replaces petition for review
filed 3/19/20

Supreme Court No. 98288-1
COA No. 52454-6-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

KATHRYNE L. CONNER,

Petitioner,

v.

HARRISON MEDICAL CENTER and
DEPARTMENT OF LABOR & INDUSTRIES OF WASHINGTON,

Respondent.

Corrected PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Court Rules

A. IDENTITY OF PETITION/DECISION BELOW

Petitioner, Kathryne L. Conner, requests this Court grant review pursuant to RAP 13.4 of the published decision of the Court of Appeals in *Conner v. Harrison Medical Center and Department of Labor & Industries of Washington*, No. 52454-6-II, filed on December 17, 2019[1]. Conner moved the Court to reconsider its December 17, 2019 opinion, which the Court denied on February 21, 2020. Copies of the Court of Appeals' opinion and Order Denying Reconsideration are attached as Appendix A.

B. ISSUES PRESENTED FOR REVIEW

1. The Court of Appeals' construction of RCW 51.52.130 conflicts with the Supreme Court's decision in *Brand v. Department of Labor & Indus.*, 139 Wn.2d 659, 989 P.2d 1111 (1999) because it narrowly construes the meaning of "additional relief" and because its opinion was influenced by the limited degree of Ms. Conner's success on appeal. RAP 13.4(b)(1).

2. The Court of Appeals' construction of RCW 51.52.130 presents an issue of substantial public interest that should be determined by the Supreme Court because it excludes an entire class of

[1] Published as: *Conner v. Harrison Med. Ctr,* 11 Wn. App. 2d 467, 454 P.3d 131 (2019)

injured workers from the benefit of attorney fee awards and undermines the purpose of RCW 51.52.130 to ensure injured workers are able to secure competent legal representation. RAP 13.4(b)(4).

C. STATEMENT OF THE CASE

This matter arises out of a workers' compensation appeal pursuant to the Industrial Insurance Act, Title 51 RCW. Following a jury trial, Ms. Conner, the injured worker, appealed a Kitsap County superior court judgment, pursuant to RCW 51.52.130, which denied her attorney fee petition.

Ms. Conner suffered four separate industrial injuries while working as an occupational therapist between October 28, 2004 and June 15, 2010. The injury pertinent to this petition occurred in March 2010, when she injured her low back, among other body parts, while putting a scooter in her car (the "scooter claim"). Ms. Conner appealed a Decision and Order of the Board of Industrial Insurance Appeals (the "board") that affirmed four separate department orders relative to her four claims. A jury trial was held on November 8, 9, 13, 14, and 16, 2017. In the scooter claim the jury determined the board erred in deciding that the scooter injury did not proximately cause or aggravate degenerative disc disease of

her lumbar spine. The jury affirmed the board's determinations in the other three claims.

The superior court rejected her motion for attorney's fees based on the finding that the outcome of Ms. Conner's case did not award "additional relief" within the meaning of the fee shifting statute, RCW 51.52.130. The superior court reversed, in part, the board's determination that Ms. Conner's degenerative disc disease of the lumbar spine was not proximately caused or aggravated by her March 10, 2010, industrial injury and remanded the matter to the department with direction to issue an order allowing that condition to be included in the claim and to then close the claim. The superior court determined that the allowance of a new medical condition in Ms. Conner's claim did not constitute "additional relief" required for an award of attorney fees.

Conner timely appealed to the Court of Appeals, Division II. In its published opinion of December 17, 2019, the Court of Appeals affirmed the superior court concluding that since the court directed that the claim be closed without payment of any further benefits relative to the lumbar degenerative disc disease, such did not constitute "additional relief" as contemplated by RCW 51.52.130; moreover, the Court held that whether the superior court ruling will benefit Connor in the future by way of payment of medical treatment expenses or claim reopening is speculative.

Conner filed a timely Motion for Reconsideration addressing the legal impossibility of the Court's construction of "additional relief" owing to the Department having original jurisdiction to adjudicate benefit entitlements and the fact it effectively disqualifies a class of injured workers (those appealing claim rejection or segregation of medical condition orders) from entitlement to an award of attorney fees. The Court of Appeals denied Conner's Motion on February 21, 2020.

D. ARGUMENT

1. The Court of Appeals erred in concluding that the superior court order reversing segregation of her lumbar degenerative disc disease did not award Conner "additional relief" within the meaning of RCW 51.52.130.

The Act provides that attorney fees shall be awarded to an injured worker who prevails before the superior court (in pertinent part), as follows:

> *If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary,* or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained, a reasonable fee for the services of the worker's or beneficiary's attorney *shall* be fixed by the court. . . . *If, in a worker or beneficiary appeal the decision and order of the board is reversed or modified and if the accident fund or medical aid fund is affected by the litigation*... the attorney's fee fixed by the court, for services before the court only, and the fees of medical and other

> witnesses and costs shall be payable out of the administrative fund of the department. *In the case of self-insured employers, the attorney fees fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer.*

RCW 51.52.130(1) (emphasis added).

The purpose behind the award of attorney fees in workers' compensation cases is to ensure adequate legal representation for injured workers who were denied justice by the department. *Brand v. Dept. of Labor & Indus.,* 139 Wn.2d 659, 667, 989 P.2d 1111 (1999).[2]

The legislative intent behind the Industrial Insurance Act ("the Act") is expressed in RCW 51.04.010, which provides that all rights of private civil action or any other remedy are abolished in exchange for injured workers being entitled to sure and certain relief regardless of questions of fault. Consistent with the legislative intent behind the Act and RCW 51.12.010, which expressly mandates that the Act "be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of

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[2] "The very purpose of allowing an attorney fee in industrial accident cases primarily was designed to guarantee the injured workman adequate legal representation in presenting his claim on appeal without the incurring of legal expense or the diminution of his award if ultimately granted for the purpose of paying his counsel" *Harbor Plywood Corp. v. Dept. of Labor & Indus.*, 48 Wn.2d 553, 559 295 P.2d 310 (1956) quoting, *Boeing Aircraft Co. v. Dept. of Labor & Indus.,* 26 Wn.2d 51, 173 P.2d 164, 167 (1946).

