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

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CARL CHASTAIN,

Appellant,

v.

DEPARTMENT OF LABOR AND INDUSTRIES,

Respondent.

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**BRIEF OF RESPONDENT  
DEPARTMENT OF LABOR & INDUSTRIES**

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## I. INTRODUCTION

Five weeks of stressful working conditions is not an industrial injury. Under the Industrial Insurance Act, a worker alleging an industrial injury must show that “a sudden and traumatic happening” at work produced an “immediate and prompt” injury. The alleged injury must be based on a single event that happened on a single day, not repetitive exposure to stressful conditions over the course of several weeks. Furthermore, the worker must produce medical evidence showing that the alleged injury proximately caused the complained condition. And with a claim of stroke, the worker must, in addition to meeting all of the above requirements, also show that the injury arose out of an unusual exertion at work, not that it arose out of the performance of ordinary job duties posing no unusual demands.

Carl Chastain does not meet any of these requirements. He alleges that five weeks of job stress, rather than a single event on a single day, caused his stroke. And while he presented evidence that his job stress contributed to his stroke, his medical expert did not link the stroke to the five-week period Chastain alleges. And Chastain did not establish that he performed a job duty requiring unusual exertion. Each of these failures of proof warranted rejection of his claim. The superior court properly granted

the Department's motion for summary judgment and this Court should affirm.

## **II. ISSUES**

1. An industrial injury must be sudden and traumatic and produce an immediate and prompt result. A condition resulting from exposure to several incidents over the course of several days is not an injury as a matter of law. Chastain alleges that he developed a stroke based on stressful working conditions spanning five weeks. Did he establish an injury as a matter of law?
2. To establish an injury, a worker must produce medical evidence that the condition was proximately caused by exposure to a traumatic event. Chastain presented evidence that his stroke was related to stress at work but presented no evidence that it was caused by stress during any particular time period, such as the five weeks preceding the stroke. Did Chastain establish his stroke was proximately caused by the alleged injury?
3. To establish that a stroke is an industrial injury, a worker must prove it was caused by an unusual exertion at work. Stress alone does not constitute unusual exertion. Chastain does not point to a physically demanding activity that caused him to develop a stroke and instead argues that stress at work produced the stroke. Did Chastain establish that his stroke is an industrial injury?

## **III. STATEMENT OF THE CASE**

### **A. Summary of Law Regarding Industrial Injuries**

Under the Industrial Insurance Act, an "injury" is defined as "a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom." RCW 51.08.100. The Act "provides an objective test by which it is necessary to relate the injury to some

identifiable happening, event, cause or occurrence capable of being fixed at some point in time and connected with the employment.” *Spino v. Dep’t of Labor & Indus.*, 1 Wn. App. 730, 733, 463 P.2d 256 (1969).

In stroke cases, a worker seeking claim allowance must, in addition to establishing a “sudden and tangible” injury, demonstrate that the stroke arose out of an unusual exertion at work. *Id.* at 735-36.

**B. The Department Denied Chastain’s Workplace Injury Because It Found That Five Weeks of Stress Is Not an Industrial Injury**

Chastain had a stroke while working as the executive director of the Pacific Coast Salmon Coalition in Forks, Washington. He had worked there for twenty years before having the stroke in April 2016. AR Chastain at 12. He typically worked about 40 hours per week, with job duties that included managing projects, obtaining funding for projects, managing staff and volunteers, and attending board meetings. AR Chastain at 14-15.

Before he had the stroke, Chastain suffered from high cholesterol and high blood pressure, had a family history of high blood pressure and heart disease, and weighed more than 310 pounds. AR Chastain at 18-20. Chastain did not consistently take his blood pressure medication as prescribed and thus struggled to keep his blood pressure under control before his stroke. AR James at 39.

