

NO. 49725-5-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

MICHAEL W. ALDRIDGE

Appellant,

vs.

DEPARTMENT OF LABOR AND INDUSTRIES - STATE OF
WASHINGTON

Respondent.

ON APPEAL FROM THURSTON COUNTY SUPERIOR COURT
ACTING IN ITS APPELLATE CAPACITY

APPELLANT'S OPENING BRIEF

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ABBREVIATIONS

| | |
|-------------------------------------|---------|
| Clerk's Papers..... | CP |
| Ex..... | Exhibit |
| Hr'g..... | Hearing |
| Tr..... | Trial |
| Verbatim Report of Proceedings..... | RP |

I. INTRODUCTION

Mr. Aldridge is a dark skinned American of African ancestry¹. On October 14, 2000, Mr. Aldridge suffered an industrial injury for which he sought and was granted coverage through the Department of Labor and Industries (hereinafter “Department”) under the Industrial Insurance Act (hereinafter “IIA”). As the claim progressed, disagreements between Mr. Aldridge and the Department arose regarding the practices of the Department and its interpretation and exercise of the provisions of the IIA. Mr. Aldridge sought counsel from attorneys but soon learned engaging legal counsel in industrial insurance claims (aka workers’ compensation) is not cost effective to the injured worker. Generally, time-loss compensation benefits under the IIA equal 60 percent of the worker’s regular income. Attorneys generally require payment of fees equal to 1/3 of any monetary award received by the worker for representation. This fee is also charged against the monetary time-loss compensation benefits the worker receives once a claim is accepted. Where, as in Mr. Aldridge’s case, the injured worker is self-represented at the time the claim is filed and accepted, the worker receives 100 percent of the entitled 60 percent of time-loss compensation benefits. If an injured worker retains a lawyer after the claim is accepted, the attorney commands the fee against all time-loss compensation benefits the worker receives from the point of

¹ Mr. Aldridge’s race is germane to this case as his race is the basis for the requirement before the BIIA that armed security is present when he appears before it in person.

representation forward. For budgetary reasons, Mr. Aldridge represented himself before the Department and ultimately before the Board of Industrial Insurance Appeals (hereinafter "BIIA"). Additionally, as part of the entitlements provided under the IIA, Mr. Aldridge received job retraining. Mr. Aldridge enrolled in college and obtained an Associates of Science in Paralegal Studies degree through online college courses. After retraining benefits had ended, Mr. Aldridge continued his studies and earned a degree in Bachelors of Science in Legal Studies. This degree was also earned through online college courses. Pursuant to the provisions of WAC 263-12-020, Mr. Aldridge began representing other injured workers before the Department and BIIA as a Lay Representative. As the law rightfully prohibits lay representatives from receiving compensation of any sort, the injured workers Mr. Aldridge represents, receive 100 percent of entitled time-loss compensation from the Department. Not having to pay to be represented in industrial insurance claims allows the injured worker to be more likely to survive financially on the 60 percent of their normal income time-loss compensation pays.

On March 19, 2013, Mr. Aldridge appeared before the BIIA as of lay representative for his wife, Colleen M. Aldridge. Unbeknownst to Mr. Aldridge, the BIIA had requested the presence of armed security by the Washington State Patrol. When Mr. Aldridge requested the reason for armed security, the Industrial Appeals Judge (hereinafter "IAJ") retorted "None that I need to disclose to you!" From that point

forward, the BIIA required the presence of armed security, with the ability to exercise force up to and including deadly force, whenever Mr. Aldridge appears in person no matter the circumstances, e.g. hearing, conferences. From the date of Mr. Aldridge's industrial injury (October 14, 2000) through March 19, 2013, when Mr. Aldridge appeared before the BIIA, armed security was not required. From March 19, 2013, through the date this Brief was filed, the BIIA has denied Mr. Aldridge's request to be provided the reason(s) the BIIA requires the presence of armed security when Mr. Aldridge appears in person before it. Mr. Aldridge's request for a hearing on the matter has also been denied. Except for the single time in the case giving rise to this Appeal, Mr. Aldridge's requests for the reason(s) and a hearing on the practice of the BIIA to require armed security when Mr. Aldridge appears before it in person, the BIIA has denied Mr. Aldridge's requests. Additionally, the single time the BIIA allowed a hearing on the reason the Department insists upon the presence of armed security when Mr. Aldridge appears in person, the judge hearing the appeal, Chief Assistant Industrial Appeals Judge Brian O. Watkins (hereinafter "CAIAJ"), only allowed the hearing because the IAJ originally assigned the appeal, ordered the Department to brief the "specific" reason(s) for the armed security requirement. During a telephonic scheduling conference in the appeal, CAIAJ Watkins attempted to relieve the Department of the order to brief the "specific" reason(s) for the presence of armed security by characterizing the

order issued by the prior IAJ as Mr. Aldridge's request for "no security," rather than the Department's request for security. [CP. Index 20, 10:20-25, RP, 3/27/2015 11:15-22]. The brief filed by the Department consisted of a declaration by Judith Morton, the Attorney General of Washington's attorney assigned to represent the Department and a copy of the declaration BIIA Executive Secretary Jonathan S. Timmons (aka J. Scott Timmons) filed in Thurston County Superior Court in support of the BIIA's motion to deny Mr. and Mrs. Aldridge's petition for protective order against the BIIA regarding its requirement of armed security when Mr. Aldridge appears in person. [CP. Index 20, 146-238]. To garner sympathy from the court, in his declaration, Mr. Timmons made vague, unsupported, and inaccurate reference to the number of appeals the Aldridges have filed with the BIIA. [CP. Index 20, 139:1-5] Additionally, in his declaration, Mr. Timmons identified circumstances under which the BIIA requires the presence of armed security during its proceedings. These circumstances include a request by one of the parties, an assault on an IAJ, threats to assault or kill an IAJ, and the BIIA facilities not being equipped with metal detectors or employees to search individuals arriving at BIIA facilities. What Mr. Timmons and the Department exclude from their declarations are reference(s) to any instance where Mr. Aldridge committed any of the transgressions identified in Mr. Timmons' declaration, the Department's request for security and the "specific" reason for the request, and how Mr. Aldridge appearing

before the BIIA has anything to do with BIIA facilities not having metal detectors or employees to search people entering their facilities. [CP. Index 20, 139:6-10]

As previously stated herein, as recently as the date of this Brief, the BIIA continues to require the presence of armed security when Mr. Aldridge appears in person. In an appeal by Mr. Aldridge that is currently pending before the BIIA,² Mr. Aldridge requested a hearing if the BIIA insisted on the presence of armed security if Mr. Aldridge appeared in person. In her litigation order, the IAJ directed that, at the time of the issuance of the litigation order, the presence of armed security had not been requested. However, if requested, Mr. Aldridge would be advised, and determination made as to the appropriateness of the need for armed security.³ The IAJ did not rule that a hearing on the request would be held. Neither did the IAJ rule that a discretionary decision rendered by her, an employee of the BIIA, under the auspices of the IIA, would be decided with pleadings, with or without oral argument. Additionally, although the BIIA does not have the personnel to search/screen for weapons as people/citizens enter BIIA facilities

² BIIA Docket 15 11803 Consolidated.

³ The BIIA Docket 15 11803 Consolidated, Forth Amended Litigation Order states in relevant part: 2. Whether armed security is necessary whenever Mr. Aldridge is **present with** a representative of the Department of Labor and Industries. (Security has not been requested for proceeding at the Board in any of the pending appeals. If a request is made, Mr. Aldridge will be advised of the request, and a determination will be made as to whether it is appropriate to have security present during further proceedings. ****Please be advised that while security will not be present for the proceedings, all parties will be screened for weapons upon entering any Board facility.**)

(as previously declared by Mr. Timmons)⁴, the BIIA now attempts to circumvent due process and equal treatment laws by requiring that “all parties” in Mr. Aldridge’s appeal be “screened for weapons upon entering any Board facility.” After receiving notice of the BIIA’s decision to “screen for weapons” in Mr. Aldridge’s appeal, Mr. Aldridge requested records from the BIIA through the Public Records Act. Mr. Aldridge requested a copy of all litigation orders issued in appeals during the same period as that of Mr. Aldridge. In no other litigation order of the BIIA is the language contained requiring all parties in an appeal be screened for weapons upon entering any Board facility. Moreover, Mr. Aldridge also requested a copy of the BIIA rules as they pertain to screening for weapons. The BIIA rules do not allow for screening of parties in proceedings before the BIIA. Only in appeals involving Mr. Aldridge are the parties required to be screened for weapons.

