

NO. 44713-4-II

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

DALE WEEMS,

Appellant,

v.

THE STATE BOARD OF INDUSTRIAL INSURANCE APPEALS,

Respondent.

**DEPARTMENT OF LABOR AND INDUSTRIES' ANSWER TO
AMICUS CURIAE BRIEFS OF
DISABILITY RIGHTS WASHINGTON, THE
FRED T. KOREMATUS CENTER FOR LAW AND EQUALITY,
AND THE NORTHWEST JUSTICE PROJECT**

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I. INTRODUCTION

This Court should reject the arguments raised by the amicus curiae briefs filed by the Northwest Justice Project (NJP), Disability Rights Washington (DRW), and the Fred T. Korematsu Center For Law And Equality (KC). The amicus briefs argue (1) that Weems was incapable of meaningfully participating in his appeal at the Board of Industrial Insurance Appeals (Board); (2) that the industrial appeals judges had an affirmative duty to conduct a factual inquiry into whether Weems was capable of representing himself; (3) that the court's adoption of GR 33 shows that the Board was required to appoint an attorney for Weems; and (4) that, under the ADA, a state entity must grant a disabled person's requested accommodation unless the state entity can show that it would be "unreasonable," regardless of whether any other accommodation would adequately serve the disabled person's needs.¹

The arguments raised in the amicus briefs fail. First, the record shows that Weems was able to, and did, effectively participate in his appeal. Second, the cases cited by the amici do not support their argument

¹ The amicus briefs also critique the Board's overall compliance with the ADA, and one amicus notes that other state entities have appointed counsel to disabled persons or are considering doing so. *See* NJP Amicus Br. at 7, 16-17; DRW Amicus Br. at 17-18; KC Amicus Br. at 7-9, 12-17. However, these are new issues raised only by an amicus, and this Court should not consider them. *See Noble Manor Co. v. Pierce Cnty.*, 133 Wn.2d 269, 272 n.2, 943 P.2d 1378 (1997) (noting that a court typically does not consider issues raised by an amicus). Furthermore, these arguments should be rejected as they are based on evidence not in the Board record. *See* RCW 51.52.115.

that due process requires a tribunal to conduct a factual inquiry into an individual's capacity to represent himself or herself any time it appears that a person might have difficulty in doing so. Third, GR 33 allows a superior court to grant accommodations that are not required by the ADA, and, therefore, it does not establish that the ADA required the Board to appoint counsel to Weems. Fourth, Weems did not request accommodation as required by the ADA and therefore was not entitled to one, but, in any event, the case law shows that a public entity may offer a disabled person an accommodation that is different from the one requested so long as it was adequate under the circumstances.

II. ARGUMENT

A. The Record Establishes That Weems Was Able To, And Did, Meaningfully Participate In His Board Appeal

The record shows that Weems understood the basic nature of the proceedings, was able to articulate a theory as to why he should receive relief on appeal, presented a witness who provided some support for his claims, and asked relevant questions of both his witnesses and the Department's witnesses on cross-examination. BR 9/15/2008 at 64-69, 71-72; BR 10/13/2011 at 28-40.² Weems also filed written pleadings with the Board that were lucid and relevant. *See, e.g.*, BR 4, 9-10, 24.

² Citations to the documents in the Board record containing machine-stamped numbers will be listed with BR. Citations to the hearing transcripts will be listed with BR, followed by the date of the hearing and the page number of the transcript.

Furthermore, the only opinion by a mental health expert in this case establishes that Weems's ability to function is "pretty good," despite his mental health issues. BR 10/13/2011 at 26. Thus, the record shows that Weems was able to, and did, meaningfully participate in his appeal. None of the amicus briefs offers a reason to reject the opinion of the only mental health expert who evaluated Weems.

The amicus briefs contend that Weems is incapable of meaningfully representing himself. *See* NJP Amicus Br. at 6; KC Amicus Br. at 1-2, 4; DRW Amicus Br. at 11-12. However, the bulk of their assertions are not supported by citation to the record and for that reason do not merit consideration by this Court. *See* NJP Amicus Br. at 6-8; KC Amicus Br. at 1-2, 4; DRW Amicus Br. at 11-12; *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

With only a general citation to the record, NJP argues that the industrial appeals judge "yielded to hyper-technicalities," denied Weems "an opportunity to introduce medical records," and deemed Ms. Weems a "suitable lay representative . . . despite her apparent lack of sophistication, training, and own disruptive behavior." NJP Amicus Br. at 7.

