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COURT OF APPEALS  
DIVISION II

No. 38150-8-II  
IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON

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STATE OF WASHINGTON  
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DEPUTY

DIVISION II

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TIMOTHY T. WALKER,

Appellant,

v.

GLACIER NORTHWEST, INC.,

Respondent.

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APPEAL FROM THE SUPERIOR COURT FOR CLARK COUNTY

THE HONORABLE ROBERT L. HARRIS

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BRIEF OF APPELLANT

TIMOTHY T. WALKER

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TIMOTHY T. WALKER

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## I

### Assignment of Error

A. Appellant, Timothy Walker, contends that the Trial Court erred in making Conclusion of Law No. 2 as follows:

The termination of his employment occurred for reasons wholly unrelated to the industrial injury or receipt of workers' compensation benefits. Therefore, the employer met its obligation under RCW 51.32.090(4) to provide modified work to an injured worker and Mr. Walker is not entitled to time-loss compensation from November 28, 2005, and continuing until he is capable of returning to full-duty work.

The following issues pertain to Conclusion of Law No. 2:

1. Did the termination of employment occur for reasons wholly unrelated to the industrial injury?
2. Does RCW 51.32.090(4) apply to deny Tim Walker time loss benefits commencing November 28, 2005?

B. Tim Walker also contends that the Trial Court erred in making Conclusion of Law No. 3 and entering Judgment reversing the order of the Department of Labor and Industries dated February 15, 2006, but the resolution of this assignment necessarily depends on the outcome of Assignment A.

## II

### Statement of the Case

#### A. Facts

The appellant, Timothy Walker, born September 17, 1958, has a family consisting of a son, and two daughters, ages 17 and 21, who live with him in a condominium he rents at 13216 N.E. Salmon Creek Avenue, Vancouver, Washington. (Certified Appeal Board Record, WALKER, page 6, line 40; page 120, lines 27, 34 and 38; page 125, line 49; and page 126, line 5). As of August 15, 2005, Tim Walker had been employed by the respondent, Glacier Northwest, Inc., for about a month as a ready-mix concrete truck driver. (CABR - WALKER, page 7, lines 3 and 7, and page 10, line 18). For the first 2-3 weeks, Tim Walker drove with Dave on a training truck. He had been driving his own truck for a week or so, which was another truck in the fleet, a 1988 Mack. (CABR, WALKER, page 12, lines 25 and 29, and page 122, line 25). Tim Walker was driving for Glacier Northwest, Inc., out of a concrete plant in Woodland, Washington, and had previously been employed as a ready-mix driver for 5 years. (CABR - Walker, page 7, line 27, and page 11, line 18).

The concrete mixer truck that Tim Walker was assigned was a booster truck which holds 9 1/2 yards of concrete, and has an axle that

drops down in back to take weight off the other axles and looks like a couple of wheels which extend off the back. (CABR - WALKER, page 8, lines 7, 18 and 23). Tim Walker had started his shift at 7:00 a.m. on August 15, 2005, had inspected the truck for 15 minutes, and was on his 3rd of 4th load of the day. He had driven a 5 yard partial load and a 7 yard partial load, and had 4 yards left in his barrel, when the plant batched 5 1/2 yards on top to make a 9 1/2 yard full load. (CABR - WALKER, page 11, lines 5 and 10; page 13, line 25; page 15, lines 1 and 5; and page 124, lines 9, 14 and 18).

Any time there is concrete sitting in the truck all day, it starts setting up, and is more like a sticky paste and has a lot more tendency to cling to the sides of the barrel and stick to it. (CABR - WALKER, page 124, line 47 and page 125, line 14). Tim Walker had what is called a "hot load", having 5 1/2 yards of new concrete on top of 4 yards of old, which will set up a lot faster than regular concrete. (CABR - WALKER, page 129, lines 3, 16 and 21). Any time the concrete mixer truck is being driven, the barrel is always turning slowly, and that was the case on August 15, 2005. (CABR - WALKER, page 124, lines 27 and 34). Going from a 5 yard load to a 7 yard load, and to a 9 1/2 yard load, Tim Walker adjusted the booster to take weight off the driving tire axles. (CABR -

WALKER, page 15, lines 12, 16 and 20).