At the start of this Introduction section, Mr. Aldridge’s skin color and race are identified. Identifying Mr. Aldridge’s skin color and race is important since neither the Department nor the BIIA have or will provide Mr. Aldridge the reason(s) either entity believes the presence of armed security is required when Mr. Aldridge appears in person. The BIIA’s denial to state the reason(s) for its insistence on the presence of armed security when Mr. Aldridge appears in person and

⁴ CP, Index 20, 157:12-20.

its denial to hold hearings on the matter, are indicative of the racial bias behind the requirement and its unethical support for the Department and the Office of the Attorney General of Washington (hereinafter "OAG."). In proceedings before Judge Mary Wilson (hereinafter "Judge Wilson")⁵ in Thurston County Superior Court, Mr. Aldridge presented evidence of white people who had made threats against the BIIA and members thereof. It is imperative to note, Mr. Aldridge did not sift through the records of threats he obtained from the BIIA through the public records Act, to identify the ethnicity of the individual making the threat. Rather, Mr. Aldridge identified the records that fit the category of threats identified by BIIA Executive Secretary Mr. Timmons as the type of threats the BIIA receives. These threats include actions up to and including a threat to "blow up" BIIA facilities.⁶ It was only after the threats were made by the white appellants that the BIIA implemented the requirement for the presence of armed security when those appellants appear in proceedings before the BIIA. Where Mr. Aldridge, a black man, is concerned, however, without proof of any threat or reason to require the presence of armed security when he appears in person before the BIIA, the BIIA not only

⁵ Judge Mary Sue Wilson is a well-respected jurist who was originally appointed by Governor Jay Inslee to the bench in Thurston County Superior Court. However, prior to her appointment, Judge Wilsons served the State of Washington as lead counsel with the Office of the Attorney General of Washington. Attorney Wilson's duties included representing agencies of the State of Washington in legal matters before State and Federal courts. <http://www.governoCP.wa.gov/news-media/gov-inslee-announces-appointment-mary-sue-wilson-thurston-county-superior-court>.

⁶ RP. Index 20, 156-159.

requires the presence of armed security, but also denies any request by Mr. Aldridge for the reason(s) for the requirement and that hearings be held on the matter. The single time a hearing was held on the matter of the presence of armed security (before CAIAJ Watkins), it was to give the appearance of fairness to an issue the judge had already decided he would rule in favor of for the Department before the hearing was held. As revealed in the records giving rise to this Appeal, the issues before CAIAJ Watkins were “Whether the Department’s order dated October 16, 2014, reinstating claimant’s vocational benefits effective October 3, 2014, for failure to cooperate pursuant to RCW 51.32.110, but maintaining suspension of benefits from September 5, 2014 (sic) through October 2, 2014, is correct.” During the proceedings, the issue of the Department's insistence on the presence of armed security as well as the way the BIIA handled the request became an issue reviewable by a higher court, despite its verdict on the original issue of time-loss benefits, since the decision to allow the presence of armed security is discretionary and continues to this day. As a direct result of the BIIA’s practice of requiring the presence of armed security when he appears in person, for personal safety reasons, Mr. Aldridge is unable to attend proceedings in person. [CP. Index 20, 266:28-30, 267:1-31, 268:1-32, 269:1-8]. The regular practice of the BIIA is for the parties to be present at appeal trials. However, given the increased publicity of police officers shootings of unarmed black men here in America, which is exactly what Mr. Aldridge would have been

(unarmed black man) if he had appeared for the trial, in combination with the BIIA's unabridged requirement for the presence of armed security when Mr. Aldridge appears in person, without holding unbiased hearings on the record of the requirement, opened Mr. Aldridge up to becoming one of the increasing statistics of unarmed black men being killed by the police. Unfortunately, in Mr. Aldridge's case, if the police killed Mr. Aldridge, the BIIA would be in the position to support the killing by blaming Mr. Aldridge and claiming any number of reasons it required the presence of armed security when Mr. Aldridge appears in person. Mr. Aldridge would be dead and therefore unable to refute the BIIA's claims. It is for this reason the BIIA adamantly refuses to hold fair hearings on the record about its decision to require the presence of armed security when Mr. Aldridge appears in person before it. [CP. Index 20, 266-269]⁷

At the conclusion of the hearing before CAIAJ Watkins, CAIAJ Watkins purposely ruled for Mr. Aldridge on the issue of the Department's failure to allow 30 days for Mr. Aldridge to serve a "good cause" letter for not attending an independent medical examination (hereinafter "IME").

⁷ On July 19, 2013, President Obama addressed the nation on the matter of Trayvon Martin and the shooting death of unarmed black men in America. The Trayvon Martin murder is relevant in Mr. Aldridge's Appeal because of the similarities between the conduct of the BIIA with regard to Mr. Aldridge and the requirement of armed security without providing a reason or holding unbiased hearing on the matter and the perception such a practice causes.

On March 8, 2007, Mr. Aldridge served electronically, an appeal on the BIIA and the Department, from the Department's January 9, 2007, letter ending vocational services. From March 8, 2007, through May 9, 2007, Mr. Aldridge attempted additional service of the appeal on the BIIA. Mr. Aldridge also attempted contacting the BIIA by letter regarding the filing. The BIIA refused to respond or acknowledge receipt of the appeal as required by WAC 263-12-060. Pursuant to WAC 263-12-070 and RCW 51.52.090, the BIIA's failure to acknowledge receipt of a notice of appeal deems the appeal is granted. On May 9, 2007, after having not received any response or acknowledgment from the BIIA, Mr. Aldridge paid the filing fee and filed an appeal in Thurston County Superior Court. On May 17, 2007, after receiving service of Mr. Aldridge's appeal to Superior Court, the BIIA acknowledged receipt of Mr. Aldridge's appeal, apologized, and granted Mr. Aldridge's appeal effective February 23, 2007. By this time, however, since Mr. Aldridge had already advanced the matter to Superior Court, the BIIA lost jurisdiction of the appeal. Nonetheless, the BIIA assigned the matter a docket number and continued processing the appeal. Mr. Aldridge's appeal was heard in Superior Court where it was denied. Mr. Aldridge appealed to the Court of Appeals.⁸ The Superior Court's denial was affirmed. In the instant Appeal, CAIAJ Watkins could have ruled for the Department despite

⁸ Case NO. 38588-1-II.

the Department's failure to adhere to its own rules. Mr. Aldridge's dealings with the BIIA, the Superior Court and the Court of Appeals where the BIIA failed to adhere to its own rules, not by one day, rather, for 60 days, proved the rules are not resolute where deviated from by the BIIA and the Department. However, had CAIAJ Watkins ruled for the Department, the likelihood of a higher court considering the matter of armed security increased. CAIAJ Watkins knew what to do to make the system work for the BIIA and the Department, and against Mr. Aldridge.

Throughout the history of America, on numerous published occasions, white people have unjustly accused black people, black men in particular, of crimes to justify violations of our rights, up to and including the right to liberty and life. For example, Emmett Till. Emmett Till was a 14-year-old black boy who was kidnapped, brutally beaten, and shot for allegedly improperly touching and whistling at a white woman.⁹ Charles Stuart. Charles Stuart, a white man, falsely claimed he and his wife were mugged and his pregnant wife fatally shot by a dark-skinned man when they got lost heading home from a birthing class. William Bennett, a black man, was eventually arrested and jailed on suspicion of murder in the case. Police later discovered Charles Stuart had killed his wife but blamed the murder on a black

⁹ https://www.nytimes.com/2017/01/27/us/emmett-till-lynching-carolyn-bryant-donham.html?_r=0

man.¹⁰ Susan Smith, a white woman. Susan Smith murdered her 3-year-old and 14-month-old children when she rolled the car the children were seat-belted into, into John D. Long Lake, thereby drowning the children inside. Susan Smith claimed that her car had been carjacked by a black man. An investigation revealed Susan Smith committed the murders.¹¹ Bethany Storro, a white woman. Bethany Storro claimed she was accosted by a black woman in a parking lot in Vancouver WA. Storro claimed the black woman threw acid in Storro's face. Storro later confessed that her injuries were self-inflicted.¹² Not even the former President of the United States is immune from false accusations by a white man, for having committed a crime against the white man. On March 4, 2017, President Trump accused former President Obama of having wiretapped the telephones in the Trump Tower. As of the date of this Brief, President Trump has not provided evidence to support his claim.¹³ In the instant Appeal, the issue of the BIIA requiring the presence of armed security when Mr. Aldridge appears in person before it is suggestive of the horrible instances of white people falsely accusing a black man of a crime, or, as in this Appeal, suggesting by their actions that a black man *may*

¹⁰ <http://www.nytimes.com/1990/01/15/us/boston-tragedy-stuart-case-special-case-motive-remains-mystery-deaths-that-haunt.html?pagewanted=all>

¹¹ <http://www.today.com/news/susan-smith-tells-reporter-she-not-monster-20-years-after-t34081>

¹² http://www.huffingtonpost.com/2010/09/17/bethany-storro-acid-attack_n_720536.html

¹³ <https://www.nytimes.com/2017/03/04/us/politics/trump-obama-tap-phones.html>

commit a crime, therefore, ordering the presence of armed security is necessary.

