

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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No. 38891-0-II

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

PAIGE E. SAGEN,

Appellant,

vs.

DEPARTMENT OF LABOR AND INDUSTRIES,
a Washington State Agency,

Respondents.

BRIEF OF APPELLANT SAGEN

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I. ASSIGNMENTS OF ERROR

A. Assignments

1. Finding of Fact No. 6 to the extent that it states that claimant's industrial injury did not proximately cause a condition diagnosed as left lateral epicondylitis. 1
2. Finding of Fact No. 14 to that portion which states that, from December 10, 2003 through June 20, 2004, "the claimant's earning power was impaired".
3. Finding of Fact No. 15 to that portion which states that as of June 21, 2004, the claimant was not precluded by the residuals of the industrial injury of February 9, 1998, from engaging in gainful employment on a reasonably continuous basis.
4. Conclusion of Law No. 6 to the extent that it states only that, as of June 21, 2004, claimant was a permanently *partially* disabled worker.
5. Conclusion of Law No. 8 to the extent that states that, during the period December 10, 2003 through June 20, 2004, claimant was only temporarily *partially* disabled;
6. Conclusion of Law No. 9 to the extent that states that, as of June 21, 2004, the claimant was not permanently totally disabled.
7. Conclusion of Law No. 11 to the extent that it does not direct the Department to accept a condition of left lateral epicondylitis, does not direct payment of full time-loss

1. Although designated a "Finding of Fact" the portion of Finding of Fact Numbers 6, 14 and 15 to which Mr. Sagen assigns error is actually a conclusion of law. The court will treat a conclusion of law as a legal conclusion, even if it is labeled a finding of fact. *McClendon v. Callahan*, 46 Wn. 2d 733, 740-41, 284 P.2d 323 (1955). Assigning error to the misdesignated "Finding of Fact" Number 4 therefore does not raise a question of material fact, nor does it alter the *de novo* standard of review that the court will apply to the legal questions in this case.

compensation benefits for the period December 10, 2003 through June 20, 2004, and does not determine the claimant to be permanently totally disabled as of June 21, 2004

(1) Assignments of Error

1. The trial court erred in entering Conclusion of Law Number 1.2
2. The trial court erred in entering Conclusion of Law Number 2.
3. The trial court erred in entering Conclusion of Law Number 3.
4. The trial court erred in entering the Judgment and Order of April 5, 2001 affirming the Board of Industrial Appeals Decision and Order.
5. The trial court erred in reversing the Industrial Appeals Judge's evidentiary ruling regarding testimony of John Fountaine, VRC.
6. The trial court erred in giving the Department of Labor and Industries permanent total disability instruction, identified as Court instruction # 10.

II. APPELLANT'S STATEMENT OF THE ISSUES

1. Whether the Court below committed error by offering the Department's instruction regarding total disability?

2. Whether the Court below committed error by reversing the Industrial Appeal Judge ruling and excluding highly probative evidence, including testimony, which had been previously admitted by the Board of Industrial Insurance Appeals and was not preserved by the Department at the time of the injured worker's appeal to Superior Court?

² The trial court's Judgment and Order contains separate paragraphs with what amount to conclusions of law. In order to comply with RAP 10.4(a), appellant Sagen has assigned error to each.

III. APPELLANT'S STATEMENT OF THE CASE

In January of 1988, Appellant, Paige Sagen, sustained an industrial injury during the course of his employment with Sound Overhead Door Service, Inc., hereinafter "Sound Door." Certified Appeal Board Record (hereinafter "CABR"), at 20. The claim was allowed and benefits paid. Id. On June 21, 2004, the Department of Labor and Industries (Department) issued an order closing the claim with time loss compensation as last paid and no award for permanent partial disability. CABR 17. Appellant filed an appeal to the Board of Industrial Insurance Appeals (Board) of the June 21, 2004 closing order and on August 24, 2004, the Board issued an order granting the appeal. CABR at 33.