At about 4:00 p.m. on August 15, 2005, Tim Walker was driving down Pioneer Road to turn onto Reiman Road in Ridgefield, Washington. The posted speed was 35 miles per hour, and he was driving that speed or slower because he had to go through some S-curves going down a hill. (CABR -WALKER, page 10, line 49; page 16, line 38; page 17, lines 10 and 18; and page 18, line 10). The turn onto Reiman Road is a right turn and Tim Walker was familiar with the corner, having driven the exact route while he was in training at least a dozen times with a 9 1/2 yard load. There was a development with a number of houses being built off of Reiman Road, and he had not had any problems before. (CABR - WALKER, page 16, line 42; page 17, line 3; page 131, lines 25, 29, 36 and 40; and page 132, lines 1, 10 and 16).

There was a turn lane on Pioneer for right turns onto Reiman Road about 300 feet back from the corner. The turn onto Reiman Road is banked to the outside, meaning the road surface is lower on the outside than it is on the inside of the turn. (CABR - WALKER, page 126, lines 38 and 45; page 127, lines 42 and 47; and page 128, lines 20 and 25). The turn is more than a 90° turn, and Reiman slopes down around the corner before flattening out. (CABR - WALKER, page 129, line 40, and

page 130, lines 3 and 18).

Tim Walker was driving more cautiously with the fully loaded 9 speed 1988 Mack concrete mixer truck, and had shifted down into 3rd gear and was traveling at 10 to 15 miles per hour to initiate the turn onto Reiman Road. (CABR - WALKER, page 18, line 25; page 19, line 14; page 134, line 43; and page 135, line 3). As he went around the corner, Tim Walker felt like he was being pushed from behind, like a surge, and his concrete mixer truck started to go onto its side. It was like the load had shifted inside the drum. He had never experienced a surge before. As the concrete is climbing in the barrel, it is going to shove the truck more. (CABR - WALKER, page 18, lines 40 and 44; page 19, lines 5 and 9; and page 133, line 3).

When the truck turned on its side, Tim Walker was trapped inside the cab, waiting for the paramedics to arrive, and was taken to the hospital. As the result of the accident, he had 2 broken ribs, a lacerated kidney and a broken rotator cuff in 2 places, and since then has been under the care of a doctor. (CABR - WALKER, page 20, lines 42 and 47, and page 21, lines 42 and 49). Tim Walker's employment at Glacier Northwest, Inc., was terminated because of the accident for going too fast around a corner. (CABR - WALKER, page 22, line 20, and page 23, line 16).

At hearing before an Industrial Appeals Judge of the Board of Industrial Insurance Appeals on August 22, 2006, the parties stipulated to the following: Tim Walker was terminated on September 20, 2005, light duty was authorized by his doctor on November 28, 2005, and the self insured employer stopped payment of time loss benefits as of November 28, 2005. (CABR - WALKER, page 4, line 29, through page 5, line 22). Glacier Northwest, Inc., maintains that, though light duty work was available to Tim Walker, they did not have to provide it to him because he had already been terminated, and his time loss benefits should end.

#### **B. Procedure**

On December 21, 2005, the Department of Labor and Industries entered an order directing the employer to pay time loss compensation effective November 28, 2005, on the basis that Tim Walker had been released to light duty work and light duty was no longer available to him due to the fact that he had been terminated from his employment. (CABR - page 41). On February 13, 2006, Glacier Northwest, Inc., protested and requested reconsideration of the Department order. (CABR, page 45-49). On March 1, 2006, the Department forwarded employer's request for reconsideration to the Board of Industrial Insurance Appeals as

a direct appeal. (CABR - page 50).

The Board of Industrial Insurance Appeals granted Glacier Northwest, Inc.'s, appeal on March 8, 2006, (CABR - page 52), and the employer's appeal proceeded to hearing before Industrial Appeals Judge Richard Mackey on August 22, 2006. (CABR - pages 1-163). On December 1, 2006, Judge Mackey filed his Proposed Decision and Order including Findings of Fact and Conclusions of Law, deciding at page 36, line 15, through page 37, line 13, of the Certified Appeal Board Record:

From the foregoing it is clear that Mr. Walker was no longer an employee of Glacier Northwest, Inc., when on November 28, 2005, he was medically released to perform a light duty job that existed at Glacier Northwest, Inc. In ordering the self-insured employer to pay time-loss compensation effective November 28, 2005, in the order under appeal here, the Department correctly determines that the claimant had only been released to light-duty work, and that such work was not available due to the termination of Mr. Walker's employment.