Many black people believe slavery never ended in America. Rather, slavery, where blacks are concerned, moved from slave masters on plantations to the justice system. There, blacks may be tried under the appearance of a fair system while instead, the system is being used to advance racial discrimination. The conduct of the Department and the BIIA, in Mr. Aldridge's case, supports this perception.

II. ASSIGNMENT OF ERROR

1. The Superior Court, acting in its appellate capacity and authority, erred when it failed to advise Mr. Aldridge that the judge spent 20 years employed as a lawyer for the OAG where she represented state agencies in state and federal lawsuits on behalf of the State.

2. The Superior Court erred when, under BIIA docket 14 15505, it granted the Department's motion for dismissal pursuant to CR 12(b)(6), holding it did not have jurisdiction to hear the appeal and that there was no relief the court could grant.

3. The Superior Court erred when under BIIA docket 13 22304, it granted the Department's motion to dismiss.

4. The Superior Court erred when it granted the Department's motion for statutory costs.

A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether the court erred when it denied Mr. Aldridge's motion for a new trial? The court did not advise Mr. Aldridge of her history as a lawyer with the OAG whereby she represented state agencies, in state and federal court, in cases brought against the state by others and in cases brought against others by the state. Mr. Aldridge did not learn of the court's prior employment and the nature of her position until the court rendered its decision. In the history of Mr. Aldridge's dealings with the BIIA and the Department, he learned that obtaining public records information about BIIA and Department employees appears to cause alarm with the members of the entities. For this reason, Mr. Aldridge did not research the history of Judge Wilson until the case was concluded.

2. Whether the court erred when, under BIIA docket 14 15505, it granted the Department's CR 12(b)(6) motion to dismiss? The motion is in violation of local court rules and was therefore not properly before the court. Additionally, the ruling that the Superior Court did not have jurisdiction to hear the appeal since Mr. Aldridge prevailed on the "initial merit" of the BIIA appeal is in repudiation of the law. The Department offered no case law to support its position.

3. Whether the court erred when, under BIIA docket 13 22304, it granted the Department's motion to dismiss Mr. Aldridge's appeal? The court found that the BIIA's finding of fact 3 and 4 are supported by a preponderance of the evidence. However, the court questioned the BIIA's

ruling under finding of fact 5. Nonetheless, the court found for the Department and dismissed Mr. Aldridge's appeal.

4. Whether the court erred in granting the Department's motion for judgment for cost? The Department may exercise discretion in deciding when it will seek statutory cost as the "prevailing" party. Here, the Department only sought statutory cost as a continuation of its retaliation against Mr. Aldridge, which started when it requested the presence of armed security when Mr. Aldridge appears in person but failed to present the "specific" reason for its position on the matter.

III. STATEMENT OF THE CASE

B. FACTUAL HISTORY.

i. BIA Docket 13 22304

On August 24, 2011, the Department suspended Mr. Aldridge's industrial insurance claim alleging non-cooperation for "failure to submit to and/or cooperate with a medical examination." On July 25, 2013, Mr. Aldridge contacted the Department and advised Mr. Wallace that he would attend and cooperate with an IME. The Department scheduled an IME to occur on September 17, 2013, an unprecedented 54-day (8 weeks) delay. On September 17, 2013, Mr. Aldridge attended and cooperated with the IME. On September 18, 2013, Mr. Aldridge contacted Mr. Wallace through the Department's secure messaging system and requested that benefits be reinstated effective July 25, 2013, the date Mr. Aldridge agreed to cooperate. On September 25, 2013, Mr. Wallace provided the Department's response to Mr. Aldridge's request. In the response, Mr. Wallace materially altered the conditions of reinstatement of benefits under the August 24, 2011, suspension order, by adding requirements to the reinstatement conditions. The original suspension order (August 24,

2011) lists the following as a condition for reinstatement of benefits, "The suspension will remain in effect until you submit to and cooperate with the examination, or until the claim is closed, whichever occurs first." [CP. Index 5, RP. October 27, 2014, 11:14-25]. In the secure message, Mr. Wallace commanded, "Lifting a suspension of time loss and resuming time loss are two separate issues. Once full cooperation is demonstrated I can review lifting the suspension. Full cooperation would include completing the MRI that was recommended by the examiners and attending the rescheduled chiropractic exam on 10/2/13. Paying time loss would be based on current medical opinion on ability to work such as the IME report and/or other medical received." Apparently, the chiropractor scheduled to conduct the September 17, 2013, IME, was unavailable. Mr. Aldridge was not informed of this until September 18, 2013, when Mr. Wallace mentioned it in his secure message reply. It was in this message that Mr. Aldridge also learned of the rescheduled chiropractor examination. However, the rescheduled chiropractor examination was not communicated to Mr. Aldridge until September 27, 2013. The rescheduled chiropractor examination was set to occur on October 2, 2013, five days after communication of the notice. At the time of the claim suspension, Mr. Aldridge was receiving full benefits. Therefore, the additional condition required by Mr. Wallace that the IME examination substantiate continued entitlement to benefits violated the express reinstatement conditions established in the August 24, 2011, suspension order. Moreover, the additional requirement that Mr. Aldridge complete the MRI recommended by the examiners prior to reinstatement of benefits also violates the conditions established in the August 24, 2011, suspension order. The initial requirements for reinstatement of benefits under the August 24, 2011, order, did not require participation in an MRI study. The

recommendation that an MRI study is conducted was made by Dr. Stump, one of the IME examiners, during the September 17, 2013, IME. It was the IME doctor's responsibility, through the Department, to obtain approval for the MRI study then schedule the study. Additionally, Dr. Stump advised Mr. Aldridge that he would contact Dr. Nehls, to determine the type of MRI study Dr. Nehls felt should be performed.¹⁴ Apparently, Dr. Stump did not wish to confer with Mr. Aldridge's treating medical physician, Dr. Thomas Young, regarding the MRI, and instead insisted that he would contact Dr. Nehls. On October 7, 2013, Mr. Aldridge filed Appeal of the Department's violation of the condition of reinstatement of benefits as contained within the August 24, 2011, suspension order. On October 27, 2014, a hearing on Mr. Aldridge's appeal was held. On April 22, 2015, a PD&O was issued affirming without due process, the Department's material alteration to the August 24, 2011, suspension order.

During the hearing, Mr. Aldridge was required to be sworn in before he was allowed to represent himself. [CP. Index 6, 4:18-31, 15:1-17, RP, October 27, 2014, 8:19-26, 9:1-5]. This was the first time in the history of the BIIA a self-represented appellant was required to be sworn before representing himself. Appellants are required to be sworn before testifying, not to represent themselves. Additionally, IAJ Gilbert required the presence of armed security without a hearing on the matter. Moreover, on October 10, 2014, Richard W. Aldridge, Mr. Aldridge's son, completed process of service on the Department at its Tumwater office. After completing service, Mr. Richard Aldridge was followed out of the Department's Tumwater office by a WSP Trooper and Sergeant, Sergeant Hicks. Mr. Richard Aldridge was accosted by Sergeant Hicks when

¹⁴ DCP. Daniel Nehls is the neurosurgeon who performed two back surgeries (February 2001 and October 2001) on Mr. Aldridge's back.

Sergeant Hicks grabbed Mr. Richard Aldridge's arm to stop him. Sergeant Hicks forced Mr. Richard Aldridge to take back the papers for which he had completed process of service on the Department. [CP. Index 6, 106-109]. When Mr. Aldridge brought this matter to the attention of IAJ Gilbert, Judge Gilbert only addressed the issue of whether the Department received service. He did not address the matter of Mr. Richard Aldridge being accosted by Sergeant Hicks. [CP. Index 6, RP, October 16, 2014, 1-3]. At the time of the incident, Sergeant Hicks was assigned to the Department and was acting as an agent on behalf of the Department. The incident occurred in the process of matters relating to Mr. Aldridge's appeal under the IIA.