At issue at the Board, and at Superior Court was the basis for the Department's determination that the Appellant, Mr. Sagen, was not entitled to time loss compensation benefits or total disability benefits, based upon a job offer, identified as dispatcher, by the employer of injury. CABR at 18. Within the Appellant's case in chief, was testimony by John Fountaine, vocational rehabilitation counselor. Mr. Fountaine had had an opportunity to review vocational "notes" of Whittall Management Group, which delineated a significant issue with whether or not the job offer relayed to Mr. Sagen, in order to terminate his labor and industries benefits, was in fact a good faith, bonafied, return to work offer. The statements contained within the vocational notes were made by Bob Wahl, the owner of Sound Door. *Id.*

During Mr. Fontaine's testimony the Department's attorney objected to Mr. Fontaine's testimony regarding what he learned from the vocational notes which vocationally raised questions concerning issues between the employer and the Appellant. RP 12/8/04 at 19. The Industrial Appeals Judge (IAJ) overruled the Department's objections and allowed into the written transcripts Mr. Fontaine's testimony. RP 12/8/04 at 11. In his oral ruling, IAJ Hansen held that the information being offered constituted facts and data pursuant to ER 705. *Id.*

On March 11, 2005, Industrial Appeals Judge Randall L. Hansen issued a Proposed Decision and Order. CABR, at 17-36. The Proposed Decision and Order reversed the June 21, 2004 closing order but affirmed the Department's determination that the Appellant was not entitled to temporary total disability from 12-10-03 through 6-20-04 and not entitled to a finding of permanent total disability. CABR, at 35-36. The following are the pertinent findings of material fact as found by the Board of Industrial Insurance Appeal (hereinafter "BIIA"):

4. On February 19, 1998, the claimant sustained an industrial injury to his left shoulder, arm, back, and neck in the course of his employment with Sound Overhead Door Service, Inc.
5. The February 19, 1998 industrial injury proximately caused sprains and contusions to the left elbow and shoulder, mild impingement syndrome of the left shoulder, cervical strain/sprain, lumbosacral strain/sprain, and aggravation of the claimant's pre-existing degenerative disk disease of the lumbar spine.

7. As of December 10, 2003, the claimant's conditions proximately caused by the industrial injury had reached maximum medical improvement, and were not in need of further treatment, and based on objective findings, the claimant had a permanent partial disability best described as Category 3 WAC 296-20-280, permanent dorso-lumbar and/or lumbosacral impairments.
8. From November 24, 2003 through December 9, 2003, the claimant was precluded by the residuals of the industrial injury of February 19, 1998, from engaging in gainful employment on a reasonably continuous basis.
9. As of February 19, 1998, the claimant was earning \$11 an hour working as an installer for Sound Overhead Door Service, Inc.
10. The industrial injury of February 19, 1998 was a proximate cause of the claimant's inability to return to his previous work as an installer of overhead doors.
11. From December 10, 2003 through June 21, 2004, as a result of the physical limitations proximately caused by the industrial injury, the claimant was restricted to modified/lighter duty work, as his ability to lift was restricted, and it was necessary that he be free to sit, stand and walk about the work station as needed.
12. On November 6, 2003, the employer sent a letter to the claimant describing a job that was being offered to the claimant for a return to work with the employer, with wages set at \$8.98 per hour. The job offered to the claimant was consistent with his physical limitations proximately caused by the industrial injury and did constitute a valid job offer. The claimant did not accept this job offer.

On April 13, 2005, Appellant filed a petition for review with the Board of Industrial Insurance Appeals. CABR, at 4-14. On May 13,

2005, the Board issued an Order Denying Petition for Review. CABR, at 1.

Pursuant to RCW 51.52.110, on June 1, 2005, Appellant filed a Notice of Appeal in Superior Court from the Board's May 13, 2005 Order Denying Petition for Review. (Clerks Papers, hereinafter CP, at 1-3). The case was filed in Pierce County Superior Court and assigned to the Honorable Waldo Stone. (Verbatim Report of Proceedings, hereinafter VRP 9/22/08, at 1.)

Through its attorney, the Department re-raised its objections to the allowance of evidence, including John Fontaine's testimony, regarding Mr. Wahl's statements contained within the vocational notes. VRP 9/22/08 at 26-42. The Honorable Stone overturned the industrial appeals judge's rulings and sustained the Department's objections. *Id.*

A jury trial was then held on September 22, 2008 in Pierce County Superior Court. VRP 9/23/08 at 59. Prior to closing, the Court heard arguments and exceptions by the respective parties in regards to the Court's proposed jury instructions. VRP 9/25/08 at 4. The Plaintiff took exception to the Court's instruction # 10 which was the Department's proposed modified Permanent Total Disability instruction. *Id.*

The Court's instruction # 10 stated:

“Total disability is an impairment of mind or body that renders a worker unable to perform or obtain a gainful occupation with a reasonable degree of success and continuity. It is the loss of all reasonable wage-earning capacity.