employment", this court has repeatedly emphasized that the Act must be given a liberal interpretation. *Brand,* 139 Wn.2d at 668. "The act is remedial in nature and is to be liberally applied to achieve its purpose of providing compensation to all covered persons injured in their employment" *Id.* at 668 citing *Sacred Heart Med. Ctr. v. Dept. of Labor & Indus.,* 92 Wn.2d 631, 635, 600 P.2d 1015 (1979); *Johnson v. Tradewell Stores, Inc.,* 95 Wn.2d 739, 743, 630 P.2d 441 (1981); *Johnson v. Weyerhaeuser Co.*, 134 Wn.2d 795, 799, 953 P.2d 800 (1998).

a. *Narrow Construction of "Additional Relief"*

By concluding that Ms. Conner did not obtain "additional relief" in successfully proving that the department and board incorrectly segregated her lumbar degenerative disc disease from her claim, the Court of Appeals narrowly construed the meaning of "additional relief" as used in RCW 51.52.130. This is contrary to the intent of the Act, the mandate of liberal construction, as well as this Court's clear directive reiterated in *Brand,* 139 Wn.2d 659.

As a result of her success on the issue relative to causation of her lumbar degenerative disc disease by the industrial injury, the board and department orders were reversed and the superior court directed the department to issue an order accepting that condition. This should be

sufficient "additional relief" in and of itself to entitle her to an award of attorney fees.

b. *Cases Relied Upon by the Court of Appeals are Inapposite*

The Court of Appeals determined that Ms. Conner's case was similar and therefore controlled by *Kustura v Dep't of Labor & Indus.*, 142 Wn. App. 655 175 P.3d 1117 (2008); and *Sacred Heart Med. Ctr. v. Knapp*, 172 Wn. App. 26, 288 P.3d 675 (2012). *See Conner v. Harrison Med. Ctr,* 11 Wn. App. 2d 467, 475-6, 454 P.3d 131 (2019) However, these cases are factually inapplicable, because neither case reversed a board decision, nor did either case involve an appeal of an order rejecting a claim or segregating a condition where attorney fees were denied for not resulting in additional relief. *Sacred Heart, Id.* involved the trial court simply remanding the case to the department to consider additional evidence. It was not a decision on the merits that resulted in any relief to either party. It was a deferral to the Director. Here, we have a decision on the merits resulting in additional relief in the form of an additional medical condition for which Ms. Conner has the right to seek additional benefits, notwithstanding the fact that her claim was closed.[3]

[3] WAC 206-20-125(7)(b) specifically accommodates medical billing for segregated or rejected claims that are subsequently overturned or subsequent to claim closure. See also, *In re: Kimberly Nelson*, BIIA Dec., 00 18243 (2001).

Kustura, 142 Wn. App. 655, held that the worker was not entitled to an attorney fee award because the superior court's order correcting her marital status did not result in an increase of benefits because her wage order had already become final and binding. There was no additional relief secured as a matter of law. Here, however, there is no previously un-appealed order relating to Ms. Conner's lumbar degenerative disc disease that would preclude Ms. Conner from pursuing additional benefits flowing from the expanded scope of her claim upon remand back to the department. Stated otherwise, the outcome of her appeal expanded the scope of her claim and her rights under the Act. Such must be sufficient to qualify her for an award of reasonable attorney fees and costs. To hold otherwise would negate any value to the inclusion of her lumbar condition in her claim.

c. A Worker's Limited Relief on Appeal is Not an Appropriate Basis to Deny or Limit an Attorney Fee Award.

While the Court did not affirmatively hold that attorney fees were not available due to Ms. Conner's limited success on appeal, it is implied by the Court's willingness to view the superior court judgment and order as a ministerial "corrective" order instead of a substantive decision on the merits. This action suggests that the limited extent of her success adversely impacted the Court's assessment of whether she achieved

additional relief. To the extent that the superior court and Court of Appeals found that attorney fees were not available because of the limited nature of relief obtained, such is directly contrary to this Court's decision in *Brand* and wrong as a matter of law. *Brand,* 139 Wn.2d, 659.

2. The Court of Appeals' opinion requiring a specific additional monetary award flowing from the inclusion of an additional medical condition imposes a jurisdictional impossibility on Ms. Conner and those similarly situated.

Ms. Conner argued that the inclusion of her lumbar degenerative disc disease not only entitled her to seek reimbursement of medical treatment expenses incurred for that condition while her claim was open and the condition was segregated, but also affords her the additional relief of expanded claim reopening rights in the event her now accepted condition becomes aggravated. RCW 51.32.160. Upon reopening within 7 years, she would qualify for all benefit entitlements under the Act, not just medical treatment costs. The Court of Appeals' opinion determined such benefits too speculative to be construed as "additional relief." The Court of Appeals insisted that her "additional relief" must "flow directly from the superior court's order." Opinion p. 9. The Court of Appeals' opinion imposes a jurisdictional impossibility upon Conner and other workers similarly situated because the department has original jurisdiction to adjudicate benefit entitlements. The board and the courts serve a purely

appellate function with limited scope of review. If a question is not passed upon by the department, it cannot be reviewed by the board, superior court, or courts of appeal. *Kingery v. Dept. of Labor & Indus.,* 132 Wn.2d 162, 171-172, 937 P.2d 565 (1997); *Brakus v. Dep't of Labor & Indus.*, 48 Wn.2d 218, 223, 292 P.2d 865 (1956); *Lenk v. Dep't of Labor & Indus.*, 2 Wn.App. 977, 982, 478 P.2d 761 (1970).

The successful aspect of Conner's appeal was reversing the board decision and department order segregating her lumbar disease from her claim. In such order, the board and department can only adjudicate causation of the lumbar condition. Therefore, what the superior court and Court of Appeals insist upon to qualify a worker for an attorney fee award, i.e., the specific additional relief that flows directly from reversal of the segregation order, is beyond the superior court's scope of review. The only issue that could properly be adjudicated by the superior court relative to the lumbar condition in the scooter claim, was the causal relationship between the industrial injury and the lumbar disc disease.

