates a wide decompression and interbody fusion with instrumentation at the second mobile interspace. Again, there is mild spinal and lateral recess stenosis at the third interspace.”

On the page 17 of Dr. Diana Kraemer June 28, 2016 IME report (page 423 of CABR):” This was the appropriate level for these symptoms and imaging findings. This is no evidence that the procedure was performed “at the wrong level”. There is not

evidence that the ruptured disc was not addressed during surgery because of wrong level surgery. The lumbar fusion was performed at the appropriate interspace, to address the spondylolisthesis. Mr. Laskowski can be reassured that the operations were performed at the correct level.”

Second interspace in Petitioner’s lumbar where all surgeries where done should than be marked as L5-6.

This correct conclusion should logically draw another one that the third and fourth interspaces, respectively L4-5 and L3-4 are the two interspaces that need still medical attention.

Dr. Diana Kraemer limited her review to sprain and strain of Lumbar only but by using the Worksheet appropriate for Dorso-Lumbo-Sacral Lumbar strongly suggests that Dr. Kraemer was aware of all 10 conditions pertaining to the Claim AB 17747.

The Department of Labor and Industries when adjudicated this claim used Medical Billing Codes as follow: 846.0, 724.4, 724.3 (from 01/05/2006 till 09/30/2015), M54.15, M54.14, M54.16, S33.8XXA, M54.17, M51.14, M54.31 (from 10/01/2015 till 2099) what respectively stands for Sprain and Strain of lumbosacral, Thoracic/Lumbosacral Nueritis/Radiculitis UNSPEC, Sciatica, Radiculopathy Thoracolumbar Region, Radiculopathy Thoracic Region, Radiculopathy Lumbar Region, Sprain OTH parts Lumbar

Spine & Pelvis INIT ENC, Radiculopathy Lumbosacral Region,
Intervertebral Disc D/O with Radiculopathy Thoracic and Sciatica
Right Side.

Because of this long list not coincidentally created by the
Washington State Department of Labor and Industries, and still
unresolved L4-5 and L3-4 medical issues in this claim, by the
authority of WAC 296-20-01002(3) the Petitioner did not reach
yet the MMI (Maximum Medical Improvement), equivalent to "fix
and stable."

Farther, the Court may notice another Attending Physician in the
Claim AB 17747. Dr. Kevin Berry who provide medical services
between November 05, 2015 till May 2017, wrote letter dated
May 17, 2016, acknowledge by Dr. Diana Kraemer in her June 28,
2016 report, which reads:" I suspect that he will have chronic and
ongoing low back and leg pain indefinitely despite continued
medical treatment but it would be my hope that we could
significantly improve his pain control and function. At this point,
he is demonstrating progressive decline in terms of function due
to his pain complains" (page 207-208 o CABR).

CONCLUSIONS

Dr. Diana Kraemer 2016 Independent Medical Examination
contains several innuendos and missed opportunities to apply
common knowledge and Science, which could be avoid it if

RCW 51.52.100, RCW 51.52.102, RCW 51.52.115,
RCW 34.05.455(1)(2)(5), RCW 34.05.562 and WAC 263-12-093
were followed by the Board of Industrial Insurance Appeals or the
Thurston County Superior Court; either of the courts did.
Superior Court Judge Hon. Carol Murphy used bullying when the
Petitioner address the issue of being blacklisted in the State of
Washington and not be able to retain lawyer for proper legal
representation: "You just didn't find one yet".

Files in Thurston County Superior Court Cause No. 16-2-04012-34
are heavily altered by Court's orders and lack of respond to
Petitioner motions.

The Thurston County Clerk's Office took active role in blocking,
potentially delaying of files or not filling documents at all.

The Supreme Court of the State of Washington shall reverse the
Thurston County Superior Court order dated May 25, 2018 as an
order of prejudice and perjury.

The Unpublished Opinion of the Washington State Court of
Appeals, Division II for the matter No. 53067-8-II contains several
innuendos and incontinences of laws and shall be reversed.

ALJ William P. Gilbert for his role in tampering with evidence
alleged by Hon. Carol Murphy and for intervening into the final
medical opinion of Diana Kraemer, MD has to be
noted.

Exhibits 7 and 8 included with this Petition shall help this Court
gain opinion of the quality of medical aid still use by the
Department of Labor and Industries. It vital for all workers who
experienced injuries to receive high quality of medical help.

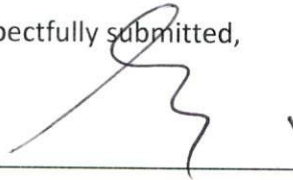
Doctors with two malpractices on their record should be subject to only limited licensing. Their presents on Department of Labor and Industries preferred list of providers it is continued problem for the Department to fix.