A worker is totally disabled if unable to perform or obtain regular gainful employment within the range of the worker's capabilities, training, education, and experience. If Paige Sagen can do any regular work at any gainful occupation, he is not permanently and totally disabled. The work may be light or heavy, sedentary or manual, but it must be some regular employment within his physical and mental capabilities.

A worker is not totally disabled solely because of inability to return to the worker's former occupation. If Paige Sagen is capable of performing light work of a general nature, then he is not permanently and totally disabled solely because of inability to return to his former occupation.

Total disability does not mean that the worker must have become physically or mentally helpless. Total disability is permanent when it is reasonably probable to continue for the foreseeable future.”

The Plaintiff had offered the pattern instruction on Total Disability, WPI 155.07.

After opening statements, testimony and closing arguments, the jury returned a verdict on September 26, 2008 affirming the Board of Industrial Insurance Appeals Decision and Order. VRP 9/26/08 at, 3. On February 4, 2009 Judgment was filed in Superior Court. CP at, 110-112.

On February 24, 2009 Mr. Sagen filed a Notice of Appeal to this Court.

IV. STANDARD OF REVIEW

(1) Standard of Review

Judicial review of matters arising under the Industrial Insurance Act is governed by RCW 51.52.110 and RCW 51.52.115. *Ball-Foster Glass Container Co. v. Giovanelli*, 128 Wn. App. 846, 849, 117 P.3d 365 (2005). The hearing in the superior court is de novo. RCW 51.52.115. When a party appeals from a decision of the Board and the superior court affirms the Board's decision, this Court's inquiry is the same as that of the superior court. *Littlejohn Construction Co. v. Dep't of Labor & Indus.*, 74 Wn. App. 420, 423, 873 P.2d 583 (1994). Appellate review is limited to the evidence and testimony presented to the Board. *Stelter v. Dep't of Labor & Indus.*, 147 Wn.2d 702, 707, 57 P.3d 248 (2002).

(2) Statutory Interpretation Under Title 51

Courts must liberally construe the Industrial Insurance Act in favor of the injured worker. Title 51 RCW has its own rule of statutory construction, in RCW 51.52.010, which provides, in relevant part:

This title shall 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 employment.

In this state, injured workers' rights to benefits are statutory. Washington's workers' compensation law was enacted in 1911, the result

of a compromise between employers and workers such that “sure and certain relief for workers, injured in their work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy.” RCW 51.04.010. Workers receive less than full tort damages but are spared the expense and uncertainty of litigation. *See Dennis v. Dep't of Labor & Indus.*, 109 Wash.2d 467, 469-70, 745 P.2d 1295 (1987).

The Industrial Insurance Act mandates that its provisions 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 employment.” RCW 51.12.010. Courts, therefore, are to resolve doubts as to the meaning of the IIA in favor of the injured worker. *Kilpatrick v. Dep't of Labor & Indus.*, 125 Wash.2d 222, 230, 883 P.2d 1370, 915 P.2d 519 (1994). Note that it is not any particular portion of Title 51 that is to be liberally construed. Rather, it is the *entire statutory scheme* that receives the benefit of that construction.

Each statutory provision should be read by reference to the whole act. “We construe related statutes as a whole, trying to give effect to all the language and to harmonize all provisions.” *Guijosa v. Wal-Mart Stores, Inc.*, 101 Wn. App. 777, 792, 6 P.3d 583 (2000), *aff'd*, 144 Wn.2d 907, 32 P.3d 250 (2001). The Supreme Court noted:

Historically, this Court has followed the rule that each provision of a statute should be read together with other provisions in order to determine legislative intent. “The purpose of reading statutory provisions in pari materia with related provisions is to determine the legislative intent underlying the entire statutory scheme and read the provision ‘as constituting a unified whole, to the that a harmonious, total statutory scheme evolves, which maintains the integrity of the respective statutes.”