The Court of Appeals' opinion that a worker is not entitled to an award of reasonable attorney fees and costs pursuant to RCW 51.52.130 unless there is evidence of specific benefit entitlements that flow directly from the superior court's order not only imposes a jurisdictional legal impossibility on Ms. Conner, but further excludes an entire class of

injured workers from the benefits of RCW 51.52.130 and undermines the very purpose of the statute to ensure all injured workers' ability to secure competent legal representation. Based on the Court of Appeals' holding and analysis, workers who successfully appeal orders rejecting their claims or orders segregating medical conditions may never be entitled to an award for attorney fees because the specific benefit entitlements that flow from success on appeal will always be beyond the scope of the superior court appeal, and according to the Court of Appeal's opinion, would always be "speculative."

The legislature has wide discretion in designating classifications. But the classifications may not be "manifestly arbitrary, unreasonable, inequitable, and unjust." *Johnson v. Tradewell Stores*, 95 Wn.2d 739,744, 630 P.2d 441 *quoting*, *State ex.rel. O'Brien v. Towne*, 64 Wn.2d 581, 583, 392 P.2d 818 (1964). Reasonable grounds must exist for making a distinction between those within and those without the class. *Moran v. State*, 88 Wn.2d 867, 568 P.2d 758 (1977).

Johnson Id. involved the consolidation of appeals of the conflicting opinions between Division One and Division Two of the Court of Appeals on the issue whether the successful worker on appeal was entitled to an award of attorney fees when their employers were self-insured; at that time, RCW 51.52.130 did not provide for an award of attorney fees from

self-insured employers (just from the department's administrative fund). Division One held that a fee award was appropriate and Division Two denied the worker's fee award. Division One held that even though RCW 51.52.130 did not provide for an award of fees in self-insured cases, the statute must be interpreted in accordance with the intent of the legislature to avoid absurd results. The legislative intent is controlling, though contrary to the strict letter of a statute. *Johnson v. Tradewell Stores*, 24 Wn. App. 53, 56, 600 P.2d 583 (1979). The Supreme Court affirmed Division One and reversed Division Two holding that "it is a manifest injustice of the most egregious nature, and we hold it to be a violation of the equal protection clause of the Fourteenth Amendment and Const. art. 1, section 12 to classify one group of workers so they receive fewer benefits than similarly situated workers simply because the employer chooses to be self-insured. *Johnson v. Tradewell Stores*, 95 Wn.2d at 745.

Here, the Court of Appeals' construction of RCW 51.52.130 to require proof of the specific additional relief that flows directly from the superior court appeal would exclude attorney fee awards to workers who successfully appeal orders that reject their claims or segregate medical conditions. It would be manifestly unjust and absurd to exclude these workers from the benefit of RCW 51.52.130 and a violation of equal protection to interpret the statute this way. Moreover, this Court's

published opinion will undermine the ability of these injured workers to secure competent legal representation beyond the board. This will discourage appropriate appeals in which workers are denied justice by the department and afford the department and self-insured employers even more advantage and power in a system where the worker has already given up the right to private cause of action for reduced benefits. Certainly, this is not what the legislature intended.

When a worker simply reverses a rejection or segregation order on appeal, such expanded scope of the claim with the mere right to request additional relief from the department or self-insured employer, must be deemed "additional relief" sufficient to qualify such worker to an award of reasonable attorney fees and costs pursuant to RCW 51.52.130.

3. The Court of Appeals opinion is contrary to the legislative intent behind RCW 51.52.130.

The Court of Appeals' published opinion requiring that her appeal result in a specific additional monetary benefit[4] inappropriately reads into RCW 51.52.130 a requirement that there be a specific liquidated amount of recovery from her successful appeal. This is tantamount to requiring that the litigation affect the self-insured employer's funds, which the

[4] "On the other hand, attorney fees are recoverable under RCW 51.52.130(1) when the trial court's reversal results in an increased payment to the claimant." *Conner*, 11 Wn. App. 2d at 474.

legislature specifically omitted in its 1993 amendments to RCW 51.52 130[5] (See Appendix B). By omitting the requirement that the self-insured employer's funds be impacted by the litigation, the legislature obviously intended to remove exactly what the Court of Appeals required of Ms. Conner – a specific monetary benefit entitlement payable by the self-insured employer. Thus, the Court of Appeals' reading of RCW 51.52.130 is contrary to liberal construction and the legislature's 1993 amendments.

Notwithstanding the legislature removing the necessity of any monetary impact on the self-insured employer from RCW 51.52.130 and, to the extent the Court of Appeals relied on the fact that the superior court ordered Ms. Conner's claim closed without specifically ordering additional monetary benefits relative to her lumbar spine condition, such does not mean that Ms. Conner is not entitled to additional benefits. The mere inclusion of degenerative disc disease of the lumbar spine affords her the right to seek reimbursement for medical treatment she received for that condition while her claim was open and that condition was segregated. The fact that the superior court's order directed that the claim be closed as of July 19, 2012, does not relieve Harrison Medical Center of its

[5] The legislature deleted the following language from RCW 51.52.130: "if the decision and order of the board is reversed or modified resulting in additional benefits by the litigation that would be paid from the accident fund if the employer were not self-insured".

obligation to pay medical treatment costs while the claim was open because the department has the authority to order payment of medical bills even after the claim is finally closed. WAC 296-20-125(7)(b); *In re Kimberly A. Nelson*, BIIA Dec., No. 00-18243 (2001); see also, RCW 51.32.160 (Injured workers have the right to reopen their claims owing to aggravation of their industrial injury or disease for all benefit entitlements within 7 years of claim closure and for medical treatment after 7 years).

E. CONCLUSION

Based on the foregoing, Ms. Conner respectfully requests the Court to accept review of the December 17, 2019 Published Opinion by the Court of Appeals, Div. II.

Respectfully submitted,

for #52817

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WSBA 18726

CERTIFICATE OF SERVICE

SIGNED at Seattle, Washington.