NJP appears to characterize as "hyper-technicalities" the industrial appeals judge's decision to sustain objections to certain testimony offered by Weems because the statements were hearsay. *See* NJP Amicus Br. at 7.

NJP fails to offer any reasoned argument establishing that the industrial appeals judge did not properly sustain the objections. Similarly, the Board's rejection of medical records as exhibits was proper. *See* RCW 51.52.140 (providing that the practice in civil cases applies to industrial insurance appeals); ER 801(c); ER 802. Furthermore, pro se litigants who do not have any sort of disability frequently struggle with evidentiary rules, such as the rule against hearsay. Thus, the fact that Weems faced some challenges in this regard is not evidence that he is mentally incompetent or incapable of representing himself.

NJP's argument that Ms. Weems was not an appropriate lay representative for Weems overlooks the fact that, while the industrial appeals judge allowed Ms. Weems to assist Weems at the hearing, he did not designate Ms. Weems as Weems's lay representative. In any event, this does not demonstrate that Weems was incapable of meaningfully participating in his appeal.

The amicus briefs also point to the fact that the superior courts granted Weems an attorney under GR 33 as showing that Weems was incapable of representing himself.³ DRW Amicus Br. at 11-12;

³ Weems did not raise a GR 33 issue in his appeal. *See* App. Br. at 1-3. Weems's choice to not raise GR 33 on appeal must be seen as deliberate, as he raised it at the superior court. CP 30-32. This issue cannot be raised by the amicus. *See Noble Manor Co.*, 133 Wn.2d at 272, n.2 (explaining that a court typically does not consider issues raised solely by an amicus).

KC Amicus Br. at 3-6; NJP Amicus Br. at 6-8. In particular, DRW argues that the Board judge declined to accommodate Weems based on stereotypical assumptions about disabled persons rather than the evidence, supporting this claim only by noting that two superior court judges granted Weems an attorney under GR 33. DRW Amicus Br. at 11-12. DRW appears to reason that since GR 33 contemplates a fact-specific inquiry, there must be evidence that shows that Weems is disabled and incapable of self-representation. DRW Amicus Br. at 11-12.

However, the record does not establish what specific evidence either superior court relied upon when deciding to appoint an attorney to Weems under GR 33, and there is no basis for assuming the superior court judges conducted a more thorough consideration of the evidence in deciding to appoint an attorney than the Board judges did when they did not make such an appointment. *See* BR 66-77; CP 17. Furthermore, the superior court concluded that Weems had a mental condition that affected his ability to represent himself, not that he was incapable of meaningfully representing himself. BR 66.

Also, contrary to DRW's argument, GR 33 does not require a superior court judge to conduct a detailed and fact specific inquiry into whether an accommodation is necessary. GR 33 provides that an applicant for an accommodation shall provide a statement of what his or her

disability is and what accommodation he or she is seeking. GR 33 further provides that a judge *may*—but need not—direct the applicant to provide medical documentation of the disability. Thus, a judge can grant an accommodation under GR 33 based on an applicant’s request alone, and need not conduct any further inquiry into the matter.

NJP points to two incidents that it claims demonstrate that Weems was incapable of representing himself. NJP Amicus Br. at 10. First, NJP notes that Weems asked a Board judge how many times “L&I, doctors and the hospital” had been able to hide medical records from him. NJP Amicus Br. at 10. Second, NJP notes that Weems asked a Board judge if he could call “the media” as a witness. NJP Amicus Br. at 10.

Neither incident demonstrates that Weems is mentally incompetent and incapable of self-representation. Weems’s first comment demonstrates frustration with the industrial insurance process and a belief that important medical records had been lost or hidden. *See* BR 6/3/08 at 11. Weems’s second comment is reasonably understood as a suggestion that Weems might contact the media regarding the Department’s handling of his claim as a way to pressure the Department to agree to provide him with additional benefits. *See* BR 6/3/08 at 19-20. Neither incident proves that Weems lacked the capacity to represent himself.

B. Washington's Adoption Of GR 33 Does Not Constitute A Ruling That Every Form Of Accommodation That Is Authorized By GR 33 Is Legally Mandated

GR 33 does not control here. KC argues that, by adopting GR 33, the Washington Supreme Court has effectively ruled that any accommodation that is *authorized* by GR 33—including the appointment of counsel—is *mandated* by the ADA and the Washington Law Against Discrimination (WLAD). KC Amicus Br. at 3-6. KC contends that because the Board, like a court, is a state entity subject to the ADA and the WLAD, it follows that the Board, like a court, must provide accommodations whenever such accommodations would be authorized under GR 33. KC Amicus Br. at 3-6.