In re Estate of Kerr, 134 Wn.2d 328, 336, 949 P.2d 810 (1998), *citing State v. Williams*, 94 Wn.2d 531, 547, 617 P.2d 1012 (1980).

In addition to liberal construction, Washington courts have mandated that doubts as to the meaning of the workers’ compensation law be resolved in favor of the worker. *See, Clauson v. Department of Labor and Industries*, 130 Wn. 2d 580, 586, 925 P.2d 624 (1996)(where a worker who had been awarded a permanent total disability pension under one worker's compensation claim received a permanent partial disability award for a prior injury under a separate, pre-existing claim. Where the court held that the timing of the closure of claims should not work to the disadvantage of an injured worker.); *see also, McClelland v. ITT Rayonier Inc.*, 65 Wn. App. 386, 828 P.2d 1138 (1992)(a case involving an employee’s claim for worker's compensation benefits for an aggravation of his psychological condition of major depression coupled with simple phobia).

(3) The Act's Purpose and Policies when Looking at this Case.

In order for a proper understanding of the importance of this case and the issues presented, it is important to first look at what brought about Washington's Industrial Insurance Act and the policies and presumptions that came with it.

The Industrial Insurance Act was established to protect and provide benefits for injured workers. As noted for many years by the courts, the enactment of the Industrial Insurance Act in 1911 by the Washington State Legislature was due to a, "finding that the remedy of the injured workman had been uncertain, slow and inadequate. . . ." 1911 Wash. Law, ch. 74; *see, e.g. Lee v. Department of Labor and Industries*, 81 Wn. 2d 937, 506 P.2d 308, 309 (1973)(a case involving a Mandamus proceeding by injured workman to compel director of labor and industries to obey and carry out order of board of industrial insurance appeals directing department of labor and industries to provide workman additional treatment). The declared purpose of the Act was to provide sure and certain relief for injured workmen. *Id.*

The Washington Supreme Court has long held that the Industrial Insurance Act is to be liberally applied in favor of the injured worker. The court stated in *Johnson v. Department of Labor and Industries*, 134 Wn. 2d 795, 953 P.2d 800 (1998), "We have previously recognized the change

in the common law brought about by the Legislature's enactment of the Industrial Insurance Act and that 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.'" 134 Wn. 2d at 799, 953 P.2d at 802. (Emphasis added)(Quoting *Sacred Heart Med. Ctr. v. Carrado*, 92 Wn.2d 631, 635 (1979)).

As the cases above establish, the Industrial Insurance Act was enacted to compensate as fully as possible workers injured on the job. With the long standing policy of liberal construction of the Act in favor of the worker, the remedial nature of the act, in conjunction with the mandate that any doubt be resolved in favor of the worker, supports a finding by this Court reversing the superior court's ruling as it relates to the adoption of the Department's modified jury instruction for total disability which was a clear misstatement of the law, in addition to being contrary to the underlying policies of the Industrial Insurance Act.

V. ARGUMENT FOR REVERSAL

- (1). The Court's Instruction #10 on Total Disability was an Inaccurate Statement of the Law and Presumptively Affected the Outcome of the Trial.

"Jury instructions are sufficient if they allow the parties to argue their theories of the case, do not mislead the jury and, when taken as a whole, properly inform the jury of the law to be applied." *Ezell v. Hutson*,

105 Wn.App. 485, 488, 20 P.3d 975 (2001) (quoting *Robertson v. State Liquor Control Bd.*, 102 Wn.App. 848, 860, 10 P.3d 1079 (2000), review denied, 143 Wn.2d 1009 (2001)), review denied, 144 Wn.2d 1011 (2001).

Appellate Courts review de novo whether an instruction is an error of law. *Id.* But the giving of a particular instruction is reviewed for an abuse of discretion. *Thomas v. Wilfac, Inc.*, 65 Wn.App. 255, 264, 828 P.2d 597, review denied, 119 Wn.2d 1020 (1992). An instruction that contains a misstatement of the applicable law is reversible error when it causes prejudice. *Ezell*, 105 Wn.App. at 488. Error is not prejudicial unless it affects or presumptively affects the outcome of the trial. *Thomas v. French*, 99 Wash.2d 95, 104, 659 P.2d 1097 (1983).

