

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 REPLY TO DEPARTMENT'S**  
**OPENING BRIEF**

---

**MICHAEL W. ALDRIDGE**  
By Michael W. Aldridge, Pro se

**MICHAEL W. ALDRIDGE**  
P.O. Box 237  
DuPont, WA. 98327-0237  
Telephone: (406) 578-1877  
Facsimile: (253) 267-8065

## I. REPLY

- a) **The secure message from Mr. Wallace the Claims Manager in charge of the administration of Mr. Aldridge's claim, was appealable since it changed the requirements upon which benefits would be reinstated and it denied benefits to which Mr. Aldridge is legally entitled.**

The Department's argument that Mr. Aldridge's appeal seeks review of matters outside the BIIA's scope of review is without merit.

In its Opening Brief, the Department appears to rely on the holdings in *Lenk v. Dep't of Labor & Indus.*, 3 Wn. App. 977, 982, 478 P.2d 761 (1970); RCW 51.52.050, .060, .070, .100, .102, .104, *Lee v. Jacobs*, 81 Wn.2d 937, 941, 506 P.2d 308 (1973), and *Colleen Aldridge*, No. 10 15903 (Bd. Indus. Ins. Appeals Feb. 16, 2011), to support its theory that the language contained in the secure messages to Mr. Aldridge, are not "appealable orders." (Resp't Br. p.10-11). The Department's argument is without merit.

In matters arising under the IIA, when the Department has taken any action or made any decision relating to any phase of the administration under the IIA, the worker, beneficiary, employer, or other person aggrieved thereby may appeal to the BIIA. [51.52.050(2)(a)]. When a notice of appeal is filed the notice of appeal shall set forth in full detail the grounds on which the appellant considers the order or decision is unjust or unlawful. The notice of appeal shall include every issue to be considered by the BIIA or the matter shall be deemed to have been waived. All objections or irregularities concerning the matter on which the appeal is taken other than those specifically set forth in the notice of appeal or

appearing in the records of the department must be included in the notice of appeal or the matters shall be considered waived. *Brakus v. Department of Labor & Indus.*, 48 Wash. 2d 218, 220, 292 P.2d 865 (1956), the court interpreted RCW 51.52.070 to mean that the notice of appeal must include every issue the appealing party wishes the BIIA to consider. The Department has broad subject matter jurisdiction over claims for workers' compensation benefits under the IIA. *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d at 539-40; RCW 51.08.140. Additionally, the BIIA has broad subject matter jurisdiction to review Department actions. *Matthews v. Dep't of Labor & Indus.*, 171 Wn.App. 477, 490, 288 P.3d 630 (2012), review denied, 176 Wn.2d 1026 (2013); see also RCW 51.52.050(2)(a). In *Lenk v. Department of Labor & Indus.*, 3 Wash. App. 977, 478 P.2d 761 (1970), the court gave the BIIA's scope of review under RCW 51.52.070 a more liberal interpretation, stating that both the scope of the Department's order, as well as the content of the notice of appeal, determines the BIIA's scope of review. *Lenk*, at 982 n.9. The matter of the Department and the BIIA's requirement for the presence of armed security when Mr. Aldridge is present, was made an issue before the BIIA and the superior court in both of Mr. Aldridge's appeals.

Under Dockets 13 22304 and 14 15505, the issue of the requirement for the presence or armed security when Mr. Aldridge is present, was not included in the notice of appeal since the requirement was not made known to Mr. Aldridge until a proceeding requiring the personal appearance of the parties was scheduled before the BIIA. Once the

requirement was made known to Mr. Aldridge, he immediately made the requirement an issue in the matters of the procedures of the BIIA's appellate process. [Index 5, RP 5-15]. [CP. Index 20, ].

Under Docket 13 22304, the issue of the requirement for the presence of armed security when Mr. Aldridge appears in person was denied a hearing before the IAJ. [CP. Index 5, Tr. October 27, 2014, 65-69].

Under Docket 14 15505, the issue of the requirement for the presence of armed security when Mr. Aldridge appears in person was heard through pleadings and in a conference on May 26, 2015. A ruling which granted the Department's motion for security was entered in writing on May 29, 2015, only days before the June 4, 2015, appeal hearing. No hearing was heard and Mr. Aldridge was not given the opportunity to call witnesses, question witnesses or otherwise hear testimony regarding the requirement for the presence of armed security. [CP. Index 20, Tr. May 26, 2015, 14-15]. Because the issue of the requirement for the presence of armed security evolved under the auspices of the provisions of the IIA through an action of the Department [RCW 51.52.050(2)(a), the BIIA had subject matter jurisdiction over the issue. Despite the Department's argument in its opening brief that the neither the BIIA or the Superior Court had jurisdiction to hear the issue of the requirement for the presence of armed security <sup>1</sup> under Docket 13 22304, the matter was briefly discussed during the hearing on Mr. Aldridge's appeal, while under Docket 14 15505, a

---

<sup>1</sup> The Department did not object to the BIIA hearing the issue for the presence of armed security before the trial court (BIIA).

conference was heard on May 26, 2015, from which the BIIA's May 29, 2015, order granting the Department's request for the presence of armed security was issued. The BIIA and Superior Court have broad authority to decide claims under the IIA. *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 536, 889 P.2d 189 (1994); see also *Abraham v. Dep't of Labor & Indus.*, 178 Wash. 160, 163, 34 P.2d 457 (1934) The BIIA has broad authority to review appeals from Department action. RCW 51.52.050(1)-(2)(a). Superior courts have jurisdiction to review appeals from BIIA decisions. RCW 51.52.050(2)(c).