Mr. Aldridge's petition by the full BIIA for review was denied. Mr. Aldridge appealed to Superior Court. The Superior Court affirmed the BIIA's dismissal of Mr. Aldridge's appeal. Although the issue of the requirement for armed security when Mr. Aldridge appears in person was at issue in this appeal, Judge Wilson refused to hear the matter or the issue regarding Mr. Aldridge's son being accosted by the WSP.

ii. BIIA Docket 14 15505

On October 14, 2000, Mr. Aldridge suffered an industrial insurance injury while conducting a felony drug search of a suspect vehicle Mr. Aldridge stopped for a routine traffic offense in Thurston County southbound I-5 near Pacific Avenue. Mr. Aldridge reported the injury to his employer and the Department. The Department allowed the claim. When this appeal was heard by the BIIA, Mr. Aldridge's claim had remained open continuously since the date of injury. However, entitled benefits, including medical coverage, had been denied sporadically by the Department. Throughout the pendency of the claim, Mr. Aldridge had undergone two surgeries with a third surgery suggested by a

neurosurgeon. Mr. Aldridge had also participated in several sessions of vocational services including job retraining. Funds for vocational services available to Mr. Aldridge are exhausted and have been since Mr. Aldridge completed retraining in 2006. On May 2, 2014, the Director ordered that Mr. Aldridge participate in additional vocational services despite the Department having exhausted the statutorily allotted funds for vocational services available to Mr. Aldridge. The administration of vocational services was assigned to Strategic Consulting Services, Inc., by David Bacon (hereinafter "Mr. Bacon") CDMS. Mr. Bacon sent intake forms to Mr. Aldridge directing that he complete and return the forms to Mr. Bacon. The intake questionnaire consisted of information that is already contained in the industrial insurance claim file the Department maintains on Mr. Aldridge. [RP. June 11, 2015, 61:25-26, 62:1-26, 63:1-26, 64:1-20]. Mr. Bacon has access to the Department industrial insurance claim file the Department maintains on Mr. Aldridge. Mr. Aldridge declined to complete the questionnaire. On September 5, 2014, the Department suspended the claim alleging Mr. Aldridge failed to cooperate with vocational services. Mr. Aldridge appealed. On October 16, 2014, the Department reinstated benefits after Mr. Aldridge, under duress, completed and returned the vocational services questionnaire to Mr. Bacon. The Department reinstated benefits effective October 3, 2014, as opposed to September 5, 2014. Mr. Aldridge appealed. Mr. Aldridge's Appeal was originally assigned to IAJ Dominique L. Jinhong. After making several disparaging comments about Mr. Aldridge and the need for the presence of armed security when Mr. Aldridge appears in person, the IAJ recused herself. [CP. Index 5, Tr. 01/06/2015, 21:11-26,22:1-26,23:1-26,24:1-15] and [Tr. 02/06/2015,15:13-26,16:1-26, 17:1-26,18:1-26, 19.1-26,20:1-26,21:1-15]. The appeal was assigned, to IAJ Wayne B.

Lucia. Having experienced unfair treatment and resulting rulings from IAJ Lucia in the past, Mr. Aldridge filed an affidavit of prejudice. The appeal was assigned to CAIAJ Watkins. Prior to the assignment of the appeal to CAIAJ Watkins, IAJ Jinhong ordered the Director to brief the "specific" reason(s) he believes armed security is necessary during proceedings in Mr. Aldridge's appeal where Mr. Aldridge appears in person. [Tr. 02/06/2015,20:18-26,21:1-15]. During the March 27, 2015, telephone conference ordered by CAIAJ Watkins, CAIAJ Watkins attempted to relieve the Director from IAJ Jinhong's order that he brief the "specific" reason(s) he believes armed security is necessary when Mr. Aldridge appears in person. CAIAJ Watkins attempted to characterize IAJ Jinhong's order as a request by Mr. Aldridge for no security during the proceedings. [Tr. 03/27/2015, 8:4-26, 9:1-26, 10:1-26, 11:1-26 12:1-16 13:1-17]. On or about May 7, 2015, the Department filed the Department's Request for Security. The request did not meet the requirements outlined by IAJ Jinhong in her Amended Order Establishing Litigation Schedule (Changing Witness Confirmation, Discovery, Trial Dates, and Adding Briefing Schedules) issued February 6, 2015. [Tr. 02/06/2015,20:18-26,21:1-15] Despite this violation, on May 29, 2015, CAIAJ Watkins granted the Department's request. In his order, CAIAJ Watkins held in part, "It has long been held that it within the inherent power and discretion of the courts to impose security measures to provide for the safety of the public and persons in attendance upon the courts." "Insurance Appeals . . . [m]ust ensure its courtrooms are safe for parties, witnesses, court reporters and observers. Having security personnel in a courtroom isn't inherently prejudicial (Holbrook v. Flynn. 475 U.S. 560 (1986))." (Emphasis added). On June 2, 2015, Mr. Aldridge filed a Motion and Declaration for order for Contemporaneous Telephonic Participation in Proceedings. In a

separate letter to CAIAJ Watkins, Mr. Aldridge requested that CAIAJ Watkins recuse himself and that the hearing be continued to allow interlocutory review of the matter. In a letter to the BIIA (March 18, 2015), Mr. Aldridge requested that his appeal and two other appeals in which he was involved, be assigned to an independent visiting judge selected from outside of the BIIA to hear his appeals. If the request were denied, a hearing on the matter occur. The request for the visiting judge is the result of the BIIA's racial bias against Mr. Aldridge as manifested by the BIIA's requirement that armed security be present whenever he appears in person and the denial of Mr. Aldridge's request for a hearing on the record addressing the requirement. On March 30, 2015, BIIA Mr. Timmons responded by requiring that Mr. Aldridge provide "[a]ny factual information and argument, in writing, addressed to my attention by April 17, 2015. No hearing will be scheduled on this matter." On April 13, 2015, Mr. Aldridge requested an additional twenty days to provide the required information and argument. Mr. Timmons denied the request and directed that the required information be provided by the preassigned deadline, or the matter would be dropped. It is noteworthy that Mr. Timmons appeared in Thurston County Superior Court on behalf of the BIIA in Mr. Aldridge's petition for a protective order against the BIIA. The information provided by the Department in the Department's request for security in appeal 14 15505, consisted of the declaration Mr. Timmons filed in Superior Court against Mr. Aldridge's petition for protective order. In his declaration, Mr. Timmons purposely, and with malice, excluded facts in prior BIIA appeal cases involving Mr. Aldridge that contradict the information that he swore to under penalty of perjury. On June 3, 2015, CAIAJ Watkins responded by directing that the hearing set for June 4, 2015, would continue as scheduled and that the matter of Mr. Aldridge's

request that CAIAJ Watkins recuse would be heard prior to the appeal being heard. On June 4, 2015, the first of three hearings was held in Mr. Aldridge's appeal. CAIAJ Watkins declined to recuse. With armed security present and at the ready, CAIAJ Watkins commenced the hearing. Additionally, during the hearing, CAIAJ Watkins heard the Department's motion for continuance of its case-in-chief from June 8, 2015, to another date. The continuance was to allow the testimony of Katie Holmes, a Department witness. Although the Department confirmed the availability of its witness in its Witness Confirmation Letter of March 16, 2015, the motion was granted. Yet another hearing date (June 11, 2015) was set. CAIAJ Watkins unfairly denied Mr. Aldridge's request for a continuance but granted the Department's request for a continuance.

IV. ARGUMENT

C. STANDARD OF REVIEW:

In an industrial insurance case, the Court of Appeals reviews the decision of the trial court, not the decision of the Board." *Dillon v. Dep't of Labor & Indus.*, 186 Wn.App. 1, 6, 344 P.3d 1216 (2014), *review denied*, 183 Wn.2d 1021, 355 P.3d 1152 (2015); RCW 51.52.140. The review is akin to a review of other superior court judgments. *Dillon*, 186 Wn.App. at 6. "[W]e review whether substantial evidence supports the trial court's factual findings and then review, de novo, whether the trial court's conclusions of law flow from the findings." *Rogers v. Dep't of Labor & Indus.*, 151 Wn.App. 174, 180, 210 P.3d 355 (2009) (quoting *Watson v. Dep't of Labor & Indus.*, 133 Wn.App. 903, 909, 138 P.3d 177 (2006)).