RELIEF SOUGHT

Please order the Department of Labor and Industries for farther adjudication of Claim AB 17747.

DATED, October 19, 2019

Respectfully submitted,



Zbigniew M. Laskowski, Petitioner Pro Se

Certificate of Service

I certify that on October 19, 2019, I deposited in the United States mail, delivered through a legal messenger service, personally delivered, a copy of this document to the attorney(s) of record for Plaintiff/Petitioner Defendant/Respondent All Other Parties of Record.

Attorney for Plaintiff/Petitioner

Defendant/Respondent

Other: _____

PRESENTING PARTY:

Sign: _____
Print/Type Name: **ZBIGNIEW M. LASKOWSKI**
WSBA # _____ (if attorney)

Address **PO BOX 6195**

City/State/Zip: **OLYMPIA/ WA/ 98507**

Attorney for: _____

Telephone: **(360) 918 4401**

Date: **October 19, 2019**

LIST NAMES, ADDRESSES & TELEPHONE NUMBERS
OF ALL PARTIES REQUIRING NOTICE

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SUPREME COURT CLERK

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GENERAL-TACOMA

WSBA #: 36978

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WSBA #:

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 zbigniew laskowski <zlaskowski@yahoo.com>





EXHIBIT
1



 Oct 18 at 6:20 PM

ROI

 REHABILITATION
 OPTIONS OF ISSAQUAH

www.rehabissaquah.com
 425-394-1200
 Fax 425-394-0100
 1740 NW Maple St. Suite 111
 Issaquah, WA 98027

Date: 5/17/2016

RE: Zbigniew Laskowski

Attn: Judge Brian Watkins,

I am writing this letter on behalf of my patient Zbigniew Laskowski (DOB: 01/23/1957). This patient has been under my care since November 2015. He was referred to me by his previous surgeon Jeffrey Pearce, M.D. He is very limited by his lower back pain with pain radiating into his legs. This pain is also accompanied by left leg muscle atrophy likely of a neurologic source. Additionally, he also has significant pain in his left shoulder and left mid back.

The patient's low back and bilateral leg pain is most consistent with a bilateral L3 radiculopathy and likely some element of post laminectomy syndrome. This does correspond with the advanced imaging that reflects spinal stenosis in his lumbar spine as well as his clinical history. The patient has undergone a great deal of treatment including epidural injections, surgical intervention, physical therapy and medication management. Unfortunately, medication management is significantly limited by the patient's sensitivity to pain medications. He has noted the most significant improvement of pain and function with the use of medical marijuana. This patient has demonstrated appropriate use of pain medications and responsible conduct while on them. I have no significant concerns about addiction or abuse in this particular patient.

This patient will require further treatment. I do suspect that there is a strong likelihood that we can provide him with some improvement through either surgical or nonsurgical means. I have referred him to a neurosurgeon for consideration of an additional decompression surgery that would hopefully prevent any progression of his neurologic injuries. This may also significantly minimize pain. However, he also is a very reasonable candidate for a spinal cord stimulator which may further decrease pain and improve his function. It is impossible to predict exactly how much function he would gain through these interventions, but I would estimate that it is very unlikely he would be able to return to his previous level of function. Furthermore, he will likely have significant disability due to pain and weakness in the future. This would prevent them from returning to his previous level of employment and may preclude him from meaningful employment at any level.

It is my understanding that he has a previous labor and industries claim that is related to his lumbar spine. To my knowledge, this claim was closed well before he sought out treatment with me so I do not have all the details concerning it. Although, I would say that the patient does continue to have significant lumbar pain and leg pain that is consistent with his imaging findings. Furthermore, there are reasonable treatment options for him to consider, including additional lumbar surgery or other interventional procedures that may help to mitigate his pain. I suspect that he will have chronic and ongoing low back and leg pain indefinitely despite

Sent from Yahoo Mail on Android

EXHIBIT 2.

Diana Kraemer, MD

Zbigniew Laškowski

June 28, 2016

Claim AB17747

Docket Numbers 15-17653 and 15-17654

Page 14

April 5, 2016: He reports that he does feel that great. He feels worse while having bowel movements. He is wondering if we can refer him to a neurosurgeon for a surgical opinion. Oxycodone is added, and he is referred to Dr. Bishop.

May 17, 2016: Dr. Berry writes to Judge Brian Watkins. That letter is read but not dictated into this report.

PAST MEDICAL HISTORY:

Injuries: Described above, related to this claim.

Illnesses: He reports no other hospitalizations or surgeries.

Surgeries: Significant for the surgeries mentioned in this report and a left shoulder surgery in 2003.

Allergies: Fentanyl.