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, hereby certifies that on the 15th day of April 2020, the document to which this certificate is attached, Petition For Review, was served to each of the following recipients in the manner stated:

VIA ELECTRONIC FILING TO:	Clerk of the Court Supreme Court Of the State of Washington
VIA ELECTRONIC FILING TO:	Ryan Miller, Atty. Hall & Miller, P.S. rmiller@thall.com
VIA ELECTRONIC FILING TO:	Anastasia Sandstrom, AAG Office of the Attorney General Labor & Industries Division anas@atg.wa.gov

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Conner v. Harrison Med. Ctr.

Court of Appeals of Washington, Division Two

December 17, 2019, Filed

No. 52454-6-II

Reporter
11 Wn. App. 2d 467 *; 454 P.3d 131 **; 2019 Wash. App. LEXIS 3119 ***

KATHRYNE L. CONNER, *Appellant*, v. HARRISON MEDICAL CENTER ET AL., *Respondents*.

Prior History: [***1] Appeal from Kitsap Superior Court. Docket No: 15-2-01037-1. Judge signing: Honorable Jeffrey P Bassett. Judgment or order under review. Date filed: 07/17/2018.

Core Terms

additional relief, superior court, degenerative, benefits, disease, attorney's fees, lumbar, industrial injury, reimbursement, aggravated, disability, superior court's order, conditions, correction, vocational, permanent, argues, entitled to an attorney, superior court's denial, appellate court, reversal, partial

Case Summary

Overview

HOLDINGS: [1]-The denial of the employee's motion for attorney fees after her partially successful appeal of a decision by the Board of Industrial Insurance Appeals relating to her industrial injury was proper because allowing the lumbar degenerative disc disease condition was not a grant of "additional relief" under *Wash. Rev. Code § 51.52.130(1)* since the superior court did not order the Department of Labor and Industries to pay any further benefits to the employee. Further, whether that ruling would benefit her in the future was speculative.

Outcome
Judgment affirmed.

LexisNexis® Headnotes

Workers' Compensation & SSDI > Administrative Proceedings > Costs & Attorney Fees

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review

HN1[] **Administrative Proceedings, Costs & Attorney Fees**

Wash. Rev. Code § 51.52.130(1) provides that the superior court shall award reasonable attorney fees to an injured worker on appeal of a Board of Industrial Insurance Appeals' (BIIA) decision if the BIIA's 's decision is reversed or modified and additional relief is granted to the worker.

Workers' Compensation & SSDI > Administrative Proceedings > Costs & Attorney Fees

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review

Appendix A

HN2[] Administrative Proceedings, Costs & Attorney Fees

Under *Wash. Rev. Code § 51.52.130(1)*, an injured worker is entitled to recover the full, reasonable amount of attorney fees incurred on appeal even though some of the claims were unsuccessful.

Workers' Compensation & SSDI > Administrative Proceedings > Costs & Attorney Fees

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > Standards of Review

HN3[] Administrative Proceedings, Costs & Attorney Fees

Whether a party is entitled to attorney fees under *Wash. Rev. Code § 51.52.130* is a question of law reviewed de novo.

Workers' Compensation & SSDI > Administrative Proceedings > Costs & Attorney Fees

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review

HN4[] Administrative Proceedings, Costs & Attorney Fees

The Industrial Insurance Act does not define "additional relief" for purposes of *Wash. Rev. Code § 51.52.130(1)*, but the Court of Appeals of Washington, Division II, concludes that to grant additional relief, a reversal must include the grant of some further benefits, treatment, or award.

Workers' Compensation & SSDI > Administrative Proceedings > Costs & Attorney Fees

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review

HN5[] Administrative Proceedings, Costs & Attorney Fees

Attorney fees are recoverable under *Wash. Rev. Code § 51.52.130(1)* when the trial court's reversal results in an increased payment to the claimant.

Workers' Compensation & SSDI > Administrative Proceedings > Costs & Attorney Fees

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review

HN6[] Administrative Proceedings, Costs & Attorney Fees

The argument that "additional relief" under *Wash. Rev. Code § 51.52.130* could be defined as the superior court's direction that the Department of Labor and Industries make a final determination regarding whether the claim has any remaining value has been rejected.

Civil Procedure > Appeals > Costs & Attorney Fees

Workers' Compensation & SSDI > Administrative Proceedings > Costs & Attorney Fees

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review

HN7[] Appeals, Costs & Attorney Fees

Wash. Rev. Code § 51.52.130 encompasses fees in both the superior and appellate courts when both courts review the matter.

Headnotes/Summary

Summary

WASHINGTON OFFICIAL REPORTS SUMMARY

Nature of Action: An industrial insurance claimant sought judicial review of a Board of Industrial Insurance Appeals (BIIA) decision upholding a Department of Labor and Industries (DLI) order ending the claimant's time-loss benefits and closing her claim without awarding a permanent partial disability benefit. The BIIA found that the claimant's degenerative disc disease was not proximately caused or aggravated by her industrial injury, the claimant's thoracolumbar sprain condition

arising from her employment was fixed and stable, and the claimant was not entitled to further treatment.

Superior Court: The Superior Court for Kitsap County, No. 15-2-01037-1, Jeffrey P. Bassett, J., on July 17, 2018, entered a judgment on a jury verdict affirming the BIIA's decision in part, reversing only the finding that the claimant's industrial injury did not proximately cause or aggravate her lumbar degenerative disc disease. The court reversed the BIIA's decision that the lumbar degenerative disc disease was not included in the enumeration of conditions allowed under the claim and remanded the case to DLI, directing it to allow the condition under the claim, then close the claim without further time loss compensation or disability award. The court denied the claimant's motion for an award of attorney fees under *RCW 51.52.130*, finding that the jury's reversal of the BIIA's decision regarding lumbar degenerative disc disease did not entitle the claimant to "additional relief" because the jury did not grant additional benefits, treatment, or awards, and the only practical effect of the decision was to reverse one element of the BIIA's decision on a claim that remained closed.

Court of Appeals: Holding that the trial court's reversal order was not a grant of "additional relief" within the meaning of *RCW 51.52.130* and that the claimant was not entitled to attorney fees on appeal, the court *affirms* the trial court's denial of attorney fees and *denies* the claimant's request for appellate attorney fees.