Chastain had several doctor visits with his attending physician, Dr. Wilbert James, in 2015 and 2016. His blood pressure was recorded as elevated on the following dates: February 2, 9, and 23, 2015; March 24, 2015; June 25, 2015; and October 29, 2015. AR James at 38-39. On January 28, 2016, Chastain called Dr. James' office to request a refill of his blood pressure medication. AR James at 40. A nurse from the office called Chastain back on February 1, 2016, to find out about the status of his blood pressure. AR James at 41. Chastain did not return the nurse's call. AR James at 41. Two months later he suffered a stroke while at work.

Chastain submitted an online accident report to the Department of Labor and Industries for his stroke, explaining that the injury occurred "[g]radually over a period of time" and checking a box revealing that his injury was not "as a result of a specific incident." Certified Appeal Board Record (AR) 67, 70. He noted that he had experienced pain or discomfort for two years caused by "[s]tress from duties related to coordinating with multiple funding agencies and board directives." AR 70.

Chastain testified that in early 2016, he had a new and difficult working relationship with an employee from the Washington Department of Fish and Wildlife (WDFW), who was asking him to "provide an assortment of documents that [Pacific Salmon] hadn't done before." AR Chastain at 22. WDFW provided funding to Pacific Salmon. AR Chastain

at 14. These documents included new financial management policies and re-filing 501(c)(3) non-profit documents under a strict timeline. AR Chastain at 14. In February 2016, Chastain met with the WDFW representative to discuss Chastain's progress with the assigned tasks. AR Chastain at 26.

After the meeting in February 2016, Chastain went to the Board of Directors for Pacific Salmon and suggested that they fire him as their executive director because he felt that someone else would be more effective in working with the WDFW representative. AR Chastain at 26-28. Chastain testified that Pacific Salmon's Board responded by assuring him that he was "doing a good job" and to "just keep doing what you're doing, we'll be okay." AR Chastain at 28. Chastain worked an average of 80 hours per week until April 2016, when he had the stroke. AR Chastain at 32. On the day that he had a stroke, Chastain had submitted the final 501(c)(3) documents to the WDFW. AR Chastain at 32.

Chastain was taken to the Emergency Department of the Forks Community Hospital. AR 73. Dr. Jeffrey Wallhoff diagnosed him with an acute ischemic stroke and arranged for him to be airlifted to Seattle so that he could be treated at the Swedish Stroke Center. AR 77.

In early May 2016, upon returning to Forks, Washington, Chastain presented the emergency room doctor, Dr. Wallhoff, with a Report of

Accident form in which he asked Dr. Wallhoff to determine whether the injury, which Chastain described as, “2 YEARS – multiple audits and reviews by various agencies in accordance with board directives and state laws,” was the cause of his stroke. AR 79. When he completed the form in May 2016, Dr. Wallhoff concluded Chastain’s stroke was not caused by many years of stress at the workplace. AR Wallhoff at 14 and AR 79 (#7 of the Health Care Provider Information section).

Chastain then asked his attending provider, Dr. Wilbert James, to review his Report of Accident form and say whether the stroke was caused by the exposure that Chastain described. AR 84. In May 2016, Dr. James concluded that the stroke was caused by the exposure Chastain reported. *Id.*

In June 2016, the Department rejected Chastain’s claim. AR 63-65. The Department rejected the claim as either an industrial injury or an occupational disease. Chastain appealed this decision to the Board.<sup>1</sup>

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<sup>1</sup> AR 32, 39. The Board determined that Chastain did not suffer either an occupational disease or an injury. AR 29. Chastain did not raise the theory that he had an occupational disease as an issue at superior court, nor does he raise it as an issue in his appellate brief.

**C. Chastain's Appeal of the Claim Denial Was Affirmed at the Board of Industrial Insurance Appeals and Clallam County Superior Court**

The Board affirmed the Department of Labor and Industry's decision on June 8, 2017, following a live hearing and preservation depositions of medical experts. AR 3, 30.

Chastain appealed the Board's ruling to Clallam County Superior Court, where the Department filed a motion for summary judgment. CP 41. Following briefing and argument, the trial court granted the Department's motion. CP 16.

Chastain appealed the superior court's decision to this Court.