KC's argument fails. While it is clear that the Washington Supreme Court was cognizant of the ADA when it adopted GR 33, the Supreme Court's decision to adopt that rule does not show that it believes that everything that GR 33 authorizes a superior court judge to do is legally mandated by the ADA or other law. On the contrary, the Supreme Court, in adopting GR 33, adopted a rule that authorizes superior court judges to grant accommodations even when doing so is *not* mandated by either the ADA or the WLAD.

First, GR 33 provides that, in determining whether to grant an accommodation and what accommodation to grant, the judge shall

“consider, *but not be limited by*, the provisions of the Americans with Disabilities Act of 1990 . . . and other similar local, state, and federal laws” (Emphasis added.) Thus, GR 33 expressly authorizes a judge to grant an accommodation to a disabled person even if the accommodation is not required by either the ADA or any other law.

Second, a comparison of GR 33 and the case law under the ADA shows that GR 33 encourages superior court judges to use a more liberal standard in granting accommodations than is mandated by the ADA. As explained in the Department’s brief, the ADA requires that a state entity provide an accommodation only when doing so is necessary to ensure that the individual receives “meaningful access” to the state entity and its programs. *See* L&I Br. of Resp. at 21-24; *Alexander v. Choate*, 469 U.S. 287, 301-02, 105 S. Ct. 712, 83 L. Ed. 661 (1985) (holding that Rehabilitation Act requires accommodation only when this is necessary to ensure that individuals receive “meaningful access” to a public entity); *Ballard v. Rubin*, 284 F.3d 957, 960 (8th Cir. 2002) (explaining that the case law discussing the Rehabilitation Act and the ADA is “interchangeable”); *Tennessee v. Lane*, 541 U.S. 509, 531-33, 124 S. Ct. 1978, 158 L. Ed. 2d 820 (2004) (holding that ADA requires that disabled individuals receive “meaningful access” to the courts).

Furthermore, the case law under the ADA shows that the appointment of counsel has only been ordered as a form of relief when the court determined that the individual was not only suffering from a disability but also was incompetent. *Franco-Gonzales v. Holder*, 828 F. Supp. 2d 1133, 1136-48 (C.D. Cal. 2011) (concluding that mentally incompetent plaintiff was entitled to appointment of “qualified representative” in immigration proceeding because he was incapable of representing himself or waiving the right to counsel); *Hoang Minh Tran v. Gore*, No. 10cv2682-BTM, 2013 WL 878771 at 2*-6* (S.D. Cal. March 8, 2013) (concluding that plaintiff was not entitled to appointed counsel because he was capable of self-representation).

Conversely, GR 33 authorizes a superior court judge to appoint counsel to a litigant if doing so is “appropriate or necessary” to ensure that the court’s programs are “readily available” to a disabled person. The standard under GR 33 is a more liberal one: one can easily imagine a situation in which a court could conclude that it is “appropriate” to appoint a disabled person an attorney to ensure that the court is “readily accessible” to him or her, even though the disabled person is mentally competent and is therefore capable of meaningful self-representation.

It is, of course, the prerogative of the Supreme Court, the head of the judicial branch of Washington’s government, to voluntarily take on a

greater obligation to accommodate disabled persons who appear before the courts than is mandated by the ADA and related laws. However, the issue here is whether the Board violated the ADA and the WLAD when it did not provide Weems an attorney as an accommodation. The amici have not demonstrated that the Board violated those laws.

C. Neither The ADA Nor Due Process Required The Industrial Appeals Judges To Make A Further Inquiry Into Whether Weems Was Capable Of Representing Himself

Contrary to the amici's' arguments, neither due process nor the ADA required the two industrial appeals judges involved in Weems's case to make further inquiries into whether Weems was capable of self-representation. *Contra* NJP Amicus Br. at 9.

KC argues that the ADA requires that a fact-specific inquiry be held into whether an assessment is necessary, noting that GR 33 contemplates such an assessment. However, because it contains a more liberal standard than what is mandated by the ADA, GR 33 does not mandate that a detailed factual inquiry be conducted.