Headnotes

WASHINGTON OFFICIAL REPORTS HEADNOTES

WA[1][1]

Industrial Insurance > Judicial Review > Attorney Fees > Prevailing Employee > Amount > Successful and Unsuccessful Claims.

An award of attorney fees under *RCW 51.52.130*, which provides for an award of attorney fees to an industrial insurance claimant if a court reverses or modifies a decision of the Board of Industrial Insurance Appeals and additional relief is granted to the claimant, includes reasonable fees for work done on both successful and unsuccessful claims.

WA[2][2]

Industrial Insurance > Judicial Review > Attorney Fees > Prevailing Employee > Question of Law or Fact > Review > Standard of Review.

Whether a party is entitled to attorney fees under *RCW 51.52.130* is a question of law reviewed de novo.

WA[3][3]

Industrial Insurance > Judicial Review > Attorney Fees > Prevailing Employee > Additional Relief > What Constitutes.

For purposes of *RCW 51.52.130*, which provides for an award of attorney fees to an industrial insurance claimant if a court reverses or modifies a decision of the Board of Industrial Insurance Appeals and additional relief is granted to the claimant, "additional relief" means the grant of some further benefits, treatment, or award. Speculative or potential relief is not enough.

WA[4][4]

Industrial Insurance > Judicial Review > Attorney Fees > Prevailing Employee > On Appeal > Reversal of Board Order > No Additional Relief.

An industrial insurance claimant who obtains a reversal or modification of an adverse decision by the Board of Industrial Insurance Appeals by a superior court or an appellate court, but is not granted additional relief, is not entitled to an award of attorney fees on appeal under *RCW 51.52.130*.

MAXA, C.J., delivered the opinion for a unanimous court.

Counsel: *Tyler D. Solheim* and *Christine A. Foster* (of *Foster Law PC*), for appellant.

William J. Pratt and *Ryan S. Miller* (of *Hall & Miller PS*), for respondents.

Judges: Authored by Bradley Maxa. Concurring: Lisa Sutton, Linda Lee.

Opinion by: Bradley Maxa

Opinion

[*469] [132]**

¶1 MAXA, C.J. — Kathryne Conner appeals the superior court's denial of her motion for attorney fees after her partially successful appeal of a Board of Industrial Insurance Appeals (BIIA) decision relating to her March 2010 industrial injury. *HN1*[↑] She relies on *RCW 51.52.130(1)*, which provides that the superior court shall award reasonable attorney fees to an injured worker on appeal of a BIIA decision if the BIIA's decision is reversed or modified and "additional relief is granted" to the worker.

¶2 A superior court jury verdict affirmed all of the BIIA's findings regarding Conner's claim except one. Contrary to the BIIA's finding, the jury **[***2]** found that Conner's March 2010 industrial injury caused or aggravated her lumbar degenerative disc disease. Pursuant to this verdict, the superior court's judgment directed the Department of Labor and Industries (DLI) to issue an order allowing the lumbar degenerative disc disease under Conner's industrial injury claim. But the court also directed that the claim be closed without the payment of any further benefits.

¶3 Conner argues that the superior court erred in denying her motion for attorney fees because allowing the lumbar degenerative disc disease condition constituted "additional relief." However, we conclude that the superior court's ruling was not a grant of "additional relief" under *RCW 51.52.130(1)* because the court did not order DLI to pay any further benefits to Conner and whether the court's ruling will benefit Conner in the future is speculative. Accordingly, we affirm the superior court's denial of Conner's motion for attorney fees.

[*470] FACTS

¶4 Conner worked for Harrison Medical Center (HMC) as an occupational therapist from 2006 through 2010. On March 10, 2010, she was injured in the course of her employment, sustaining sprain injuries to her low back and left shoulder. Conner filed a claim **[***3]** with DLI seeking benefits in connection with this injury.[1]

¶5 Conner received treatment for her injuries, including visits to a nurse practitioner with HMC Employee Health, follow-up appointments with her primary care physician, and massage therapy. An MRI (magnetic resonance imaging) showed advanced degenerative disc disease in her lumbar spine. DLI apparently paid for Conner's medical treatment. Conner also received time-loss benefits beginning in September 2010.

¶6 On July 18, 2012, DLI issued an order ending Conner's time-loss benefits as paid through June 30, 2012 and closed her claim without awarding a permanent partial disability. On October 3, 2013, DLI issued an order affirming the July 18 order. Conner appealed the DLI order to the BIIA.

¶7 The BIIA affirmed DLI's order. The BIIA made the following finding of fact: "Before March 10, 2010, Kathryne L. Conner had degenerative disc disease of the cervical, thoracic, and lumbar spine, including at L5-S1. *These conditions were not proximately caused or aggravated by her March 10, 2010 industrial injury.*" Clerk's Papers (CP) at 20 (emphasis added). The BIIA concluded that **[**133]** Conner's thoracolumbar sprain condition arising from her employment was fixed and stable as of September 17, 2013 and that **[***4]** she was not entitled to further treatment.

[*471]

¶8 The BIIA also concluded that (1) Conner was not temporarily totally disabled from July 1, 2012 through October 3, 2013, and (2) the conditions caused or aggravated by the March 2010 industrial injury were fixed and stable as of October 3, 2013 and were not entitled to further treatment.

¶9 Conner appealed the BIIA's decision to the superior court. The jury returned a verdict finding that the BIIA's decision was correct in all respects except for the finding that the March 2010 industrial injury did not cause or aggravate Conner's degenerative disc disease in her lumbar spine. Instead, the jury answered yes to the question of whether the March 2010 industrial injury proximately caused or aggravated Conner's lumbar

[1] Conner filed a total of four workers' compensation claims against HMC, all of which were the subject of her appeal of the BIIA's decision to the superior court. At trial, the jury's verdict did not disturb the BIIA's findings regarding Conner's other claims.

degenerative disc disease. But the jury found that the BIIA was correct regarding the other two conclusions and was correct in determining that Conner was not permanently and totally disabled.