Medications: He is currently taking morphine 45 mg three times per day.

REVIEW OF SYSTEMS:

He endorses blurred vision and noise in his ears in the past. He is currently having shaking in his limbs, pain in his testicles, difficulty with sexual functioning, and genital pain. He endorses joint pain and swelling, loss of motion in his joints, previous history of bone fractures, and spine abnormalities. He endorses feelings of depression, excessive worry and anxiety, feelings of worthlessness, nervous exhaustion, frequent nightmares, and difficulty with sleeping.

SOCIOECONOMIC HISTORY:

Marital Status and Dependents: He is currently single.

Education: He has a high school education.

Military: He has not served in the Armed Forces.

Brief Work History: He had been working for Air Van Lines for six months at the time of his injury. He is currently receiving Social Security benefits.

Habits: He does not smoke tobacco or use alcohol.

EXHIBIT 3

Diana Kraemer, MD

Zbigniew Laskowski

June 28, 2016

Claim AB17747

Docket Numbers 15-17653 and 15-17654

Page 18

the Lumbar MRI of March 2, 2006, both showed changes consistent with L5 pars compromise, which would not have been caused by the mechanism of injury described in Claim AB17747, on a more probable than not basis.

It should be noted that the current use of narcotics to treat Mr. Laskowski's chronic back and leg pain do not meet Washington State Labor and Industries Guidelines for Prescribing Opioids to Treat Pain in Injured Workers, July 1, 2013 and therefore cannot be related to Claim AB17747 on a more probable than not basis.

3. *Do any conditions related to the industrial injury require further medical treatment as of May 15, 2015? If this is the case, what treatment recommendations do you have?*

There is no recommended treatment related to Claim AB17747. Mr. Laskowski is a candidate for lumbar decompression for treatment of central canal stenosis at L3-L4, unrelated to Claim AB17747. Dr. Keem noted solid bony fusion of the 2nd lumbar interspace, confirmed by x-ray during that same visit. If there is any further concern for non-union of the lumbar spine, then a lumbar spine CT, with sagittal reconstruction, could be performed to further document the status of the lumbar fusion, unrelated to Claim AB17747.

4. *Did the residual impairment from the January 5, 2006, industrial injury temporarily prevent Mr. Laskowski from obtaining and performing work on a full-time basis during the period between May 12, 2015, and May 15, 2015?*

No. It is noted that Dr. Becker performed a Physical Capacities Examination on December 12, 2007 that reported that Mr. Laskowski was capable of performing Full Time Medium work, with some modifications, as related to Claim AB17747. There is no progression related to the industrial injury that would alter those recommendations.

It is noted that a lumbar fusion was performed on February 10, 2014. Most surgeons recommend 3, 6, or 12 months of recovery after fusion before returning to work. By those standards, Mr. Laskowski would have been capable of full time work between May 12, 2015 and May 14 or May 15, 2015.

5. *Did the residual impairment from the January 5, 2006, industrial injury permanently prevent Mr. Laskowski from obtaining and performing work on a full-time basis as of May 15, 2015, and thereafter?*

No. It is noted that Dr. Becker performed a Physical Capacities Examination on December 12, 2007 that reported that Mr. Laskowski was capable of performing Full Time Medium work, with some modifications, as related to Claim AB17747. There is

EXHIBIT 4

ZBIGNIEW M. LASKOWSKI vs. WASHINGTON STATE DEPARTMENT OF LABOR & INDUSTRIES

1 THE COURT: And the document you referenced,
2 the letter from January 4th, which is in the record
3 as 46, starts off with, "After our in-person meeting
4 last week," and that was a letter that is signed by
5 the judge. Any record of that in-person meeting?

6 MR. LASKOWSKI: Judge --

7 THE COURT: I will hear from you again,
8 Mr. Laskowski. Right now, I'm talking to Mr. Barnes.

9 MR. BARNES: Not in the transcript that was
10 actually provided to us as part of the certified
11 appeal Board record. I do recall that there were on
12 more than one occasion where we came in there for
13 purposes of a hearing that didn't go forward, because
14 there was no need to, because there was no medical
15 witness. It would have been fruitless. Maybe that's
16 how this came about, but, unfortunately, there is no
17 transcript. Even that would have probably have been
18 off the record anyway.

19 THE COURT: Is this normal?

20 MR. BARNES: Some judges are much better than
21 others. I was a little surprised to see when I was
22 going through looking through the record that there
23 was not an actual document that both parties signed,
24 but I think just from the record that is provided
25 that there is some inference that was there was an

EXHIBIT 4

ZBIGNIEW M. LASKOWSKI vs. WASHINGTON STATE DEPARTMENT OF LABOR & INDUSTRIES

1 THE COURT: And the document you referenced,
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5 the judge. Any record of that in-person meeting?