D. DENIAL OF MOTION FOR NEW TRIAL:

For more than 20 years, Judge Wilson honorably represented the State of Washington as an attorney with the OAG.¹⁵ Judge Wilson represented the State of Washington and state officials in state and federal courts cases brought by the State. Judge Wilson also represented the State in cases where a state agency was sued. This information was not provided to Mr. Aldridge prior to Judge Wilson hearing his case. A judge should disclose on the record, information the judge believes the parties might reasonably consider relevant to a motion for disqualification. [CJC 2.11 cmt. 5]. “Under this rule, a judge *is disqualified* whenever the judge’s impartiality *might reasonably* be questioned, *regardless* of whether any of the specific provisions of paragraphs (A)(1) through (5) apply. . . .” [CJC 2.11 cmt. 1]. (Emphasis added). The phrase “might reasonably” is not defined. Absent a statutory definition; a term must be accorded its plain and ordinary meaning. *Dennis v. Department of Labor and Industries*, 109 Wash. 2d 467, 479-80, 745 P.2d 1295 (1987). Given Judge Wilson’s honorable service to the State of Washington as an attorney for the OAG and her duties in that capacity, it is reasonable for Mr. Aldridge to question the impartiality of Judge Wilson. However, Mr. Aldridge was not aware of Judge Wilson's prior employment status and dedicated duties until after appearing before Judge Wilson and receiving an unfavorable ruling. As such, and because Judge Wilson did not disclose to Mr. Aldridge her prior employment and duties, he had no reason to seek the Judge’s disqualification before the hearing. [CJC 2.11 cmt. 2 and 5]. Additionally, the circumstances surrounding the proceedings before Judge Wilson suggest that partiality may have played a part in Judge Wilson's rulings.

¹⁵ <http://www.co.thurston.wa.us/superior/judge-wilson.htm>

The administrative law review of Mr. Aldridge's appeal was heard on August 26, 2016. The decision was rendered on October 7, 2016. October 7, 2016, happened to be the day Mrs. Aldridge's administrative law review from an unfavorable BIIA decision was to be heard by Judge Wilson. Mr. Aldridge received an e-mail from Judge Wilson's judicial assistant only days before Mrs. Aldridge's review was to be heard. At the conclusion of review of Mr. Aldridge's case (August 26, 2016), Judge Wilson stated she hoped to have her decision back within one week. [RP, August 26, 2016, 56:5-11]. The transcript now shows Judge Wilson stated she hoped to schedule a time for the parties to come in and hear the decision within "two to three weeks." [RP, August 26, 2016, 56:12]. Although it is possible Judge Wilson stated she hoped to schedule a time for the parties to come in and hear the decision within "two to three weeks," Mr. Aldridge does not recall that being the case. Rather, the decision was to have been rendered within a week following the review. [Decl. Appellant May 25, 2017]. At the conclusion of Mr. Aldridge's motion for new trial, Judge Wilson conceded she had formally advised parties of her past position with the OAG but did not do so in Mr. Aldridge review. [RP, 10/28/2016 21:25, 22:13]. By this time, the revelation was too late for Mr. Aldridge to take any action further action on the matter. Nonetheless, Judge Wilson denied Mr. Aldridge's motion for a new trial.

iii. BIIA Docket 13 22304

The court's affirmation of the BIIA's findings of fact and conclusions of law are in repudiation of the law. Moreover, the court holding that the IAJ's discretionary decision to require the presence of armed security because Mr. Aldridge appeared in person, without holding a hearing on the record, is in repudiation of the law.

On June 30, 2015, Mr. Aldridge filed review from the BIIA's decision that denied his petition for review¹⁶ which affirmed the Department's actions as well as the IAJ's decision to require the presence of armed security during the proceeding.

In her assessment of Mr. Aldridge's review of what the IIA requires when a claimant agrees to participate in an IME after having previously declined to do so, Judge Wilson reviewed the Department's jurisdictional history to assist in her ruling on the issue. The jurisdictional history is a summary of the Department actions that are "relevant" to a particular appeal. [RCW 51.52.070]¹⁷ [CP. Index 5, 130]. The summary does not include "every" action taken by the Department. Neither does the history include any information contained in the claim file that was submitted by the claimant. At the initial conference in the appeal before the BIIA, the parties are asked to stipulate to the "correctness" of the "facts" of the particular appeal, solely, "for the purpose of establishing the BIIA's jurisdiction to hear the case and determine the issues to be resolved." [CP. Index 5, 21:33-38, 24:42-45, 25:1-2, 93:21-23, 130, 185:20-25]. Because the jurisdictional history document is not inclusive of all records in the claim file and is only used to establish the BIIA's jurisdiction to hear an appeal before it, the court should not have relied upon the document for reasons other than verifying the BIIA's jurisdiction to hear the appeal.¹⁸

In this appeal before the BIIA, the issues involved the Department's order suspending Mr. Aldridge's time-loss benefits and the directions

¹⁶ CP. Index 5, 6 and 7.

¹⁷ "[T]he department shall promptly transmit its original record, or a legible copy thereof produced by mechanical, photographic, or electronic means, *in such matter* to the board." (Emphasis added).

¹⁸ Before the BIIA hears an appeal, the parties are asked to agree to have the jurisdictional history included for the sole purpose of establishing BIIA jurisdiction to hear the appeal. [CP. Index 5, 24:43:44, 25:1-3].

contained in the suspension order explaining what was required to reinstate the benefits. When Mr. Aldridge met the criteria outlined in the suspension order for reinstatement of benefits, the Department added conditions that were not part of the original requirements.

In the proposed decision and order (hereinafter “PD&O”) adopted by the full BIIA when it denied Mr. Aldridge’s petition for review, the BIIA found that the facts of the appeal show that the August 24, 2011, notice of decision [BIIA Hr’g February 23, 2015, Ex. 1], suspended Mr. Aldridge’s time-loss benefits for alleged noncooperation with a medical examination. However, the notice also includes the requirements for reinstatement of the benefits. The suspension was to remain in effect until Mr. Aldridge submitted to and cooperated with an IME, or until the claim is closed, whichever occurred first. Because the full criteria for reinstatement of benefits were not considered by the BIIA in its adopted decision, the conclusions of law and findings of fact are not supported by the evidence.

If a worker refuses to submit to a medical examination, the Department may suspend any further action on any claim of the worker “so long as such refusal continues.” [RCW 51.32.110(2)]. The secure message under appeal before the BIIA, materially altered the meaning of RCW 51.32.110(2) by requiring that, “Lifting a suspension or time loss and resuming time loss are two separate issues. Once full cooperation is demonstrated I can review lifting the suspension. Full cooperation would include completing the MRI that was recommended by the examiners, and attending the rescheduled chiropractic exam on 10/2/13, paying time loss would be based on current medical opinion on ability to work such as the IME report and/or other medical received.” [BIIA Hr’g February 23, 2015, Ex. 3] (Emphasis added). “In interpreting other statutes, this court has universally followed the rule that a material alteration of the wording

generally changes the meaning of the law. *Sandahl v. Department of Labor & Industries*, 170 Wash. 380, 16 P.2d 623; *State ex rel. Bell v. Superior Court*, 196 Wash. 428, 83 P.2d 246; *State ex rel. Northwest Airlines v. Hoover*, 200 Wash. 277, 93 P.2d 346; *Great Northern CP. Co v. Cohn*, 3 Wash. 2d 627, 101 P.2d 985. *Alexander v. Highfill*, 18 Wash. 2d 733, 745, 140 P.2d 277 (1943).” The Department may, “suspend any further action on any claim of such worker so long as such refusal, obstruction, noncooperation. or practice continues.” [RCW 51.32.110(2)]. The conciliation communicated to the Department in Mr. Aldridge’s July 25, 2013, secure message, constructively acknowledged compliance with the August 24, 2011, notice of decision. The Department may only suspend entitled benefits “so long as” such noncooperation continues. *Id.* When Mr. Aldridge notified the Department that he would cooperate with the IME, any noncooperation ceased. *Id.* Reinstatement of benefits was required by statute effective at such cessation of noncooperation. The unambiguous phrase “so long as ” defines the commencement and cessation period of a Department action within the meaning of RCW 51.32.110(2). The suspension of Mr. Aldridge's claim commenced by order of the Department (August 24, 2011), in reliance on the provisions of the IIA. [RCW 51.32.110(2). In turn, reinstatement of benefits was required pursuant to the IIA (RCW 51.32.110(2)), effective July 25, 2013, when non-cooperation ceased. The IIA is to be liberally construed “for the purpose of reducing to a minimum the suffering and economic loss” of injured workers. [RCW 51.12.010]. *Shafer v. Dep’t of Labor and Industries of the State of Washington*, 166 Wash.2d 710, 213 P.3d 591, 2009.WA0001136 [§23] versuslaw. *Accord*, *Michael S. Michelbrink, Jr., v. The Washington State Patrol*, 180 Wn.App. 656; 323 P.3d 620, 624; WA.0000503 [§11] versuslaw. Effective July 25, 2013, any time-loss

benefits paid to Mr. Aldridge in reliance upon his written agreement to participate in a scheduled IME, was recoverable if Mr. Aldridge failed to comply. [RCW 51.32.240]. As such, the Department was required to reinstate benefits when it was notified in writing that Mr. Aldridge had discontinued non-cooperation with a medical examination.