¶10 The superior court entered a judgment and order based on the jury's verdict. The judgment reversed the BIIA's finding of fact that Conner's industrial injury did not proximately cause or aggravate her lumbar degenerative disc disease. The court **[***5]** also reversed the BIIA's conclusion of law that the lumbar degenerative disc disease was not included in the enumeration of conditions allowed under Conner's claim. The court therefore reversed the BIIA's October 3, 2013 order and directed DLI to

> issue an order allowing the condition described as degenerative disc disease of the lumbar spine under [Conner's claim] effective July 18, 2012, then to issue a subsequent order closing this claim effective July 18, 2012 without further time loss compensation, award for permanent partial disability, and without award for total permanent disability.

CP at 244-45.

¶11 Conner moved for an award of her attorney fees and costs under *RCW 51.52.130*. The superior court denied Conner's **[*472]** motion. The court found that the jury's reversal of the BIIA's decision regarding lumbar degenerative disc disease did not entitle Conner to "additional relief" because the jury did not grant additional benefits, treatment, or awards, and the only practical effect of the decision was to reverse one element of the BIIA's decision on a claim that remained closed. The court also denied Conner's motion for reconsideration.

¶12 Conner appeals the superior court's denial of her motion for attorney fees under **[***6]** *RCW 51.52.130(1)*.

ANALYSIS

A. APPLICATION OF *RCW 51.52.130(1)*

¶13 Conner argues that the superior court erred in denying her request for attorney fees because the judgment reversing the BIIA's finding that the March 2010 industrial injury did not cause her lumbar degenerative disc disease constituted "additional relief" under *RCW 51.52.130(1)*. We disagree.

1. Legal Principles

WA[1][↑] [1] ¶14 *RCW 51.52.130(1)* provides:

> If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified *and additional relief is granted to a worker* or beneficiary, ... a reasonable fee for the services of the worker's or beneficiary's attorney *shall* be fixed by the court.

(Emphasis added.) *HN2*[↑] Under this statute, an injured worker is entitled to recover the full, reasonable amount of attorney fees incurred on appeal even though some of the claims were unsuccessful. *Brand v. Dep't of Labor & Indus., 139 Wn.2d 659, 670-73, 989 P.2d 1111 (1999)*.

WA[2][↑] [2] ¶15 *HN3*[↑] Whether a party is entitled to attorney fees under *RCW 51.52.130* is a question of law that we review de novo. *Sacred Heart Med. Ctr. v. Knapp, 172 Wn. App. 26, 28, 288 P.3d 675 (2012)*.

[*473] 2. Meaning of "Additional Relief"

WA[3][↑] [3] ¶16 Here, the superior court reversed the BIIA's decision in part. Therefore, the **[**134]** only question is whether the court granted Conner "additional relief." *HN4*[↑] The Industrial Insurance Act (IIA), Title 51 RCW, does not define "additional relief" for purposes **[***7]** of *RCW 51.52.130(1)*. However, we conclude that to grant "additional relief," a reversal must include the grant of some further benefits, treatment, or award. Under the facts of this case, a reversal of the Board's finding did not result in "additional relief."

¶17 Two cases support this conclusion. In *Sacred Heart*, an injured worker appealed DLI's determination that vocational services were not required for her to return to work. *172 Wn. App. at 27-28*. The superior court remanded the matter to DLI to consider additional information before making any further vocational determinations. *Id. at 28*. But the superior court declined to award attorney fees to the worker. *Id.*

¶18 The appellate court held that the superior court's remand to DLI for further consideration regarding vocational services was not "additional relief" as contemplated by *RCW 51.52.130(1)*. *Sacred Heart, 172 Wn. App. at 27*. The court stated,

> [T]he superior court's holding was narrow; it required only that the department director review the evidence of changed circumstances and make a final determination on the need for vocational services. The holding recognized that the director

> had the ultimate authority to close the claim. It is for the director to resolve whether the claim has any remaining value.

Id. at 29. The court concluded, **[***8]** "Nothing here could be construed as additional relief." *Id.*

¶19 The key fact in *Sacred Heart* was that the court reversed DLI's determination without granting any vocational benefits. Instead, DLI would determine at some time in the future whether or not the claimant was entitled to such benefits.
[*474]

¶20 In *Kustura v. Department of Labor & Industries*, a worker requested attorney fees under *RCW 51.52.130* based on the superior court's correction of the BIIA's erroneous finding that she was single instead of married. *142 Wn. App. 655, 692-93, 175 P.3d 1117 (2008)*, *aff'd on other grounds*, *169 Wn.2d 81, 233 P.3d 853 (2010)*. The worker argued that the superior court's correction of her marital status resulted in an increase in worker benefits because as a married worker, she was entitled to a 65 percent benefit rate rather than a 60 percent benefit rate for unmarried workers. *Id. at 692*.

¶21 The appellate court addressed a different provision in *RCW 51.52.130(1)*, which requires an award of attorney fees if DLI's "accident fund or medical aid fund is affected by the litigation." *Id.* The court noted that DLI's order determining her wage rate and amount of allowable benefits was final and binding and that the superior court's order did not increase the amount of benefits. *Id.* Instead, the superior court corrected her marital **[***9]** status but did not order a remand or adjustment of her benefits as a result of that correction. *Id. at 692-93*. Therefore, the court denied the worker's request for attorney fees. *Id. at 693*.

¶22 The key fact in *Kustura* was that the superior court simply made a correction to the BIIA's finding without affirmatively granting any benefits. Instead, the rate and amount of benefits remained unchanged.

¶23 On the other hand, ***HN5***[↑] attorney fees are recoverable under *RCW 51.52.130(1)* when the trial court's reversal results in an increased payment to the claimant. In *Hi-Way Fuel Co. v. Estate of Allyn*, the surviving spouse and son of a worker fatally injured in a motor vehicle accident in the course of his employment received workers' compensation benefits and later recovered damages from an at fault third party. *128 Wn. App. 351, 354-55, 115 P.3d 1031 (2005)*. DLI determined the amount of its partial reimbursement for benefits paid by subtracting attorney fees and litigation expenses from the spouse's gross recovery as required **[*475]** under *RCW 51.24.060*. *Id. at 355*. However, DLI deducted costs for internal copying and postage when calculating the amount of litigation expenses, which had the effect of increasing DLI's reimbursement. *Id.*

¶24 This court reversed DLI's ruling, holding that DLI could not deduct internal copying **[***10]** **[**135]** and postage from litigation costs. *Id. at 363*. The court remanded to DLI for redistribution of the lawsuit proceeds. *Id.* The court held that the spouse was entitled to attorney fees under *RCW 51.52.130(1)* because the appeal had resulted in "additional relief" to her. *Id. at 364*.