In a letter from the employer's attorney to the Department dated February 13, 2006, (the employer's notice of appeal in this case), the employer argues that Mr. Walker's case is essentially the same as found in a series of prior decisions at the Board which hold that disciplinary termination of a worker does not require reinstatement of full time-loss compensation if the evidence establishes that the disciplinary termination was administered for reasons wholly unrelated to the industrial injury or receipt of workers' compensation benefits and the discipline likely would have been administered to any of the employer's

workers in similar situations. *In re Chad Thomas*, BIIA Dec., 00 10091 (2001); *In re Sean M. Murphy*, Dckt. No. 95 5987 (February 14, 1997); and *In re Floyd E. Peterson*, Dckt. No. 01 23284 (December 18, 2002). In addition, the employer cites *In re Candi L. Balabon*, Dckt. Nos. 02 11824 and 02 19325 (September 11, 2003), which reaches the same result as the other cited cases. While the latter Decision and Order of the Board is not lengthy, Finding of Fact No. 6 and Conclusion of Law No. 2 determine that during the period in issue, "Candi L. Balabon was capable of working at a light duty job that had been specifically made available for her by her employer . . ." The cases cited by the employer therefore all involve situations where the requirements of RCW 51.32.090(4) had been satisfied before or at the time of termination of employment.

The present case is different. Mr. Walker was not released for light duty work until November 28, 2005, more than two months after he was terminated from employment. Under these circumstances, the requirements of RCW 51.32.090(4) that the worker be able to perform light-duty work and that light-duty work be made available to him by the employer have never jointly existed. By the time Mr. Walker was able to perform any work, the employer no longer wanted him. Pointedly, with regard to the light-duty job, the stipulation of fact offered by the parties at the hearing in this appeal states that the job is available but does not state that the job is available to Mr. Walker. Accordingly, RCW 51.32.090(4) and the aforementioned cases cited by the employer are not controlling.

Glacier Northwest, Inc., then on January 18, 2007, filed a Petition for Review to the Board of Industrial Insurance Appeals. (CABR - pages 5-28), and on February 1, 2007, the Board entered an Order Denying Petition for Review, and the Proposed Decision and Order became the Decision and Order of the Board. (CABR - page 1). Glacier Northwest,

Inc., then on February 7, 2007, appealed the Board's Decision to Superior Court for Clark County. The appeal proceeded to a 6 person jury trial on July 7, 2008, before the Honorable Robert L. Harris. On July 8, 2008, Glacier Northwest, Inc., moved for dismissal and Tim Walker moved for judgment as a matter of law. After considering the arguments of respective counsel, Judge Harris made his oral decision in favor of Glacier Northwest, Inc., at page 17, line 24, through page 18, line 16:

. . . . Since then (termination), Glacier has certified that yes there is light duty available and is constantly available during the period of time. Does it meet the test and definition of 040 (51.32.090(4)(a)) that the - that the work has come to an end? And looking at both *Peterson* and the language in denying the temporary benefits of *Soesbe* looking at the spirit of these type of cases, my conclusion is that I'm going to have to grant the motion on behalf of Glacier, that they are not required to re-employ a person who has been terminated for cause, that the situation is such it was not in any way related to the industrial injury that was the basis termination for the discharge of Mr. Walker, that when he became eligible for employment there - because of the termination that they were not in any way required to re-employ and that as such, it does not meet the definition of 040, (51.32.090(4)(a)) which stands for the proposition that there is no employment available to him and therefore to continue time loss benefits are available from that specific employer.

The Court then entered its Findings of Fact and Conclusion of Law and Judgment on July 29, 2008, and Tim Walker appealed to this Court on August 7, 2008.

### III

#### Argument

##### A. Merits

The prior decisions relied upon to support the application of RCW 51.32.090(4) to Tim Walker are based on the reason that termination of employment is unrelated to the industrial injury. *O'Keefe v. Dept. of Labor & Indus.*, 126 Wn. App. 760, 766, 109 P.3d 484 (2005). *In re Chad Thomas*, BIIA Dec., No. 00 10091 (2001), and *In re Jennifer Soesbe*, BIIA Dec., No. 02 19030 (2003), all involve situations where the injured worker returned to a modified job with the employer at injury, and the employer terminated employment for disciplinary reasons occurring after the return to work. Here, Tim Walker was terminated on September 20, 2005, prior to being returned to work light duty by his doctor on November 28, 2005, when his time loss benefits were ended. More importantly, the disciplinary reasons in the prior cases were wholly unrelated to the industrial injury, while Tim Walker was terminated for reasons directly related to the industrial injury. Tim Walker was terminated for being at fault for the vehicle accident that resulted in his injury.