The Department agreed that Mr. Aldridge had contacted Mr. Wallace on July 25, 2013, and advised him he would cooperate with the IME [BIIA Hr'g Ex. 3] [BIIA Tr. 10/27/2014 Wallace 32:9-12]. In response to Mr. Aldridge's written agreement to conciliate, Mr. Wallace ordered the scheduling of a "priority" IME [BIIA Hr'g Ex. 2]. The IME was scheduled to occur on September 17, 2013. Mr. Aldridge attended and participated in the IME to the extent participation was available. Through no fault of Mr. Aldridge, one of the three examiners allegedly scheduled to conduct the examinations failed to appear for the examination. Only two examiners were available to conduct the IME. On September 18, 2013, Mr. Aldridge contacted Mr. Wallace using the Department's secure message system. Mr. Aldridge advised Mr. Wallace that he had cooperated by participating in the IME. Mr. Aldridge asked that time-loss benefits be reinstated effective July 25, 2013, the date Mr. Aldridge became cooperative. On September 25, 2013, Mr. Wallace responded by adding the additional requirements for reinstatement of benefits [Exhibit 3]. "In interpreting other statutes, this court has universally followed the rule that a material alteration of the wording generally changes the meaning of the law." *Alexander v. Highfill*, 18, Wash. 2d 733, 745, 140P.2d 277 (1943). *Sandahl v. Department of Labor and Industries* 170 Wash. 380, 16 P.2d 623; *State ex rel. Bell v. Superior Court*, 196 Wash. 428, 83 P.2d 246; *State es rel. Northwest Airlines v. Hoover*, 200 Wash. 277, 93 P.2d 346; *Great Northern CP. Co v. Cohn*, 3 Wash. 2d 627, 101 P.2d 985. The additional requirements

materially altered the meaning of RCW 51.32.010(2). The Department may not promulgate a requirement that changes a legislative enactment. *Robert Edelman v. State of Washington*, 152 Wn.2d 584, 591; 99 P.3d 386; (2004). The BIA erred by not considering the material alteration of RCW 51.32.110(2) by the Department when it added requirements to reinstatement of entitled benefits. The Department acted ultra vires.

“Ultra vires acts are those done” wholly without legal authorization or in direct violation of existing statute. . . .” *WA State Dep’t of Labor and Industries v. Kantor*, 94 Wash.App. 764, 973, 973 P.2d 30 (1999) [§48], versuslaw. The Director does not enjoy the power to promulgate rules that amend or change legislative enactments. “An agency” does not have the power to promulgate rules which amend or change legislative enactments. The Department may adopt rules that “fill in the gaps” if those rules are necessary “for implementing” a general statutory scheme.” *Melinda Marcum v. Dep’t of Social and Health Services*, 290 P.3d 1045, 2012.WA.0001543 [§51] (2012) versuslaw. The Department may, “suspend any further action on any claim of such worker so long as such refusal, obstruction, noncooperation or practice continues. . . .” [RCW 51.32.110(2)]. The conciliation communicated by Mr. Aldridge in his July 25, 2013, secure message, constructively acknowledged compliance with the August 24, 2011, notice of decision from which the Department suspended Mr. Aldridge’s entitled benefits. The Department may only suspend entitled benefits “so long as” such noncooperation continues. *Id.* When Mr. Aldridge notified the Department that he would cooperate with the IME, any noncooperation ceased. *Id.* Reinstatement of benefits was required by statute effective with the cessation of any noncooperation. The unambiguous phrase “so long as ” defines the commencement and cessation period of a Department action within the meaning of RCW

51.32.110(2). In reliance on the provisions of the IIA (RCW 51.32.110(2)), the suspension of Mr. Aldridge's claim commenced by order of the Department (August 24, 2011). Effective July 25, 2013, reinstatement of entitled benefits was required pursuant to the IIA (RCW 51.32.110(2)). The IIA is to be liberally construed "for the purpose of reducing to a minimum the suffering and economic loss" of injured workers RCW 51.12.010. *Shafer v. Dep't of Labor and Industries of the State of Washington*, 166 Wash.2d 710, 213 P.3d 591, 2009 WA.0001136 [§23, 29] versuslaw. *Accord*, Michael S. Michelbrink, Jr., v. The Washington State Patrol, 180 Wn.App. 656; 323 P.3d 620, 624; WA.0000503 [§11] 2014 Versuslaw. Effective July 25, 2013, any time-loss benefits paid to Mr. Aldridge in reliance upon his written agreement to participate in a scheduled IME, was recoverable if Mr. Aldridge failed to comply. [RCW 51.32.240]. As such, the Department was bound by the provisions of the IIA, to reinstate Mr. Aldridge's entitled benefits when it was notified in writing that he had discontinued any noncooperation with a medical examination.

The criterion required by the Director in Mr. Wallace's secure message includes the phrase "full cooperation" [BIIA Hr'g Ex. 3]. Neither the IIA nor Department rules include the phrase "full cooperation." Rather, "cooperation" is what is required under the IIA. [RCW 51.32.110].

Additionally, in his secure message, Mr. Wallace included the requirement that Mr. Aldridge complete the MRI recommended by a Department hired IME examiner before the Department would consider whether Mr. Aldridge demonstrated "full cooperation" and reconsider reinstatement of benefits. Moreover, Mr. Wallace required that Mr. Aldridge schedule the MRI requested by the Department hired IME

examiner. This abuse of authority flies in the face of everything the IIA stands for and the legislative intent of the Act.

The term “Independent medical examination,” is defined as “An objective medical-legal examination requested (by the department or self-insurer) to establish medical findings, opinions, and conclusions about a worker's physical condition. These examinations may only be conducted by department-approved examiners.” [WAC 296-23-302]. IMEs are “requested by the department or the self-insurer.” [WAC 296-23-307]. It is the IME examiners responsibility to conduct an examination that is “sufficient to achieve the purpose and reason the examination was requested.” [WAC 296-23-347(2)(i)]. This responsibility includes submitting as part of the examination report, any special tests or studies “requested as a part of the examination.” [WAC 296-23-347(3)(a)]. Neither the IIA nor Department rules require or even authorize an industrial insurance claimant to conduct the affairs of a licensed and Department approved IME provider by scheduling a follow-up study needed by the examiner to complete a Department mandated medical examination. Insisting that Mr. Aldridge schedule the MRI study as a requirement for reinstatement of benefits is indicative of the Department's bias toward Mr. Aldridge is retaliatory, and is a violation of Mr. Aldridge's due process rights. “In the absence of evidence to the contrary,” it is presumed that public officers perform their duties properly, legally and in compliance with controlling statutory provisions.” *Ledgering v. State*, 63 Wn.2d 94, 101, 385 P.2d 522 (1963). In this BIIA appeal, to delay Mr. Aldridge’s receipt of entitled benefits, Mr. Wallace materially altered the provisions of the IIA while placing those responsibilities legally required to be accomplished by IME examiners and Mr. Wallace, as a claims manager, upon Mr. Aldridge.

Despite these glaring abuses and violations of the law by the Department in its administration of Mr. Aldridge's industrial injury claim, Judge Wilson upheld the BIIA's dismissal of Mr. Aldridge's appeal, holding that, "[m]y decision is that I will grant the Department's Motion to Dismiss, because the secure message is not a final action of the issue the reinstatement date, and a separation action actually set that date."