6 MR. LASKOWSKI: Judge --

7 THE COURT: I will hear from you again,
8 Mr. Laskowski. Right now, I'm talking to Mr. Barnes.

9 MR. BARNES: Not in the transcript that was
10 actually provided to us as part of the certified
11 appeal Board record. I do recall that there were on
12 more than one occasion where we came in there for
13 purposes of a hearing that didn't go forward, because
14 there was no need to, because there was no medical
15 witness. It would have been fruitless. Maybe that's
16 how this came about, but, unfortunately, there is no
17 transcript. Even that would have probably have been
18 off the record anyway.

19 THE COURT: Is this normal?

20 MR. BARNES: Some judges are much better than
21 others. I was a little surprised to see when I was
22 going through looking through the record that there
23 was not an actual document that both parties signed,
24 but I think just from the record that is provided
25 that there is some inference that was there was an

EXHIBIT 5

ZBIGNIEW M. LASKOWSKI vs. WASHINGTON STATE DEPARTMENT OF LABOR & INDUSTRIES

1 agreement, and I believe Mr. Laskowski has admitted
2 that today.

3 He has the unusual circumstance where he has a
4 sixth lumbar vertebrae, and he has from the beginning
5 one of the theories is that they have operated on the
6 wrong level at the time, and so that one was actually
7 put in here as an additional question to ask
8 Dr. Kreamer to make sure, and I don't think she has
9 any -- you know, I don't think she is trying to
10 cover up anything when she said this was the correct
11 one by looking at the MRIs, et cetera.

12 But to answer your question, I don't recall
13 signing anything that said we agree to this binding
14 exam, no. It would have either have been done over
15 the phone or in person at the Board. But like I say,
16 we have had, this is probably the fifth or sixth
17 case. So all of those Board hearings and stuff kind
18 of run together.

19 The only other thing I wanted to say is what has
20 complicated this matter is that, besides his
21 workplace injury, he has a couple of congenital
22 defects that are also driving his pain and his need
23 for treatment. One of those surgeries was a fusion,
24 which I believe was performed by or it was actually
25 paid for through Medicaid, but, unfortunately, when



EXHIBIT 6.

3417 Ensign Road NE
 Olympia, WA 98506-5064
 Phone: (360)493-4600
 Fax: (360)493-5326

Name: ZBIGNIEW LASKOWSKI
 Exam Date: 3/20/2018 01:46 PM
 Age: 61Y 2M
 DOB: 1/23/1957
 Gender: Male
 MRN #: 10461

Referrer: ROBERT LANG, MD
 ∴ 3525 ENSIGN RD NE STE J
 OLYMPIA, WA 98506

Addendum 1

ADDENDUM: 04/04/18 10:38

Addendum is made to correct vertebral nomenclature.

There are 6 nonrib-bearing vertebrae. For the purposes of this examination and for consistency with clinical reporting, these are referred to as L1-L6.

Therefore, there has been posterior fusion at L5-L6. The remainder of the report is unchanged.

Findings were discussed with Dr. Lang by Dr. Kim at 10:39 AM on 04/04/2018.

SITE ID: 002

Electronically Signed by: David Kim, MD
 Signed Date: 4/4/2018 10:41 AM

EXAM:
 LUMBOSACRAL SPINE RADIOGRAPHY

EXAM DATE: 3/20/2018 01:26 PM.

CLINICAL HISTORY: Lumbar spinal stenosis with claudication.

COMPARISONS: None.

TECHNIQUE: 5 views.

FINDINGS:

Alignment: Normal. No spondylolisthesis or scoliosis. No abnormal vertebral body motion with flexion and extension.

Bones: Five non-rib-bearing lumbar vertebral bodies are present. Status post posterior pedicle rod and screw fusion at L5-S1. There is no evidence of hardware failure or loosening.

Disks: Mild disk space narrowing at L5-S1. Interbody device noted at L4-L5.

Facets: No degenerative changes.

Sacroiliac Joints: Unremarkable.

Soft Tissues: Normal. The visualized bowel gas pattern is normal.

IMPRESSION:

1. Status post L5-S1 posterior fusion.
2. No evidence of hardware failure, acute fracture or instability.

RADIA

SITE ID: 046

Report Electronically Signed by: Christopher Krol, MD
Report Electronically Signed on: 3/20/2018 09:33 PM

Acc #: 3284411
Site: South Sound Radiology

Signed by: Christopher Krol, MD
Finalized Date: 3/20/2018 09:33 PM

Please note that portions of this report may have been created with voice recognition software. Occasional wrong word or "sound-alike" substitutions may exist despite proofreading.