RCW 51.32.090(4)(a) states:

Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician as able to perform available work other than his or her usual work, the employer shall furnish to the physician, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the physician to relate the physical activities of the job to the worker's disability. The physician shall then determine whether the worker is physically able to perform the work described. *The worker's temporary total disability payments shall continue until the worker is released by his or her physician for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed.* (emphasis added) Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceased such work.

The Court in *O'Keefe*, 126 Wash. App. at 766, held that the work did not come to an end within the meaning of RCW 51.32.090(4)(a) when the employer fired the employee for misconduct after the incident which resulted in the industrial injury. *In re Jennifer Soesbe*, No. 02 19030, the Board of Industrial Insurance Appeals held that when the modified work ends for disciplinary reasons, wholly unrelated to the industrial injury,

modified work is available within the meaning of RCW 51.32.090(4)(a). In *Soesbe*, the worker was terminated after returning to light duty, and the Board held the reason for her termination was wholly unrelated to the industrial injury.

*O'Keefe*, 126 Wn. App. at 766, applied the plain meaning rule of statutory construction. If the statute is unambiguous, the meaning is derived from the wording of the statute itself, citing *Cobra Roofing Serv., Inc., v. Dept. of Labor & Indus.*, 122 Wn. App. 402, 416-17, 97 P.3d 17 (2004); *Taylor v. Nalley's Fine Foods*, 119 Wn. App. 919, 923, 83 P.3d 1018 (2004). In construing a statute, attempt is given to effect the legislative intent. *Dept. of Labor & Indus. v. Kantor*, 94 Wn. App. 764, 775, 973 P.2d 30 (1999), and the statute is never interpreted to reach an absurd or unjust result. *Flanigan v. Dept. of Labor & Indus.*, 123 Wn.2d 418, 426, 869 P.2d 14 (1994)

The Board of Industrial Insurance Appeals held in Conclusion of Law No. 2, *In re Timothy T. Walker*, Docket No. 06-12392, (February 1, 2007),

Where an injured worker is not medically released as physically able to perform light-duty work until two months after his employment terminates for a disciplinary reason not related to the industrial injury, and the employer is not

willing to rehire the worker, light work existing with the employer is not available to the worker within the meaning of RCW 51.32.090(4).

The Trial Court reversed the Board on this critical issue. Tim Walker takes exception to the Board's reference to his employment terminating for disciplinary reasons not related to the industrial injury, as the termination did occur for reasons related to the industrial injury.

To hold that RCW 51.32.090(4)(a) applies to end time loss benefits when the injured worker is terminated for reasons related to the industrial injury defeats the purpose of the Industrial Insurance Act. RCW 51.12.010 provides that this title shall be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries occurring in the course of employment. The guiding principle in construing provisions of the Industrial Insurance Act is that the Act is remedial in nature and is to be liberally construed in order to achieve its purpose of providing compensation to all covered employees injured in their employment with doubts resolved in favor of the worker. *Cockle v. Dept. of labor & Indus.*, 142 Wn.2d 801, 811, 16 P.3d 583 (2001), *Dennis v. Dept. of Labor & Indus.*, 109 Wn. 2d 467, 470, 745 P.2d 1295 (1987).

The meaning of a particular word in a statute is not gleaned from the word alone, because the purpose is to ascertain legislative intent of the

statute as a whole. *Labor & Indus. v. Granger*, 159 Wn.2d, 752, 762, 153 P.3d 839 (2007), *Davis v. Dept. of Licensing*, 137 Wn.2d 957, 970-71, 977 P.2d 554 (1999). The purpose of time loss compensation is to protect the worker's earning capacity. *Granger*, 159 Wn.2d at 762, *Gallo v. Dept. of Labor & Indus.*, 155 Wn.2d 470, 481, 120 P.3d 564 (2005). The Industrial Insurance Act is a self-contained system that provides specific procedures and remedies for the injured worker, and RCW 51.04.060 states that its provision may not be modified by an employment contract. *Granger*, 159 Wn.2d at 762; *Brand v. Dept. of Labor & Indus.*, 139 Wn.2d 659, 668, 989 P.2d 1111 (1999). In *Granger* the court looked to the Act and its purpose in order to construe the worker's earning capacity at the time of injury and not to the rules of the union trust fund and its conditions of benefit eligibility. *Granger*, 159 Wn.2d at 762.

It should not matter if the employment came to an end before or after the worker is released to modified work. The reason for termination itself must be unrelated to the industrial injury. Otherwise, the purpose of the industrial injury is violated. Here, the result is contrary to the purpose where an employee is considered unavailable due to being terminated for the incident which caused the industrial injury. *Cockle*, 142 Wn.2d at 811, *Granger*, 159 Wn.2d at 762.