For its part, NJP argues that due process required the Board to conduct a fact-specific inquiry into this issue, apparently relying on *In re Meade*, 103 Wn.2d 374, 381, 693 P.2d 713 (1985), *In re Diamondstone*, 153 Wn.2d 430, 445, 105 P.3d 1 (2005), and *Graves v. Adult & Family*

Services Division, 76 Or. App. 215, 228, 708 P.2d 1180 (1985).

NJP Amicus Br. at 9. None of those cases supports that assertion.

First, both *Meade* and *Diamondstone* were cases involving disciplinary proceedings against attorneys. *Meade*, 103 Wn.2d at 375-76; *Diamondstone*, 153 Wn.2d at 433. Although attorney disciplinary proceedings are not criminal proceedings, the same legal standard is used in a disciplinary proceeding as in a criminal one when determining whether an attorney in that proceeding may be allowed to participate pro se. *See Meade*, 103 Wn.2d at 380. Thus, an attorney cannot properly be made to proceed pro se in a disciplinary proceeding if the attorney lacks the capacity to either intelligently waive the services of defense counsel or to effectively represent himself or herself. *See id.* This heightened due process requirement does not apply to workers' compensation disputes. *See In re Grove*, 127 Wn.2d 221, 237-38, 897 P.2d 1252 (1995) (concluding that workers' compensation disputes do not involve a fundamental liberty interest).

Second, while it is true that the *Meade* court directed that, in the future, a hearing officer "shall" order a hearing to determine whether an attorney is competent to conduct a proper defense if the officer has "reasonable cause" to question the attorney's competency, the court based that aspect of its decision on RLD 10.2(b), a rule governing disciplinary

proceedings against attorneys which does not apply to Board appeals. *Meade*, 103 Wn.2d at 381-82. Furthermore, even assuming for the sake of argument that the court viewed this as required as a matter of due process rather than RLD 10.2(b), it would not apply to Weems because the heightened constitutional standard that applies to bar disciplinary proceedings does not apply here. *See Grove*, 127 Wn.2d at 227-28.

Graves also does not support NJP's argument that the Board judges were required to inquire further into Weems's ability to represent himself. *Graves*, 76 Or. App. at 228. First, *Graves* is an Oregon case and, therefore, it is not binding on this Court. Second, *Graves* did not hold that a hearings officer is required to conduct a hearing as to whether an applicant is capable of representing himself or herself. *See id.* at 228. Rather, *Graves* held that when an applicant is pro se and "appears to be unable to address the issues involved in the hearing" the hearings officer "must develop the record adequately to determine *whether the claimant is entitled to benefits*, not just decide the case on an inadequate record." *Id.* (Emphasis added.) The court also directed that "if the hearings officer is unable to get sufficient information from the applicant to develop an adequate record by the hearing process, counsel must be appointed." *Id.*

Thus, *Graves* requires the hearings officer to develop the record sufficiently to decide whether the claimant is actually entitled to *welfare*

support or not, not into whether an *attorney appointment* is proper. *Graves*, 215 Or. App. at 228. Furthermore, under that case, counsel are provided only if the applicant is impaired to the extent that he or she is *not only* incapable of presenting a case on his or her own, but is incapable of even providing the judge with enough information to allow the judge to develop a full record. *Graves*, 215 Or. App. at 228.

Here, the record shows that Weems was able to, and did, meaningfully participate in his appeal on a pro se basis.

D. The Case Law Establishes That An Attorney Only Need Be Appointed As An Accommodation If A Person Is Not Only Disabled But Mentally Incompetent

NJP erroneously argues that the appointment of counsel as an accommodation is required to allow for meaningful access to the Board, regardless of whether the individual is incompetent to represent himself or herself. NJP Amicus Br. at 9 (citing *Meade*, 103 Wn.2d at 381), 13. The Department agrees that the ADA provides for the right to *meaningful* access to public agencies, including the Board.⁴ However, whether a worker is *able to* represent himself or herself, whether a worker is *competent* to represent himself or herself, and whether a worker is able to

⁴ In a misreading of the Department's brief, NJP contends that the Department argues that Weems was only entitled to an opportunity to be heard by the Board and did not have the right to a *meaningful* opportunity to be heard. NJP Amicus Br. at 8. However, the Department consistently argued that the applicable legal standard is whether Weems received a *meaningful* opportunity to be heard, and it consistently argued that he did, in fact, receive one. L&I Br. of Resp. at 1-2, 15-16, 18-26, 34, 37.

meaningfully participate in a judicial or quasi-judicial proceeding are simply different ways of articulating the same issue. A person who cannot meaningfully participate in an appeal is neither able to represent himself or herself nor competent to do so.