On review to the superior court, the BIIA's decision is prima facie correct, and the burden of proof is on the party challenging the decision. (RCW 51.52.115); *Ruse v. Dep't of Labor & Indus.*, 138 Wn.2d 1, 5, 977 P.2d 570 (1999). The superior court reviews the BIIA's decision de novo and may substitute its own findings and decision for the BIIA's if it finds from a "fair preponderance of credible evidence" that the BIIA's findings and decision were incorrect. *Ruse*, 138 Wn.2d at 5-6 (quoting *McClelland v. ITT Rayonier, Inc.*, 65 Wn. App. 386, 390, 828 P.2d 1138 (1992)). In this review, Judge Wilson erred when she ignored the Department's blatant abuse of the IIA, giving the impression of allegiance to the Department by virtue of her prior employment and duties with the OAG.

In her ruling on the issue of the requirements of RCW 51.52.110, although deemed an "advisory comment,"¹⁹ Judge Wilson holds, "It seems to me that the law would allow a determination that either the date of "I'm ready to cooperate" or the date of first exam with cooperative participation would be fair choices. But all of that is by way of an advisory comment, because ultimately, in this case, the question is whether, in this appeal the date of Reinstatement of Benefits is properly addressed." One of the issues before Judge Wilson was to determine whether, on July 25, 2015, Mr. Aldridge fulfilled the requirements of RCW 51.52.110 when he agreed to

¹⁹ CP. RP. 10/07/2016. 10:13-20.

participate in the IME. [CP. Index 5, 25:23-35]. On the issue of when a claimant is cooperative and therefore entitled to benefits, the statute is ambiguous. Statutes susceptible to more than one interpretation are ambiguous. *In re Sehome Park Care Ctr., Inc.*, 127 Wn.2d 774, 778, 903 P.2d 443 (1995). When interpreting ambiguous statutes, the court attempts to give force to the intent of the Legislature by considering the act as a whole and any other materials that illuminate legislative intent. *Id.*

As the Court of Appeals noted, the Act is 'patently remedial.' *Sebastian*, 95 Wn. App. at 125; *Haddenham v. State*, 87 Wn.2d 145, 148, 550 P.2d 9 (1976). We interpret the coverage provisions of remedial statutes broadly, and the limitations on coverage narrowly. *Peninsula Sch. Dist. No. 401 v. Public Sch. Employees*, 130 Wn.2d 401, 407, 924 P.2d 13 (1996). Further, a remedial statute is construed broadly to accomplish its purpose. The IIA is to "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). *Shafer v. Dep't of Labor and Industries of the State of Washington*, 166 Wash.2d 710, 213 P.3d 591, 2009.WA0001136 [§23] versuslaw. Fulfilling the intent of the legislature, in this case, meant, effective July 25, 2015, Mr. Aldridge was entitled to reinstatement of benefits since he had agreed to cooperate with a medical examination. Here, Judge Wilson abused her discretion when she granted the Department's motion to dismiss Mr. Aldridge's appeal without addressing the issues properly raised on review. A judge abuses discretion when a decision is manifestly unreasonable or exercised on untenable grounds for untenable reasons. *Mayer v. STO Indus, Inc.*, 156 Wn.2d 677,684,132 P.3d 115 (2006) *Accord* *State v. Atsbeha*, 142 Wn.2d 904, 913-14,16 P.3d 626 (2001). An abuse of discretion occurs when no reasonable person would take the view the trial court adopted. *Id.* at 914

(quoting *State v. Ellis*, 136 Wn.2d 498,504,963 P.2d 843 (1998)) See also An abuse of discretion occurs when the decision is "manifestly unreasonable or based upon untenable grounds or reasons." *Industrial Indem. Co. v. Kallevig*, 114 Wn.2d 907,926,792 P.2d 520, 7 A.L.R5th 1014 (1990) (quoting *Davis v. Globe Mach. Mfg. Co., Inc.*, 102 Wn.2d 68,77, 684 P.2d 692 (1984)).

Under this BIIA docket, Mr. Aldridge raised the issue of the requirement of armed security, without holding hearings, on the record, on the discretionary decision, when he appears in person. Mr. Aldridge also raised the issue of the BIIA requirement that he be sworn before he can represent himself; not before he testifies, before he can represent himself before the BIIA. Without providing findings of fact or conclusions of law, Judge Wilson did not address the issues. Rather, on request for clarification by AAG Gaddis, Judge Wilson holds, "[I] am granting the motion to dismiss, finding that this appeal does not present the court the opportunity to address the issues that Mr. Aldridge presented in his appeal." [CP. Index 5, 18:24-25, 19:1-3]. However, the issues presented by Mr. Aldridge are contained in the certified BIIA record. These issues include, Department decisions and orders issued by the agency's secure messaging system may be appealable. [In re Colleen Aldridge, BIIA Dec., 1015903 (2011)],²⁰ the Department's unlawful manipulation of the requirements of the IIA as previously outlined herein. The BIIA's discretionary requirement for the presence of armed security when Mr. Aldridge appears before it, and the BIIA's requirement that Mr. Aldridge be sworn before he represents himself before the BIIA. [CP. Index 5, 5-16].

²⁰ The Department's secure message of September 18, 2014, denied reinstatement of benefits from July 25, 2014, through September 17, 2014.

In her order, Judge Wilson rules, “2. The undisputed factual record establishes that: Under Dckt. 13 22304, Mr. Aldridge identified the issue, in both his Board appeals and opening brief in this court, as what was the effective date of reinstatement of his time-loss compensation benefits reinstated effective July 25, 2013, in his appeal Dckt. 13 22304. The effective date of reinstatement of Mr. Aldridge's time-loss compensation benefits, however, was not decided by the Department, was outside the scope of the Board's review, and is outside the scope of the Court's review.” As previously established herein, the issues related the effective date of reinstatement of Mr. Aldridge's time-loss compensation benefits was included in Mr. Aldridge's notice of appeal before the BIIA²¹ and his petition for review²² of the BIIA's PD&O before it was adopted by the full BIIA. RCW 51.52.115 governs the superior court's review of decisions by the BIIA. In relevant part, it states: “[U]pon appeals to the superior court, only such issues of law or fact may be raised as were properly included in the notice of appeal to the board, or in the complete record of the proceedings before the board. The hearing in the superior court shall be de novo, but the court shall not receive evidence or testimony other than, or in addition to, that offered before the board or included in the record filed by the board in the superior court.” Accordingly, “a superior court's authority to determine an issue... 'depends upon whether or not the Board properly addressed that issue.'” *Matthews v. Dep't of Labor & Indus.*, 171 Wn.App. 477, 491, 288 P.3d 630 (2012) (quoting *Hanquet v. Dep't of Labor & Indus.*, 75 Wn.App. 657, 663-64, 879 P.2d 326 (1994)). In the instant case, the BIIA had the opportunity to “properly address” all issues raised by Mr. Aldridge during his appeal. This includes the issue of the

²¹ CP. Index 5, 150-151.

²² CP. Index 5, 5-16.

requirement of the presence of armed security when Mr. Aldridge is present. Failing to “properly address,” unfairly address or not to address at all, does not divest Mr. Aldridge of the right to appeal or for his appeal to be heard. “[Although the superior court is limited to considering only the record before the Board, the superior court has no limitation upon the intensity of its review.” *Hanquet*, 75 Wn.App. at 665-66. The court erred when it ruled the issues raised in Mr. Aldridge's administrative review are outside the scope of its review. Appeals to the superior court by a party aggrieved by an order of the BIIA is expressly authorized under RCW 51.52.110. Only matters not waived by the parties may be reviewed by the superior court. *Homemakers Upjohn v. Russell*, 33 Wash. App. 777, 778, 658 P.2d 27 (1983). A party is deemed to have “waived” any objections or irregularities pertaining to the decision of the BIIA that are not specifically set forth in detail by the party in its petition for review before the Board. RCW 51.52.104.

iv. BIIA Docket 14 15505

Under this BIIA docket, Judge Wilson granted the Department's CR 12(b)(6) motion to dismiss, holding that Mr. Aldridge was the prevailing party before the BIIA, and that the BIIA's requirement for the presence of armed security are “interlocutory decisions” for which the Superior Court has no jurisdiction to hear. Judge Wilson erred on all issues.