¶25 The key fact in *Hi-Way Fuel* was that the superior court's order involved a correction of DLI's calculation that resulted in the claimant actually receiving additional funds.

3. Analysis

¶26 Here, the jury's verdict reversed one aspect of the BIIA's decision: that Conner's March 2010 industrial injury had not caused or aggravated her lumbar degenerative disc disease. And the superior court's order stated that this condition "should have been included in the enumeration of conditions allowed" under her claim and directed DLI to issue an order allowing the condition effective July 18, 2012 and closing the claim the same day. But the verdict and the superior court's subsequent judgment resulted in no additional benefits, treatment, or award. The order specified that DLI should make this change "without further time loss compensation, award for permanent partial disability, and without award for total permanent disability." CP at 244-45.

¶27 This case is similar to *Sacred* **[***11]** *Heart*. In that case, the superior court did not order DLI to provide any vocational benefits; the court only required DLI to consider the issue. *172 Wn. App. at 28-29*. The appellate court found that this did not constitute additional relief. *Id. at 29*. As in that case, the superior court here did not order DLI to pay any benefits **[*476]** relating to Conner's degenerative disc disease or even direct DLI to consider claims arising from that condition. Instead, the court merely stated that the degenerative disc disease was an allowable condition under the March 2010 claim.

¶28 This case also is similar to *Kustura*. In that case, the

superior court merely changed the worker's marital status without changing the terms of DLI's order. *142 Wn. App. at 692-93*. As in that case, the superior court here merely ruled that the degenerative disc disease should be included in the enumeration of conditions that had become fixed and stable and directed DLI to allow the condition as of July 18, 2012 and then close the claim on the same date. The court did not order DLI to pay any additional benefits.

¶29 Conner's arguments to the contrary are not persuasive. First, she contends that the jury's verdict awarded her "additional relief" under *RCW 51.52.130* because it enabled her to now **[***12]** seek reimbursement for treatment she had received for her lumbar degenerative disc disease while her claim was pending before July 18, 2012. She points out that under *WAC 296-20-125(8)(b)*, such reimbursement requests are payable if made within one year of the superior court's reversal. Conner also suggests that payment for treatment before July 18, 2012 is inevitable.

¶30 However, the superior court did not order DLI to reimburse Conner for any treatment it previously had not covered. And there is no evidence in the record that Conner received treatment specific to lumbar degenerative disc disease while her claim was pending. The superior court's order only has the effect of requiring DLI to consider Conner's reimbursement claims if she submits them. Although Conner may submit additional medical treatment bills to DLI for lumbar degenerative disc disease, any relief is speculative and does not flow directly from the superior court's order. Conner points to no authority stating that the mere *potential* for reimbursement of past medical expenses qualifies as "additional relief" under *RCW 51.52.130*. *Sacred* **[*477]** *Heart* rejected *HN6* the argument that "additional relief" could be defined as the superior court's direction that DLI "make **[***13]** a final determination [regarding] ... whether the claim has any remaining value." *172 Wn. App. at 29*.

¶31 Second, Conner argues that the superior court's order granted her "additional relief" in the form of an expanded scope for reopening her claim in the future under *RCW 51.32.160*. She argues that the superior court's addition of lumbar degenerative disc disease to the allowed conditions under her **[**136]** claim provides her an additional medical condition upon which to seek to reopen her claim in the future. However, once again whether Conner will seek a reopening in the future and whether DLI would agree to reopen the claim is speculative.

¶32 Third, Conner argues that the superior court's denial of attorney fees under *RCW 51.52.130(1)* was contrary to the statute's purpose of ensuring adequate legal representation to injured workers. She points to *Brand*, which as stated above held that the superior court must award the full amount of attorney fees to the worker under *RCW 51.52.130* without regard to the worker's degree of overall recovery. *139 Wn.2d at 670*. Conner claims that the limited nature of her success on appeal must have adversely affected the trial court's determination of whether she obtained additional relief.

¶33 However, there is no indication in the record that **[***14]** the superior court based its denial of attorney fees on the fact that she prevailed on only one of many issues. And the court in *Sacred Heart* explained that *Brand* "simply refused to segregate successful claims from unsuccessful claims and apportion fees," but did not "require an automatic award of fees upon remand." *172 Wn. App. at 29*.

¶34 Finally, Conner argues that the superior court narrowly construed the term "additional relief" in contravention of the mandate in *RCW 51.12.010* that the IIA be liberally construed. But the term needs no "construction" **[*478]** here because it is clear that the superior court did not grant Conner any additional relief.

¶35 We hold that Conner was not entitled to attorney fees because the superior court's judgment stating that her lumbar degenerative disc disease should be allowed under her industrial injury claim did not constitute "additional relief" under *RCW 51.52.130(1)*.

B. Attorney Fees on Appeal

¶36 Conner requests her reasonable attorney fees on appeal under *RCW 51.52.130*. We decline to award attorney fees.

WA[4] [4] ¶37 *HN7* *RCW 51.52.130* encompasses fees in both the superior and appellate courts when both courts review the matter. *Hoa Doan v. Dep't of Labor & Indus., 143 Wn. App. 596, 608, 178 P.3d 1074 (2008)*. But because we hold that Conner is not entitled to attorney fees in superior court under *RCW 51.52.130(1)*, she also is not entitled to attorney **[***15]** fees on appeal.

CONCLUSION

¶38 We affirm the superior court's denial of Conner's request for attorney fees under *RCW 51.52.130*.

Lee and Sutton, JJ., concur.

References

Washington Administrative Law Practice Manual

Michael J. Killeen, Employment in Washington: A Guide to Employment Laws, Regulations and Practices (4th ed.)