Appellate Courts review de novo the instructions in their entirety in order to determine whether the instructions are misleading or incorrectly state the law, which results in prejudice to the objecting party. *Furfaro v. City of Seattle*, 144 Wn.2d 363, 382, 27 P.3d 1160, 36 P.3d 1005 (2001). If an improper jury instruction results in prejudice to the objecting party, a new trial should be ordered. *Id.*

- a. The giving of Court's Instruction #10 was improper and resulted in prejudice to Mr. Sagen.

RCW 51.08.160 defines permanent total disability as meaning "loss of both legs, arms, or one leg and one arm, total loss of eyesight,

paralysis or other condition permanently incapacitating the worker from performing any work at any gainful occupation.” When a worker claims permanent total disability but does not suffer any of the disabilities specified in the statute, the inquiry becomes whether the injury permanently incapacitates the worker “from performing any work at any gainful occupation.” *Allen v. Department of Labor and Industries*, 30 Wn.App. 693, 638 P.2d 104 (1981).

Relevant Washington case law sets out the test for total disability as, “the inability, as the result of a work-connected injury, to perform or obtain work suitable to the workman’s qualifications and training. *Fochtman v. Department of Labor and Industries*, 7 Wn. App. 286, 294, 499 P.2d 255 (1972); *see also, Kuhnle v. Department of Labor and Industries*, 12 Wn. 2d 191, 198, 120 P.2d 1003 (1942)(Inability to obtain work, caused by an injury, is classed as total incapacity); *Allen v. Department of Labor and Industries*, 30 Wn. App. 693, 697-98, 638 P.2d 104 (1981)(*prima facie* case established by showing that worker is unable to follow previous occupation and is no longer able to perform or obtain work suitable to qualifications and training, as a result of the industrial injury.)

The leading case on the character and quantum of evidence required to establish a *prima facie* case of permanent total disability is

Kuhnle v. Dept. of Labor & Indus., Supra. The *Kuhnle* court held that the statutory language requiring the claimant to prove that he is incapable of performing any work at any gainful employment does not require that he be physically helpless. *Id.* The underlying basis is that the intent of the act is to insure against loss of wage earning capacity. Therefore a workman is totally and permanently disabled if he is not able to perform work for which he is qualified with a reasonable degree of continuity.

The Washington Supreme Court in *Leeper v. Department of Labor and Industries*, 123 Wn. 2d 803, 872 P.2d 507 (1994), stated that the overriding focus and measure of total disability cases is the “effect of the injury on the worker’s ‘wage earning capacity’.” *Id.*, at 812. After a review of the case law defining total disability, the *Leeper* Court stated three general conclusions:

First, the purpose of workers’ compensation, *and the principle which animates it*, is to insure against the loss of wage earning capacity. Adherence to this principle focuses disability hearings on the particular claimant’s ability to work in the competitive labor market.

Second, the appropriate measure of disability requires a study of the whole person – weaknesses and strengths, age, education, training and experience, reaction to the injury, loss of function, and other factors relevant to whether the worker is, as a result of the injury, disqualified from employment generally available in the labor market.

Third, our opinions require a claimant to show the workplace injury, not fluctuations in the labor market alone, caused the inability to obtain work.

Leeper, 123 Wn. 2d, at 814-15(emphasis added).

Thus, as established by case law, a *prima facie* case of permanent total disability is made when Appellant demonstrates that “he is unable to follow his previous occupation and is no longer able to perform or obtain work suitable to his qualifications and training, and that this incapacity is a result of the industrial accident.”³

Nothing within RCW 51.08.160 or the above case law has set the standard of permanent total disability as set forth in the modified WPI total disability instruction as offered by the Department in this case. The WPI instruction, as written, encompasses all of the cases cited by the Department in support of the modified WPI instruction. In fact, the cases cited in support of the modified total disability instruction *do not* support the additional / prejudicial verbiage contained within the Court’s instruction #10.4

³. This standard takes into account the pronouncement by the Supreme Court of Washington that “the measure of total disability is . . . the effect of the injury on the worker’s “wage earning capacity.” *Leeper v. Labor and Industries*, 123 Wash.2d 803, 812, 872 P.2d 507 (1994).