Furthermore, *Meade* does not stand for NJP's assertion at 9 that an individual who is not incompetent to represent himself or herself may nonetheless be incapable of adequate self-representation. *Meade*, 103 Wn.2d at 380. Rather, what *Meade* recognized is that there is a distinction between whether an individual is competent *to stand trial* and whether an individual is competent *to appear pro se*. *Id.* at 380-81. The distinction is that, to be competent to stand trial, an individual must be capable of rationally assisting his or her counsel, while, to be competent to represent oneself, one must be capable of self-representation. *See id.* Here, the record shows that Weems was competent to represent himself and meaningfully represented himself.

NJP also disputes the Department's argument that, read together, *Franco-Gonzalez* and *Tran*, stand for the proposition that appointment of counsel is necessary only in cases of mental incompetency.⁵ NJP Amicus Br. at 17-18. However, NJP fails to rebut the Department's contention

⁵ The *Franco-Gonzalez* case involved a dispute regarding a fundamental liberty interest as the plaintiff in that case challenged the constitutionality of detaining him in a jail for over twelve months to facilitate his eventual deportation, while Weems seeks additional workers' compensation benefits. *Franco-Gonzalez*, 828 F. Supp. 2d at 1142.

that the key question turns on whether the individual was mentally competent. *See* NJP Amicus Br. at 17-18.

In *Franco-Gonzalez*, the court's holding that the appointment of counsel was necessary as an accommodation was made in reliance on the court's finding that the plaintiff was mentally incompetent. *See Franco-Gonzalez*, 828 F. Supp. 2d at 1144-50. In that case, a mental health expert expressly concluded that the plaintiff was not capable of understanding the legal proceedings he was involved in, was not capable of representing himself, and was not even capable of meaningfully assisting his defense counsel. *Id.* at 1136. In explaining its ruling, the court observed that the plaintiff was not capable of knowingly and intelligently waiving his right to counsel in light of his mental incompetency. *Id.* at 1145-46.

Conversely, in *Tran*, the court concluded that the claimant was capable of representing himself even though he had significant mental health conditions and even though those conditions—despite the mediating effects of his treatment—had some impact on his ability to represent himself in that case. *Tran*, 2013 WL 878771 at *2-*4.

Thus, the *Franco-Gonzalez* court ordered the appointment of counsel because the plaintiff in that case was not competent to represent himself, while the *Tran* court did not order the appointment of counsel because the plaintiff was competent to represent himself. *Compare*

Franco-Gonzalez, 828 F. Supp. 2d at 1146-1150 *with Tran*, 2013 WL 878771 at *2-*4. Furthermore, the *Franco-Gonzalez* case involved a dispute regarding a fundamental liberty, which is not present here.

KC argues that the appointment of counsel may be necessary “for some disabled litigants,” citing *Franco-Gonzalez*, *Taylor v. Team Broadcast*, 2007 WL 1201640 (D.D.C. 2007), *Johnson v. City of Port Arthur*, 892 F. Supp. 835 (E.D. 1995), and *Pacheco v. Bedford*, 787 A.2d 1210 (R.I. 2002). *Franco-Gonzalez* is distinguishable for the reasons noted above, and none of the other cited by KC cases stand for the rule that the appointment of counsel may be necessary under the ADA.

In *Johnson*, the plaintiff brought an action under the ADA and requested that counsel be appointed for him, but the court did not analyze his request for counsel as an accommodation under the ADA. *Johnson*, 892 F. Supp. at 839-43. Indeed, the Court flatly stated that “An ADA plaintiff has no absolute right to an appointed counsel. Rather, the decision of whether to appoint counsel lies *solely within the discretion of the court.*” *Id.* at 839 (emphasis added). *Taylor* and *Pacheco*, similarly, analyzed the request for an appointment of counsel as a purely discretionary issue, not as something mandated by the ADA. *Taylor*, 2007 WL 1201640 at *4-*5; *Pacheco*, 787 A.2d at 1212.

E. An Individual Who Complains Of A Failure To Accommodate A Disability Under The ADA Must Show That A Request For An Accommodation Was Made

As noted in the Department's brief, Weems did not request accommodation and under the case law he may not now contend he should have received an accommodation. *See* L&I Br. of Resp. at 40-46. NJP rejects as "radical" the Department's contention that an individual must request an accommodation in order to succeed in establishing that there was a violation of the duty to accommodate under the ADA. NJP Amicus Br. at 16. However, the Department's contention is squarely supported by the ADA case law, including *Ballard*, 284 F.3d at 961-62, and *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 313 (3d Cir. 1999).