Annotated Revised Code of Washington by LexisNexis

End of Document

Filed
Washington State
Court of Appeals
Division Two

February 21, 2020

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

KATHRYNE L. CONNER,

Appellant,

v.

HARRISON MEDICAL CENTER and DEPARTMENT OF LABOR & INDUSTRIES OF WASHINGTON,

Respondent.

No. 52454-6-II

ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Kathryne Conner moves for reconsideration of the court's December 17, 2019 opinion. Upon consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Maxa, Lee, Sutton

FOR THE COURT:

Maxa, C.J.

MAXA, C.J.

1993 Wa. SB 5515

Enacted, April 23, 1993

Reporter
1993 Wa. ALS 122; 1993 Wa. Ch. 122; 1993 Wa. SB 5515

WASHINGTON ADVANCE LEGISLATIVE SERVICE > 53rd LEGISLATURE (1993 REGULAR SESSION) > (Chapter 122, Laws of 1993) > ENGROSSED SUBSTITUTE SENATE BILL 5515

Notice

[A>UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED<A]
[D>Text within these symbols is deleted<D]
[V>Text within these symbols is vetoed<V]

Synopsis

AN ACT Relating to employee rights regarding industrial insurance claims; amending RCW ***51.52.130***; adding new sections to chapter 51.14 RCW; and prescribing penalties.

Text

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW ***51.52.130*** and 1982 c 63 s 23 are each amended to read as follows:

If, on appeal to the **[A>** SUPERIOR OR APPELLATE **<A]** court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained **[D>** by the court **<D]** , a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the court. In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fee fixed for the services in the court. If **[A>** IN A WORKER OR BENEFICIARY APPEAL **<A]** the decision and order of the board is reversed or modified and if the accident fund **[A>** OR MEDICAL AID FUND **<A]** is affected by the litigation **[D>** then **<D] [A>** , OR IF IN AN APPEAL BY THE DEPARTMENT OR EMPLOYER THE WORKER OR BENEFICIARY'S RIGHT TO RELIEF IS SUSTAINED, OR IN AN APPEAL BY A WORKER INVOLVING A STATE FUND EMPLOYER WITH TWENTY-FIVE EMPLOYEES OR LESS, IN WHICH THE DEPARTMENT DOES NOT APPEAR AND DEFEND, AND THE BOARD

ORDER IN FAVOR OF THE EMPLOYER IS SUSTAINED, <A] the attorney's fee fixed by the court [A> , <A] for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department. In the case of self-insured employers, [D> if the decision and order of the board is reversed or modified resulting in additional benefits by the litigation that would be paid from the accident fund if the employer were not self-insured, then <D] the attorney fees fixed by the court [A> , <A] for services before the court [D> , <D] only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer.

NEW SECTION. Sec. 2. (1) The self-insurer shall provide, when authorized under RCW 51.28.070, a copy of the employee's claim file at no cost within fifteen days of receipt of a request by the employee or the employee's representative. If the self-insured employer determines that release of the claim file to an unrepresented worker in whole or in part, may not be in the worker's best interests, the employer must submit a request for denial with an explanation along with a copy of that portion of the claim file not previously provided within twenty days after the request from the worker. In the case of second or subsequent requests, a reasonable charge for copying may be made. The self-insurer shall provide the entire contents of the claim file unless the request is for only a particular portion of the file. Any new material added to the claim file after the initial request shall be provided under the same terms and conditions as the initial request.

(2) The self-insurer shall transmit notice to the department of any protest or appeal by an employee relating to the administration of an industrial injury or occupational disease claim under this chapter within five working days of receipt. The date that the protest or appeal is received by the self-insurer shall be deemed to be the date the protest is received by the department for the purpose of RCW 51.52.050.

(3) The self-insurer shall submit a medical report with the request for closure of a claim under this chapter.

NEW SECTION. Sec. 3. The self-insurer shall request allowance or denial of a claim within sixty days from the date that the claim is filed. If the self-insurer fails to act within sixty days, the department shall promptly intervene and adjudicate the claim.

NEW SECTION. Sec. 4. Failure of a self-insurer to comply with sections 2 and 3 of this act shall subject the self-insurer to a penalty under RCW 51.48.080, which shall accrue for the benefit of the employee. The director shall issue an order conforming with RCW 51.52.050 determining whether a violation has occurred within thirty days of a request by an employee.

NEW SECTION. Sec. 5. Sections 2 through 4 of this act are each added to chapter 51.14 RCW.

History

Approved by the Governor April 23, 1993;

Effective July 25, 1993

WASHINGTON ADVANCE LEGISLATIVE SERVICE

End of Document

Rev. Code Wash. (ARCW) § 51.52.130

Statutes current through 2019 Regular Session

Annotated Revised Code of Washington > Title 51 Industrial Insurance (Chs. 51.04 — 51.98) > Chapter 51.52 Appeals (§§ 51.52.010 — 51.52.800)

51.52.130. Attorney and witness fees in court appeal.

(1) If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained, a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the court. In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fee fixed for the services in the court. If in a worker or beneficiary appeal the decision and order of the board is reversed or modified and if the accident fund or medical aid fund is affected by the litigation, or if in an appeal by the department or employer the worker or beneficiary's right to relief is sustained, or in an appeal by a worker involving a state fund employer with twenty-five employees or less, in which the department does not appear and defend, and the board order in favor of the employer is sustained, the attorney's fee fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department. In the case of self-insured employers, the attorney fees fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer.

(2) In an appeal to the superior or appellate court involving the presumption established under *RCW 51.32.185*, the attorney's fee shall be payable as set forth under *RCW 51.32.185*.

History

2007 c 490 § *4*; 1993 c 122 § *1*; 1982 c 63 § 23; 1977 ex.s. c 350 § 82; 1961 c 23 § ***51.52.130***. Prior: 1957 c 70 § 63; 1951 c 225 § 17; prior: 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part.

Annotations

Notes

Effect of Amendments.

2007 c 490 § 4, effective July 22, 2007, added (2), and added the (1) designation to the first paragraph.

FOSTER LAW, P.C.

April 15, 2020 - 2:20 PM

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Superior Court Case Number:	15-2-01037-1

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