Pursuant to RCW 51.04.010, there is a Washington Pattern Instruction that provides that the Industrial Insurance Act allows compensation regardless of any consideration of fault, and there is no issue of negligence of the employer or the worker. WPI 155.05. The only exception to the rule is on a reopening of a claim where the issue of aggravation versus a new injury is considered in weighing whether the partially disabled worker can reasonably be expected to be performing daily activities which resulted in the aggravation. *McDougle v. Dept. of Labor & Indus.*, 64 Wn.2d 640, 645, 393 P.2d 631 (1964).

RCW 51.32.090(4)(a) appears to be a section that benefits the employer, in that if a physician certifies a worker as able to perform modified work, and the employer offers the worker modified work within his restrictions, time loss benefits will come to an end. If the modified work comes to an end before the worker is able to perform his usual job, or he is not offered other available work within his restrictions, time loss benefits are to be resumed. The statute covers a limited situation which does not contemplate the worker being terminated for fault related to the industrial injury, and for that reason not being able to perform available work. To hold the worker is not available for modified work because of termination related to the industrial injury, expands the statute beyond the

plain meaning of RCW 51.32.090(4)(a). *O'Keefe*, 126 Wn. App. at 766.

To hold that light work existing with the employer was not available to the worker within the meaning of RCW 51.32.090(4)(a), as the Board did, avoids an absurd or fundamentally unjust result. *Flanigan*, 123 Wn.2d at 426. To hold as the Trial Court did that light duty work remained available to Timothy Walker, violates the purpose of the Industrial Insurance Act to provide compensation for all covered employees injured in their employment with doubts resolved in favor of the injured worker. *Cockle*, 109 Wn. 2d at 811.

The Employer may contend or will argue that when an employee is terminated for reasons unrelated to the industrial injury, then the employee does not make themselves available for light duty. However, how can the reason for termination not be related to the industrial injury, if the injury is a result of the event/incident? The Court should make an exception/or rule that a termination related to the incident resulting in the injury is not a termination wholly unrelated to the industrial injury. The employer is arguing both sides of the coin; that the termination is wholly unrelated to the industrial injury, although the termination is the result of the injury. Following the employer's argument, will lead to an absurd result. *Flanigan*, 123 Wn.2d at 426.

## B. Reasonable Attorney Fees

Pursuant to RAP 18.1, Timothy Walker maintains that if he prevails on appeal, he should be awarded reasonable attorney fees on appeal and in the trial court. RCW 51.52.130 provides:

*(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. . . . 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.*

*Flanigan v. Dept. of Labor & Indus.*, 123 Wn.2d 418, 427, 869 P.2d 14 (1994), holds that "court" in RCW 51.52.130 has been interpreted to refer only in superior courts, not to higher courts of appeal. The statute

commences, "on appeal to the superior court and appellate court", and towards the end states, "for services before the court", which is then interpreted to mean services in superior court only, ignoring the initial reference to superior and appellate court. The continuing reference to court would be to superior or appellate court, and should not have to be repeated throughout the statute. The meaning of a particular word in a

statute is not gleaned from the word alone, because the court's purpose is to ascertain legislative intent of the statute as a whole. *Dept. of Labor & Indus. v. Granger*, 159 Wn.2d 752, 762, 153 P.3d 839 (2007).

#### IV

#### Conclusion

RCW 51.32.090(4)(a) does not apply to end time loss benefits to an injured worker who is terminated for reasons related to the industrial injury prior to being released to light duty work where light duty work is otherwise made available by the employer at injury. The decision of the Superior Court reversing the Board of Industrial Insurance Appeals and the Department of Labor and Industries is incorrect and should be reversed and

remanded to the Superior Court for Clark County to award Timothy Walker reasonable attorney fees in the superior and appellate courts, payable by Glacier Northwest, Inc.

DATED this 30th day of October, 2008.

LAW OFFICES OF STEVEN L. BUSICK

  
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Attorney for Appellant

  
Frances R. Hamrick, WSBA #31547  
Attorney for Appellant

RCW 51.32.090(4)(a) states:

Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician as able to perform available work other than his or her usual work, the employer shall furnish to the physician, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the physician to relate the physical activities of the job to the worker's disability. The physician shall then determine whether the worker is physically able to perform the work described. *The worker's temporary total disability payments shall continue until the worker is released by his or her physician for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary total disability payments shall be resumed.* (emphasis added) Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceased such work.

RCW 51.52.130 states:

(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.*  
... *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.*