On January 19, 2016, Thurston County Superior Court issued its case scheduling order. [CP. Index 23]. In the order, July 12, 2016, was set as the deadline for Mr. Aldridge to file his opening brief. August 1, 2016, was set as the deadline for the filing of the Department's opening brief. On July 12, 2016, Mr. Aldridge complied with the filing requirements of the scheduling order. [CP. Index 38]. On August 1, 2016, the Department filed a motion to dismiss rather than filing an opening brief. The Department

captioned the pleading as, "Department's Reply re Department's CR 12(b)(6) Motion to Dismiss." [CP. Index 40] [RP, August 26, 2016, 4:23-25, 5:1-25, 6:1-25, 7:1-25, 8:1-25, 9:1-25, 10:1-25, 11:1-8]. On August 16, 2016, Mr. Aldridge filed the Appellant's Reply to Department's Opening Brief. In his brief, Mr. Aldridge objected to the Department's motion to dismiss. Mr. Aldridge argued, inter alia, the nature of the motion converted it from a CR 12 motion to a motion for summary judgment, the motion is noncompliant with the local court rules, service was improper, and the motion is frivolous. [CP. Index 42, 1:19-30, 2:1-21, 8:17-29, 9:1-13]. On August 25, 2016, the Department filed what it characterized as, "Department's Reply re Department's CR 12(b)(6) Motion to Dismiss." [CP. Index 43]. In its "reply," the Department argued that the motion to dismiss should not be converted to a motion for summary judgment and considered under rules that govern such motions. Rather, the merits of the motion to dismiss under CR 12(b)(6) should be considered. If the merits preclude the non-moving party from the relief sought, the motion can be granted. On August 26, 2016, a hearing was held before Judge Wilson. In conjunction with reviewing the pleadings filed in the matter, Judge Wilson heard oral argument on the matter but withheld issuing a ruling. Colleen Aldridge, Mr. Aldridge's wife, had a hearing scheduled in her administrative review from an unfavorable ruling by the BIIA. Mrs. Aldridge's hearing was scheduled to occur on October 7, 2016. On October 6, 2016, Mr. Aldridge received an e-mail from Judge Wilson's judicial assistant advising Mr. Aldridge that Judge Wilson would be issuing her ruling on October 7, 2016. On October 7, 2016, Judge Wilson ruled, since Mr. Aldridge prevailed before the BIIA, he is therefore not aggrieved by the final ruling of the BIIA. There is no relief available the

court can offer. [CP. Index 50]. Judge Wilson's ruling is in repudiation of the law.

During proceedings before the BIIA, the BIIA required the presence of armed security when Mr. Aldridge appears in person. [CP. Index 20, 5-9]. The practice of requiring the presence of armed security when Mr. Aldridge appears in person began on March 19, 2013, when Mr. Aldridge appeared before the BIIA as a lay representative to his wife, Colleen Aldridge. [CP. Index 20, 134-140]. When Mr. Aldridge inquired into the reason for the presence of armed security, he was advised by IAJ Thomas M. Kalenius, "None that I need to disclose to you!"²³ [CP. Index 5, 14:28-31, 15:1-31, 16:1-2]. From March 19, 2013, through the date of the Superior Court ruling giving rise to this Appeal, with the exception of the instant BIIA docket appeal, Mr. Aldridge's request for a hearing on the record, and for the reason armed security is required when he appears in person, have been denied. In this case, Chief Assistant Industrial Appeals Judge Brian O. Watkins (hereinafter "CAIAJ Watkins"), attempted to circumvent holding a hearing on the matter by characterizing a prior IAJ's order in the appeal that directed the Department to brief the "specific" reason(s) the Department believes the presence of armed security is required, as Mr. Aldridge's request for "no security." [RP, March 27, 2015, 11:14-26, 12:1-26, 13:1-8]. It is not the normal practice of the BIIA to have armed security present during proceedings. Rather, the BIIA's normal practice is not to have any security unless it is requested. [CP. Index 20, 157:7-19]. The BIIA identifies the reasons security is requested as "the discretion of the judge." [CP. Index 20, 157:10-11]. The BIIA

²³ IAJ Kalenius presided over Colleen Aldridge's BIIA appeal docket 12 24705. The Aldridge's sought a temporary restraining order against the BIIA as a direct resort of the conduct of IAJ Kalenius. 14-2-00426-6.

further identifies the reason a judge may request the presence of armed security as “[t]hreats against the industrial appeals judge have been made by parties to the appeal. These individuals have threatened to kill or assault the industrial appeals judge.” [CP. Index 20, 157:12-14]. However, it is undisputed that neither the BIIA or the Department have identified any such conduct by Mr. Aldridge. Nonetheless, the presence of armed security is required when Mr. Aldridge appears in person. However, the BIIA refuses to hold fair hearings on the record, for the reason of the requirement.

In her ruling, Judge Wilson holds, “RCW 51.52.110 allows anyone who is “aggrieved” by the final decision and order of the Board to appeal such order to superior court. No relief is available to Mr. Aldridge under Dckt. 14 15505, however, because he prevailed at the Board.” However, Mr. Aldridge is aggrieved by the final decision and order of the BIIA.

An aggrieved party is one who is denied some personal or property right, legal or equitable, or one which who a burden or obligation is imposed upon. *State v. A.M.R.*, 147 Wn.2d Wn.2d 91, 95, 51 P.3d 790 (2002), the court held; "When the word "aggrieved" appears in a statute, it refers to "a denial of some personal or property right, legal or equitable, or the imposition upon a party of a burden or obligation." *Sheets v. Benevolent & Pro. Order of Keglers*, 34 Wn.2d 851, 854-55, 210 P.2d 690 (1949) (quoting 4 C.J.S. Appeal and Error § 183b(1))." See also: *Mestrovac v. Dep't of Labor & Indus.*, 142 Wn. App. 693; 176 P.3d 536 (2008) "Aggrieved" has been defined to mean "a denial of some personal or property right, legal or equitable, or the imposition upon a party of a burden or obligation." By requiring the presence of armed security when Mr. Aldridge appears in person and exacerbating that requirement by refusing to tell Mr. Aldridge the reason for the requirement and blatantly

refusing to hold hearings, on the record, for the treatment, the BIIA and the Department deny Mr. Aldridge a personal legal right while imposing a burden or obligation on Mr. Aldridge that is contrary to law. RCW 49.60.030 Freedom from discrimination—Declaration of civil rights.

“(1) The right to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to: (b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement” *MacLean v. First Northwest Industries of America Inc.*, 96 Wash. 2d 338, 343, 635 P.2d 683 (1981).

Here, as in Mr. Aldridge’s appeal under BIIA docket 13 22304, Mr. Aldridge included in his notice of appeal to the BIIA, and in his petition for review before the BIIA, the issue of the BIIA and Department’s requirement for the presence of armed security when he appears in person. *Id.* at RCW 51.52.115. *See also* Matthews 171 Wn.App. 477, 491. A petition for review shall outlined in detail, the grounds for review. A party filing a petition for review waives all objections or irregularities not specifically set forth therein. A general objection to findings of fact on the ground that the weight of evidence is to the contrary shall not be considered sufficient compliance unless the objection shall refer to the evidence relied upon in support thereof. A general objection to all evidentiary rulings adverse to the party shall be considered adequate compliance with this rule. If legal issues are involved, the petition for review shall set forth the legal theory relied upon and citation of authority

and/or argument in support thereof. [WAC 263-12-145(4)] *accord* [RCW 51.52.104 and RCW 51.52.106].

“Judges are charged with ascertaining the truth, not just playing the referee. (See Guardianship of Simpson (1998) 67 Cal.App.4th 914.) A lawsuit is not a game, where the party with the cleverest lawyer prevails regardless of the merits. (Adams v. Murakami (1991) 54 Cal.3d 105.). . . .” *Gamet v. Blanchard*, 91 Cal.App. 4th 1276, 111 Cal.Rptr.2d 439 (2001).

Judge Wilson erred in her order when she granted the Department's motion to dismiss holding the Superior Court can offer no relief to Mr. Aldridge. [CP. Index 50].

V. CONCLUSION

The BIIA and its members have received documented threats against its facilities and its members in the past. Why has the BIIA selected Mr. Aldridge, a person it has offered no proof has made any threats against it, its members, or its facilities, to use as the test case for the ability of its judges to exercise “discretion,” without due process or equal treatment, by requiring the presence of armed security with the ability to exercise force up to and including deadly force, when Mr. Aldridge appears? The answer, Mr. Aldridge is black. Allowing fair hearings on the matter would expose the BIIA's racist practices and undisclosed policies thereof. More importantly is the *perception* that Judge Wilson rendered a decision based on loyalty to State agencies.

Mr. Aldridge respectfully requests his costs and fees in these matters.

RESPECTFULLY SUBMITTED this 30th day of May 2017.

MICHAEL W. ALDRIDGE

By: 
Michael W. Aldridge, Pro Se

MICHAEL ALDRIDGE - FILING PRO SE

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