For consultation with the radiologists, please call 360-493-4600. Thank you for this referral.



EXHIBIT 7

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Jeffrey E. Pearce, MD
Master Case No.: M2010-444
Document: Stipulation to Informal Disposition

Regarding your request for information about the above-named practitioner, certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Privacy Officer, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION**

In the Matter of the License to Practice
as a Physician and Surgeon of

JEFFREY E. PEARCE, MD
License No. MD00022290

Respondent.

No. M2010-444

**STIPULATION TO INFORMAL
DISPOSITION**

1. STIPULATION

Pursuant to the Uniform Disciplinary Act, Chapter 18.130 RCW, the Medical Quality Assurance Commission (Commission) issued a Statement of Allegations and Summary of Evidence (Statement of Allegations) alleging the conduct described below. Respondent does not admit any of the allegations.

1.1 On December 26, 1984, the state of Washington issued Respondent a license to practice as a physician. Respondent is board certified in neurological surgery by the American Board of Neurological Surgery. Respondent's license is currently active.

1.2 On February 2, 2006, Respondent performed anterior cervical discectomy and osteophyctomy, and cervical fusion at level C5-6 on Patient A.

1.3 After sterile preparation, Respondent placed a skin marker to guide the procedure and transverse cervical and iliac crests incisions were outlined.

1.4 An intraoperative X-ray at the end of the procedure demonstrated fusion at C4-5 rather than the intended C5-6 level. Respondent immediately revised the procedure from a single-level fusion to a two-level fusion.

1.5 The Commission alleges that the conduct described above, if proven, would constitute a violation of RCW 18.130.180(4).

1.6 The parties wish to resolve this matter by means of a Stipulation to Informal Disposition (Stipulation) pursuant to RCW 18.130.172(1).

1.7 This Stipulation is of no force and effect and is not binding on the parties unless and until it is accepted by the Commission.

1.8 This Stipulation shall not be construed as a finding of unprofessional conduct or inability to practice.

1.9 This Stipulation is not formal disciplinary action. However, if the Commission accepts it, it will be reported to the Health Integrity and Protection Databank (HIPDB) (45 CFR Part 61), and elsewhere as required by law. HIPDB may report this Stipulation to the National Practitioner Databank (45 CFR Part 60).

1.10 The Statement of Allegations and this Stipulation are public documents. They will be placed on the Department of Health's website, disseminated via the Commission's listserv, and disseminated according to the Uniform Disciplinary Act (Chapter 18.130 RCW). They are subject to disclosure under the Public Records Act, Chapter 42.56 RCW, and shall remain part of Respondent's file according to the state's records retention law and cannot be expunged.

1.11 The Commission agrees to forego further disciplinary proceedings concerning the allegations.

1.12 Respondent agrees to be bound by and to successfully complete the terms and conditions of this informal disposition.

1.13 A violation of the provisions of Section 2 of this Stipulation, if proved, would constitute grounds for discipline under RCW 18.130.180 and the imposition of sanctions under RCW 18.130.160.

2. INFORMAL DISPOSITION

The Commission and Respondent stipulate to the following terms.

2.1 **Probation.** The Commission places Respondent's license on PROBATION.

2.2 **Paper.** Respondent must submit a paper of not less than one thousand (1,000) words, plus bibliography, describing the problem of wrong level surgery, discussing recommendations to solve the problem, and describing how Respondent has improved his localization since the date of the incident referred to in this Stipulation. The paper must meet the Commission's approval. The paper is due within three (3) months of the effective date of this Stipulation. The paper should be mailed to:

Compliance Officer, Medical Quality Assurance Commission, P.O. Box 47866, Olympia, WA 98504-7866.

2.3 **Protocol for Marking Cervical Surgery Sites.** Respondent will develop and implement a written protocol for accurate marking and review of cervical surgery sites, including pre-operative and post-operative procedures. Respondent will submit the written protocol for Commission approval within three (3) months of the effective date of this Stipulation. The paper should be mailed to the same address as stated in Paragraph 2.2, above.

2.4 **Costs.** Respondent agrees to reimburse costs to the Commission in the amount of one thousand dollars (\$1,000.00) which must be received by the Commission within twelve (12) months of the effective date of this Stipulation. The reimbursement or payments shall be paid by certified or cashier's check or money order, made payable to the Department of Health and mailed to the Department of Health, Medical Quality Assurance Commission at P.O. Box 1099, Olympia, Washington 98507-1099.

2.5 **Termination of Stipulation.** Respondent may petition the Commission in writing to terminate this Stipulation after satisfactorily completing the other terms of this Stipulation. The Commission will issue a notice scheduling a date and time for Respondent to appear, unless the Commission waives the need for a personal appearance.