**b) The BIIA did not hold hearings on the matter of the requirement for armed security, rather it held conferences on the matter.**

There are distinct differences in the nature and purpose of a conference as opposed to a hearing. Unlike a conference, a hearing is a trial de novo on sworn testimony. RCW 51.52.100; *Brakus v. Department of Labor & Indus.*, 48 Wash. 2d 218, 292 P.2d 865 (1956); *Smith v. Department of Labor & Indus.*, 176 Wash. 569, 30 P.2d 656 (1934). At a hearing, the BIIA performs essentially a judicial function. *Kaiser Aluminum & Chem. Corp. v. Department of Labor & Indus.*, 45 Wash. 2d 745, 277 P.2d 742 (1954); *Floyd v. Department of Labor & Indus.*, 44 Wash. 2d 560, 269 P.2d 563 (1954). The purpose of holding a hearing is to decide the issues on appeal. *LeBire v. Department of Labor & Indus.*, 14 Wash. 2d 407, 128 P.2d 308 (1942); *Kaiser Aluminum & Chem. Corp. v. Department of Labor & Indus.* *Watt v. Weyerhaeuser Co.*, 18 Wash. App. 731, 573 P.2d 1320 (Wa.App. 11/28/1977). RCW 51.52.095 provides that a conference

may be held before or during a hearing. This provision reveals that these two terms are not synonymous or interchangeable. Because the term "conference" is not embodied within the statutory meaning of the term "hearing," the express mention of the term "hearing" in RCW 51.52.102 is taken to imply the exclusion of the term "conference." *Dominick v. Christensen*, 87 Wash. 2d 25, 548 P.2d 541 (1976); *Bradley v. Department of Labor & Indus.*, 52 Wash. 2d 780, 329 P.2d 196 (1958); *Ramsay v. Department of Labor & Indus.*, 36 Wash. 2d 410, 218 P.2d 765 (1950). Mr. Aldridge was entitled to a hearing on the matter of the requirement for the presence of armed security when he is present.

Unfortunately, under the IIA and the BIIA's rules of procedure, although these laws hold that where applicable and not in conflict with "these rules," the statutes and rules regarding procedures in civil cases in superior court shall be followed, requesting direct review of a ruling made by an IAJ during a hearing is restricted to review by a chief industrial appeals judge. [WAC 263-12-115(6)(a)]. Whereas, in other civil proceedings, direct review to the Court of Appeals or the Supreme Court is available. Once an adverse ruling is rendered in BIIA proceedings and reviewed by a chief industrial appeals judge, the aggrieved party is stuck with the ruling throughout the end of the hearing. In Mr. Aldridge's case, once the decision to allow the presence of armed security was decided, he had no options available to him. It was either request to appear telephonically or not appear. Had he not appeared, the IAJ may have dismissed his appeals. The only option available once his appeals are

dismissed is to appeal to Superior Court. However, as is his current situation, the issue of the requirement for the presence of armed security without a hearing on the matter, would have been moot. This “catch 22” cannot be the intent behind the law under civil procedure but in particular, under the provisions of the IIA. The IIA repeatedly requires that decisions under it, be reviewed with providing benefits as the goal.

## II. CONCLUSION

Unfortunately, current life events involving the medical condition of Mr. Aldridge and his mother have severely reduced the time Mr. Aldridge had to devote to this Reply. Although his Review before this Court is extremely important and may result in the loss of the Review and additional cost to him, he was unable to properly complete his Reply within the established timeframe established by law or by the extended timeframe this Court has so graciously extended to him throughout the pendency of this Review.

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of September 2017.

MICHAEL W. ALDRIDGE

By   
Michael W. Aldridge, Pro Se

**MICHAEL ALDRIDGE - FILING PRO SE**

**September 18, 2017 - 4:58 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 49725-5  
**Appellate Court Case Title:** Michael Aldridge, Appellant v. Department of L&I, Respondent  
**Superior Court Case Number:** 15-2-01249-2

**The following documents have been uploaded:**

- 3-497255\_Briefs\_20170918165416D2239819\_9600.pdf  
This File Contains:  
Briefs - Appellants Reply  
*The Original File Name was 2017\_09\_18 49725-5-II Appellants Reply to Dept Opening Brief.pdf*

**A copy of the uploaded files will be sent to:**

- LIOlyCEC@atg.wa.gov
- cynthiagl@atg.wa.gov

**Comments:**

---

Sender Name: Michael Aldridge - Email: awm9237@outlook.com  
Address:  
PO Box 237  
DuPont, WA, 98327-0237  
Phone: (406) 578-1877

**Note: The Filing Id is 20170918165416D2239819**