4 . *Buell v. Aetna*, 14 Wn.App. 742, 544 P.2d 759 (1976), which was an action to recover benefits payable under a voluntary compensation policy, the Court noted that a total disability instruction should be based upon the explanation of that term contained in *Kuhle v. Department of Labor & Indus.*, 12 Wash.2d 191, 120 P.2d 1003 (1942) and *Fochtman v. Department of Labor & Indus.*, 7 Wash.App. 286, 499 P.2d 255 (1972).

Washington Court's have found that the WPI on total disability, is a correct statement of the law. In *Washington Irrigation and Development Co. v. Sherman*, 106 Wn.2d 685, 724 P.2d 997 (1986), the court held that WPI 155.07 as presented in the second edition of the WPI was and is a correct statement of the law and that the trial court did not err in refusing the worker's proposed instruction which referred to the "whole man theory of total disability."

With the purpose of the Industrial Insurance Act in conjunction with the guiding principles of the Act, it follows that the superior court's allowance of the Department's jury instruction was error. Court's instruction #10 was misleading; incorrectly stated the law and resulted in prejudice to the Plaintiff / Appellant.

(2) The Court's Reversal of the Industrial Appeals Judge's Evidentiary Rulings was Error.

The law gives considerable discretion to administrative law judges to determine the scope of admissible evidence. *E.g., Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wash.2d 568, 597, 90 P.3d 659 (2004). Further, de novo review is a type of review, not an evidentiary standard. *See, e.g., Davis v. Baugh Indus. Contractors, Inc.*, 159 Wash.2d 413, 416, 150 P.3d 545 (2007). An appellate court reviews a trial court's evidentiary rulings for an abuse of discretion. *In re Pers. Restraint of*

Davis, 152 Wash.2d 647, 691, 101 P.3d 1 (2004). A trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons, i.e., if the court relies on unsupported facts, takes a view that no reasonable person would take, applies the wrong legal standard, or bases its ruling on an erroneous view of the law. *State v. Lord*, 161 Wash.2d 276, 283-84, 165 P.3d 1251 (2007).

While Mr. Sagen's case was being tried at the Board, the administrative law judge made evidentiary rulings during the testimony of the various witnesses. During John Fontaine's testimony the administrative law judge determined that the statements made by the employer contained within the vocational records, were in fact, admissible. The Judge allowed the testimony under ER 705, balancing the purpose of ER 705 and ER 403.⁵

The law gives considerable discretion to an administrative law judge to determine the scope of admissible evidence. Similar to a civil case on appeal, review of a lower court's ruling is based upon the abuse of discretion standard. Here, the administrative law judge allowed in the data contained within vocational records which supported the Plaintiff's /

⁵ Under ER 705 hearsay is not substantive evidence but admitted for the limited purpose of explaining an expert's opinion. *See, e.g., Group Health Cooperative of Puget Sound, Inc. v. State Through Department of Revenue*, 106 Wn.2d 391, 722 P.2d 787 (1986). If the hearsay basis for an expert's opinion would be misleading, confusing, or unfairly prejudicial, the court may exclude testimony about the basis pursuant to Rule 403.

Appellant's position that the job offered in the case was not in good faith. The superior court's reversal of those rulings was in error as there was no showing that the administrative law judge's evidentiary rulings were manifestly unreasonable or exercised on untenable grounds or for untenable reasons.

In addition to ER 705, the statements made in this case, contained within the vocational records, fall under the hearsay exception rule 801(d)(2). Rule 801(d)(2) Admissions by Party Opponent:

A statement is not hearsay if the statement is offered against a party and is (i) the party's own statement, in either an individual or a representative capacity or (ii) a statement of which the party has manifested an adoption or belief in its truth, or (iii) a statement by a person authorized by the party to make a statement concerning the subject, or (iv) a statement by the party's agent or servant acting within the scope of the authority to make the statement for the party, or (v) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

Id.

Nothing in Rule 801 requires that the statement be "against interest" when made. Under Rule 801, an admission is simply any statement by a party, oral or written, that is offered against that party. *See, e.g., State v. Anderson*, 44 Wn.App. 644, 723 P.2d 464 (1986).

The statements contained within the vocational records were comments made by Mr. Sagen's former employer. The opposing party's own personal statement is the classic example of an admission. Under