2.6 **Obey Laws.** Respondent must obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington.

2.7 **Costs.** Respondent must assume all costs of complying with this Stipulation.

2.8 **Violations.** If Respondent violates any provision of this Stipulation in any respect, the Commission may take further action against Respondent's license.

2.9 **Change of Address.** Respondent must notify the Commission and the Adjudicative Clerk Office if he changes his address of record within thirty (30) days of such change.

2.10 **Effective Date.** The effective date of this Stipulation to Informal Disposition is the date the Adjudicative Clerk Office places the signed Stipulation into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Stipulation.

3. COMPLIANCE WITH SANCTION SCHEDULE

3.1 The Commission applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions, including stipulations to informal dispositions under RCW 18.130.172. Respondent's alleged conduct falls in Tier A of the "Practice Below Standard of Care" schedule, WAC 246-16-810, because the error in the cervical fusion site was identified and corrected as part of the initial procedure. Although the procedure was revised to a two-level fusion and took longer to perform, the additional harm or risk of harm was minimal. The majority of cervical range of motion is in the C1-2 and Occiput to C1 levels. The loss of range of motion due to fusion at C4-5 is seldom noted clinically.

3.2 WAC 246-16-800(3)(c) directs the Commission to identify aggravating or mitigating factors to determine appropriate sanctions. There are mitigating factors present in this case. Respondent has no prior history of discipline, the surgical error was corrected as part of the same procedure, Respondent has taken responsibility for the incident and he has voluntarily implemented changes to his practice.

3.3 Tier A sanction terms range from zero to a maximum of three years of oversight. WAC 246-16-800(3)(d) states that the starting point for the duration of oversight is the middle of the range and then mitigating and aggravating factors move the appropriate sanctions towards the maximum or minimum ends of the range.. This Stipulation imposes a paper, production of a written protocol, and the maximum cost recovery allowed under law. The mitigating factors present in this case justify sanctions at the minimum end of the range.

//

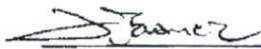
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4. RESPONDENT'S ACCEPTANCE

I, JEFFREY E. PEARCE, Respondent, certify that I have read this Stipulation to Informal Disposition in its entirety; that my counsel of record, Philip J. VanDerhoeff, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Commission without my appearance. If the Commission accepts the Stipulation to Informal Disposition, I understand that I will receive a signed copy.



JEFFREY E. PEARCE, MD
RESPONDENT

6/24/10

DATE



PHILIP J. VANDERHOEF, WSBA #14564
ATTORNEY FOR RESPONDENT

6/28/10

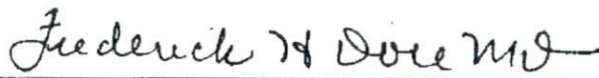
DATE

5. COMMISSION'S ACCEPTANCE

The Commission accepts this Stipulation to Informal Disposition. All parties shall be bound by its terms and conditions.

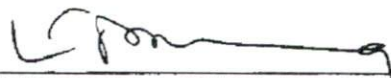
DATED: July 15, 2010.

STATE OF WASHINGTON
DEPARTMENT OF HEALTH
MEDICAL QUALITY ASSURANCE COMMISSION



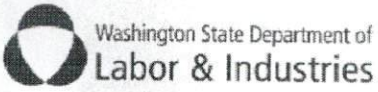
PANEL CHAIR

PRESENTED BY:



LAWRENCE J. BERG, WSBA#22334
DEPARTMENT OF HEALTH STAFF ATTORNEY

EXHIBIT 8



1 providers who can treat L&I patients

Search criteria:

All providers near **Bellevue Way NE/E, WA-520 E, Kirkland, WA, 98033, USA** within **15** miles with the name **Pearce**

PEARCE JEFFREY E MD NEUROLOGICAL ASSOCIATES 1600 116TH AVE NE STE 302 BELLEVUE, WA 98004	PHYSICIAN NEUROLOGICAL SURGERY 425-455-5440	3.4 mi.
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September 24, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ZBIGNIEW LASKOWSKI,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF
LABOR AND INDUSTRIES,

Respondent.

No. 53067-8-II

UNPUBLISHED OPINION

LEE, A.C.J. — Zbigniew Laskowski appeals the superior court's order affirming the Board of Industrial Insurance Appeals order closing Laskowski's claim and awarding him partial permanent disability benefits. Because Laskowski entered into an agreement with the Department of Labor & Industries for a binding medical examination and the results of the binding medical examination resolve Laskowski's claims, we affirm the superior court's order.