NJP offers no argument as to why the cases cited by the Department do not support that conclusion. *See* NJP Amicus Br. at 16. Instead, NJP points to 28 C.F.R. § 35.105, 28 C.F.R. § 35.106, and 28 C.F.R. § 35.107, and claims they require an agency to provide accommodations whether any request for an accommodation has been made or not. The cited rules do no more than direct agencies to develop practices and procedures to ensure compliance with the ADA. None of these regulations purports to require a state agency to speculate about whether a person might be disabled and might need an accommodation when no request for an accommodation has been made.

F. Under The ADA, A Public Entity Can Grant An Accommodation That Is Different From The One Requested If It Is Sufficient To Address The Disabled Person's Needs, And The Public Entity Need Not Show That The Accommodation Requested By The Disabled Person Was "Unreasonable"

Under the ADA, a public entity can offer an accommodation other than the one requested by a disabled person where appropriate, and NJP is incorrect when it suggests that this cannot be done unless the entity demonstrates that the requested accommodation would be "unreasonable." NJP Amicus Br. at 15. NJP cites no case law for this, instead relying on federal regulations that have been adopted under the ADA, but those rules merely provide that public agencies shall develop policies to ensure compliance with the ADA and do not support NJP. NJP Amicus Br. at 15.

Furthermore, the case law establishes that if a public entity provides an accommodation that is different from the one requested, it is the person seeking an accommodation that bears the burden of proving that the accommodation that was provided was inadequate. *See, e.g., Duvall v. County of Kitsap*, 260 F.3d 1124, 1137 (9th Cir. 2001).

NJP cites *Sullivan By and Through Sullivan v. Vallejo City Unified School Dist.*, 731 F. Supp. 947, 958 (E.D. Cal. 1990), for the proposition that a public agency "may not substitute its judgment for that of the person with the disability as to what accommodation will meet his needs."

NJP Amicus Br. at 15-16. *Sullivan* is distinguishable, and, properly understood, does not stand for such a broad rule. *See id.*

In *Sullivan*, the plaintiff was a disabled student who sought to bring her service animal to assist her at a public school. *Id.* at 948-49. The school refused to allow her to bring her animal to the school. *Id.*

The *Sullivan* court concluded that this was likely a violation of the law because state law expressly grants disabled persons to bring service dogs to any place to which the general public is invited. *Id.* at 958-60. The *Sullivan* court noted that a California statute expressly granted disabled persons to bring their service dogs to any place to which the general public was invited, and it reasoned that California's state laws established the minimum standard for compliance with the federal Rehabilitation Act. *Id.* Therefore, excluding the plaintiff's service animal was a violation of both California's act and the Rehabilitation Act. *See id.*

Sullivan stands for the rule that where a disabled person has an express right to a specific accommodation under state law, a public entity cannot deny that accommodation without violating the Rehabilitation Act. *See Sullivan*, 731 F. Supp. at 960. *Sullivan* is inapposite as no law grants Weems that right here. *See Sullivan*, 731 F. Supp. at 960.

III. CONCLUSION

The record shows that Weems meaningfully participated in his appeal without the appointment of an attorney. Therefore, he was not entitled to the appointment of an attorney. Under the case law, it was necessary for Weems to request an accommodation in order for the Board to be required to provide one. The amici are wrong in arguing there was a duty to conduct a hearing about Weems's status. In any event, the public entity can provide an accommodation that is different from the one that was requested and here the Board provided ample procedural protections to Weems. The Department requests that this Court reject the arguments in the amicus curiae briefs and that it affirm the superior court's decision.

RESPECTFULLY SUBMITTED this 21st day of March 2014.

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**DECLARATION OF
SERVICE**

DATED at Tumwater, Washington:

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, I mailed the Department's Answer To Amicus Curiae Briefs and this Declaration of Service to all parties on record as follows:

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DATED this 21st day of March, 2013.



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WASHINGTON STATE ATTORNEY GENERAL

March 21, 2014 - 11:59 AM

Transmittal Letter

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Case Name: Dale Weems vs. WA St Board of Industrial Ins. Appeals
Court of Appeals Case Number: 44713-4

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