

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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NO. 51143-6-II
COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

ALFREDO SUAREZ, *APPELLANT*

v.

MASCO CORPORATION, *RESPONDENT*.

REPLY BRIEF OF APPELLANT

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Attorneys for Appellant/Plaintiff

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ARGUMENT

The Brief of Respondent Masco Corporation argues that pursuant to RCW 51.52.050 (2)(b) there is an automatic stay of benefits of a Department order on appeal to the Board once a motion is filed pending decision on the motion to stay by the Board. RCW 51.52.050(2)(b) states:

An order by the department awarding benefits shall become **effective and benefits due on the date issued**. Subject to (b)(i) and (ii) of this subsection, if the department order is appealed the order shall not be stayed pending a final decision on the merits **unless ordered by the board**. (emphasis added)

Only later does RCW 51.52.050 (2)(b) provide that the employer may file a motion for a stay of benefits. There is no automatic stay on filing a motion for stay as there is under subsections (i) and (ii). The statute does not provide for a stay of benefits pending a decision by the Board. In fact the statute provides that the Department order awarding benefits to the worker shall be effective and benefits due on the date the Department order is issued unless ordered by the Board.

Relying on *Cockle v Labor and Industries*, 142 Wn. 2d 801, 808, 16 P. 3d 583 (2001) does not help the respondent Masco Corporation, unless more than one reasonable interpretation of the statute applies. Here, there is only one reasonable interpretation of the statute, and there is no contrary intent manifest in the statute to give the words other than their ordinary meaning. It is not Alfredo Suarez that would have this court read words into the statute, but Masco Corporation, and Masco cannot prevail on appeal

unless the court reads words into the statute other than their ordinary meaning.

Mr. Suarez does not heavily rely on the Board of Industrial Insurance Appeals designating this case as a significant decision. Suffice to say that while the Board interpretation of Title 51 RCW is not binding on the court, it is entitled to great deference. *Renton Sch. Dist. No 403 v Dolph*, 2 Wn. App. 2d 35, 40 (2017). Mr. Suarez agrees with the Brief of the Department of Labor and Industries that the legislature rewrote the statute, RCW 51.12.010 (2)(b) in 2008, after *Taylor v Nalley's Fine Foods*, 119 Wn. App. 919, 83 P. 3d 1018 (2004), and genuine medical or legal doubt no longer applies. In its significant decision *In re Alfredo Suarez*, BIIA Dec. 15 20822 (2016), rather than interpret RCW 51.52.050 (2)(B) to negate *In re Frank Madrid*, BIIA Dec. 86 0224 (1987), the Board followed its earlier line of authority. But the Board did emphasize the same salient language of RCW 51.52.050(2)(b) as is emphasized here, and provides an alternative basis for decision on this appeal. It is important to note that the Finding of Fact No. 4 in *Alfredo Suarez* at page 6, is that the self insured employer, Masco Corporation, presented no evidence establishing a genuine doubt as to medical or legal liability to pay benefits, and the trial court here found none to reverse the Board's decision. CP CABR, pages 6 and 8.

Masco Corporation relies on *Labor & Industries v. Granger*, 159 Wn. 2d 752, 757, 153 P. 3d 839 (2007) for the statement that statutes must not be construed in a way that would to an unrealistic interpretation. What the case states is that the legislature has mandated that Title 51 RCW be

liberally construed for the purpose of reducing to a minimum suffering and economic loss arising from injuries and death occurring within the course of employment, *RCW 51.12.010*, and the statute may not be constructed in a way that would lead to a “strained or unrealistic interpretation.” To interpret the statute as Masco Corporation would interpret it would certainly lead to a strained interpretation contrary to the expressed intent of the legislature. Only where reasonable minds can differ over what Title 51 RCW provisions mean, in keeping with the legislations fundamental purpose, can the statute to interpret otherwise, and the benefit of doubt belongs to the injured worker. *Labor and Industries v. Granger*, 158 at page 757, citing *Cockle v. Department*, 142 Wn. 2d at page 811. There is nothing in the statutory scheme to consider hardship or economic loss of an employer who qualifies under the Title 51 RCW to be a self-insurer.

The employer relies on the language of *RCW 51.12.010* to interpret *RCW 51.52.050 (1)(b)* for the benefit of the injured worker to offer a reduced economic loss while something is in the process of appeals. Requiring the injured worker to wait until the Board decides on a Motion for a Stay of Benefits is not going to reduce to a minimum his or her suffering and economic loss. This is an *Alice in Wonderland* approach that would turn statutory construction as its head, and be a strained interpretation of *RCW 51.12.010* and contrary to the plain meaning of *RCW 51.52.050(2)(b)*.

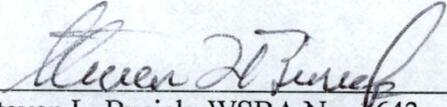
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CONCLUSION

This court should reverse the trial court and affirm the Board of Industrial Appeals and the Department of Labor and Industries in imposing a penalty against the employer Masco Corporation for delay in payment of time loss benefits, and award Alfredo Suarez's attorney his reasonable attorney fees.

Dated this 26th day of April, 2018.

Respectfully submitted,



Steven L. Busick, WSBA No. 1643
Attorney for Alfredo Suarez
Respondent

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

BY
ALFREDO SUAREZ,) COA No. 51143-6-II
)
Appellant,)
) PROOF OF SERVICE
v.)
)
MASCO CORPORATION,)
)
Respondent.)
_____)

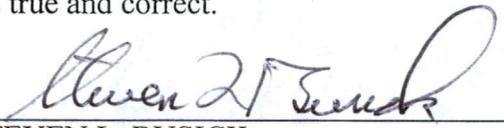
The undersigned states that on April 26, 2018, I served via US Mail, as indicated below, Reply Brief of Appellant, as attached, addressed as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: April 26, 2018.



STEVEN L. BUSICK
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