FACTS

In 2006, Laskowski suffered a work-related back injury. The Department allowed Laskowski's claim and provided him with benefits. In 2008, the Department closed Laskowski's claim with a partial permanent disability award. However, in 2010, the Department reopened Laskowski's claim. In February 2015, the Department ended Laskowski's time loss compensation. In May 2015, the Department again closed Laskowski's claim because treatment was no longer

No. 53067-8-II

necessary. The Department did not increase Laskowski's partial permanent disability award, which was set at a category III (3). Laskowski appealed the Department's 2015 orders.

At a conference before the Board of Industrial Appeals judge, the parties agreed that Dr. Diana Kraemer would perform a binding medical examination to resolve the disputed factual issues on appeal and that they would be bound by Dr. Kraemer's opinions in the binding medical examination. The parties also agreed that they would provide complete records that have been reviewed by Laskowski to Dr. Kraemer and that Dr. Kraemer's medical examination would resolve the following issues:

- (1) does Mr. Laskowski's industrial injury condition(s) need medical treatment; (2) did his industrial injury prevent him from working between May 12, 2015, and May 15, 2015, on a temporary basis; (3) is Mr. Laskowski permanently precluded by the industrial injury from working as of May 15, 2015; and alternatively (4) what degree of permanent partial disability best describe the claimant's residual impairment from his industrial injury?

Administrative Record (AR) at 50. The parties further agreed that after completing a review of medical records and performing a medical examination, Dr. Kraemer would provide a written report and include in the report answers to the following questions relating to Laskowski's industrial injury:

1. State your diagnosis of the conditions found on examination.
2. Of those conditions found, which of them, if any, are related to the claimant's January 5, 2006 industrial injury?
3. Do any conditions related to the industrial injury require further medical treatment as of May 15, 2015? If this is the case, what treatment recommendations do you have?
4. Did the residual impairment from the January 5, 2006 industrial injury temporarily prevent M[r]. Laskowski from obtaining and performing work on a full-time basis during the period between May 12, 2015, and May 15, 2015?

5. Did the residual impairment from the January 5, 2006 industrial injury permanently prevent M[r]. Laskowski from obtaining and performing work on a full-time basis as of May 15, 2015, and thereafter?
6. If Mr. Laskowski's industrial injury conditions do not require further medical treatment, what degree of permanent partial disability best described his residual impairment from the industrial injury?

AR at 50-51 (boldface omitted).

After completing the binding medical examination, Dr. Kraemer determined that there was no additional recommended treatment for conditions related to Laskowski's industrial injury. Dr. Kraemer also determined that Laskowski's partial permanent disability was a Category IV (4).

Based on the parties' agreement, the Board of Industrial Insurance Appeals issued an order on agreement of parties. The Board affirmed the Department's order closing Laskowski's claim because no further treatment was necessary. The Board's order also reversed the Department's order declining to increase Laskowski's permanent partial disability award and remanded for the Department to award permanent partial disability benefits consistent with Category IV (4).

Laskowski appealed the Board's order to the superior court. The superior court entered findings of fact and conclusions of law, concluding that the order on the agreement of parties was correct. Accordingly, the superior court affirmed the Board's order.

Laskowski appeals.

ANALYSIS

A. STANDARD OF REVIEW

Our review of the superior court decision is governed by the Industrial Insurance Act (IIA); specifically, our review is governed by RCW 51.52.140, which states that an "[a]ppeal shall lie from the judgment of the superior court as in other civil cases." This results in a different role for

this court than is typical for appeals from other administrative decisions. *Rogers v. Dep't of Labor & Indus.*, 151 Wn. App. 174, 180, 210 P.3d 355, *review denied*, 167 Wn.2d 1015 (2009). Thus, under the IIA, we review only “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*, 151 Wn. App. at 180 (quoting *Watson v. Dep't of Labor & Indus.*, 133 Wn. App. 903, 909, 138 P.3d 177 (2006)).

B. AGREEMENT TO A BINDING MEDICAL EXAMINATION

Laskowski argues that his agreement to enter into a binding medical examination was an improper waiver of his right to compensation under the IIA. Laskowski also challenges the contents of the Board's order on agreement of parties, which adopted the findings of the binding medical examination.

Entering into an agreement for a binding medical examination is not an improper evasion of benefits. Therefore, Laskowski's agreement for a binding medical examination was proper and Laskowski has no grounds for challenging the Board's order based on that binding medical examination. And because Laskowski agreed to resolve the factual disputes relating to his industrial injury through a binding medical examination, he cannot now dispute Dr. Kraemer's factual findings and conclusions.

WAC 263-12-093(1) provides that “If an agreement concerning final disposition of any appeal is reached by all the parties present or represented at a conference, an order shall be issued in conformity with their agreement, providing the board finds the agreement is in accordance with the law and the facts.” Parties may also agree to a medical examination to resolve their dispute:

The parties present at a conference may agree to a vocational evaluation or a further medical examination of a worker or crime victim, including further evaluative or diagnostic tests, except such as require hospitalization, by medical or vocational experts acceptable to them, or to be selected by the industrial appeals judge. In the event the parties agree that an order on agreement of parties may be issued based on the report of vocational evaluation or medical examination, the industrial appeals judge may arrange for evaluation or examination and the board will pay reasonable and necessary expenses involved. Upon receipt by the board, copies of the report of such examination or evaluation will be distributed to all parties represented at the conference and further appropriate proceedings will be scheduled or an order on agreement of parties issued. If the worker or crime victim fails to appear at the evaluation or examination, the party or their representative may be required to reimburse the board for any fee charged for their failure to attend.

WAC 263-12-093(4).

Here, the Board's report of proceedings shows that the parties agreed to a binding medical examination to be performed by Dr. Kraemer. The purpose of the binding examination was to resolve the underlying factual disputes regarding the appeal; specifically, whether Laskowski was able to work during the time-loss compensation period, whether further treatment was warranted (to justify closing the claim), and whether the current category of permanent partial disability was correct. Because the parties agreed to a binding medical examination with the express purpose of resolving the factual disputes underlying the appeal, it was proper under WAC 263-12-093(1) and WAC 263-12-093(4) for the Board to enter an order on agreement of the parties consistent with the findings in the binding medical examination.

Laskowski argues that the Board's order was improper because the agreement to a binding medical examination violates RCW 51.04.060, which provides that "[n]o employer or worker shall exempt himself or herself from the burden or waive the benefits of this title by any contract,

No. 53067-8-II

agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void.” Laskowski’s argument fails.

In *Solven v. Dep’t of Labor & Industries*, the court held that an agreement to resolve an appeal by agreed examinations is not void under RCW 51.04.060. 101 Wn. App 189, 195, 2 P.3d 492, *review denied*, 142 Wn.2d 1012 (2000). The court explained, “[t]he agreement merely stipulates to a method of finding facts; it does not prevent the employee from demanding all compensation to which he is entitled.” *Id.* The court also noted that the plain language of the statute demonstrates that it was meant to prevent employers from exploiting employees by urging them to contract away benefits under the IIA. *Id.*

The same is true here. Laskowski did not enter into an agreement to waive any of the benefits to which he was entitled under the IIA. Instead, Laskowski entered into an agreement stipulating to a specific method of determining the facts necessary to resolving his appeal. Therefore, the agreement to a binding medical examination is not void under RCW 51.04.060. *Solven*, 101 Wn. App. at 195.

Because the parties’ agreement to a binding medical examination was not void or improper, the superior court properly concluded that the agreement was proper and binding. Accordingly, we affirm the superior court.

B. LASKOWSKI'S OTHER ARGUMENTS

Laskowski makes several other arguments challenging the validity of the report generated after the binding medical examination and the Board's order. However, most of these are related to Laskowski's disagreement with Dr. Kraemer's findings and conclusions. We do not consider these arguments.¹

None of Laskowski's challenges to the Dr. Kraemer's findings and the Board's order are challenges to the findings of fact or conclusions of law that were made by the superior court. In IIA appeals, we review the superior court's findings of fact and conclusions of law. RCW 51.52.140; *Rogers*, 151 Wn. App. at 180. Because Laskowski fails to challenge the superior court's findings of fact, they are verities on appeal. *Mid Mountain Contractors, Inc. v. Dep't of Labor & Indus.*, 136 Wn. App. 1, 4, 146 P.3d 1212 (2006). Those findings of fact, in turn, support the superior court's conclusions that the Board's order is correct.

¹ Laskowski also argues that his condition has a much greater negative impact on him and that a "correctly rated impairment would reflect that" and relies on several medical records created after the date of the Dr. Kraemer's report and the Board's order on agreement of parties. Br. of App. at 23. Because Laskowski's argument relies on records that were created after the date of Dr. Kraemer's report, the Board's order on agreement of parties, and the superior court's findings of fact and conclusions of law, we do not consider his argument.

Laskowski also appears to argue that the Board's order was incorrect because the Industrial Appeals Judge stated that he would issue the order. However, the Report of Proceedings memorializing the parties' agreement states that after the binding medical examination is completed, the appeal will be resolved by an order on agreement of the parties issued by the Board, which is exactly what occurred. Therefore, the Industrial Appeals Judge's misstatement is not an irregularity that undermines the parties' agreement to a binding medical examination. To the extent that it is actually challenged, we affirm the superior court's finding on this point.