**IV. STANDARD OF REVIEW**

In an appeal from a superior court's decision to this Court, the ordinary civil standard of review applies. RCW 51.52.140; *Malang v. Dep't of Labor & Indus.*, 139 Wn. App. 677, 683, 162 P.3d 450 (2007). The appellate court does not review the Board decision, nor does the Administrative Procedure Act apply. *See Rogers v. Dep't of Labor & Indus.*, 151 Wn. App. 174, 179-81, 210 P.3d 355 (2009). The superior court reviews the Board's decision de novo but does so based solely on the record developed at the Board. RCW 51.52.115.

On review of an order for summary judgment, the appellate court's inquiry is the same as the superior court's. *Bennerstrom v. Dep't of Labor*

*& Indus.*, 120 Wn. App. 853, 858, 86 P.3d 826 (2004). Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c).

The moving party bears an initial burden of proving that no genuine issue of material fact exists. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). The court must consider all facts submitted and all reasonable inferences from the facts in the light most favorable to the nonmoving party. *Id.* at 226. For summary judgment purposes, a material fact is one on which the outcome of the litigation depends. *Morgan v. Kingen*, 166 Wn.2d 526, 533, 210 P.3d 995 (2009). Once a party seeking summary judgment has made an initial showing that no genuine issues of material fact exists, the nonmoving party must set forth specific facts that, if proved, would establish his or her right to prevail on the merits. CR 56(e); *Young*, 112 Wn.2d at 225. The moving party is entitled to summary judgment if the opposing party fails to provide proof about an essential element of the opposing party’s claim. *Id.* at 225. Speculation and conclusory allegations cannot avoid a summary judgment. *Boguch v. Landover Corp.*, 153 Wn. App. 595, 610, 224 P.3d 795 (2009); CR 56(e).

## V. ARGUMENT

### A. **Chastain's Claim Does Not Establish an Industrial Injury as a Matter of Law Because He Relates His Condition to Continuous Exposure to Stressful Working Conditions Over Several Weeks Rather than a Single Traumatic Event**

A worker who alleges an industrial injury must prove that he suffered a “sudden and traumatic” happening in the course of his employment “producing an immediate and prompt result.” RCW 51.08.100; *see Garrett Freightlines, Inc. v. Dep't of Labor & Indus.*, 45 Wn. App. 335, 343-44, 725 P.2d 463 (1986). Chastain argues that he was under great emotional stress for the five weeks preceding his injury and that this qualifies as an “injury” under the law. *See* Opening Brief of Appellant (AB) 10-14. But under the plain language of the statute, and as further clarified by case law, injurious workplace exposure that spans a period of several weeks does not constitute an industrial injury because such a claim does not involve either an allegation of a “sudden” accident or an allegation that the accident produced an “immediate” and “prompt” result. RCW 51.08.100; *Garrett*, 45 Wn. App. at 343-44; *Rothwell v. Nine Mile Falls Sch. Dist.*, 149 Wn. App. 771, 779, 206 P.3d 347 (2009).

**1. A claim cannot constitute an industrial injury if it involves exposure to multiple incidents over the course of more than one day**

Exposure to stressful working conditions over a five-week period is not an industrial injury under RCW 51.08.100. The statute defines an injury as “a *sudden* and tangible *happening*, of a traumatic nature, producing an *immediate and prompt result*, and occurring from without.” RCW 51.08.100 (emphasis added). As the plain language of the statute shows, and as the case law clarifies, an industrial injury claim cannot be based on an allegation of repetitive exposure to harmful working conditions over the course of a prolonged period of time. In such a case, the disability was not caused by “a sudden and tangible happening” and the happening did not produce “an immediate and prompt result.”

The appellate courts have repeatedly rejected the idea that exposure to injurious working conditions over the course of several days constitutes an industrial injury. In *Cooper v. Department of Labor & Industries*, the Court held that a series of static electric shocks over a prolonged period of time was not an injury because the claimant did not assert that “a single shock” produced the injury. 49 Wn.2d 826, 828, 307 P.2d 272 (1957). Under this analysis, a worker’s claim would have to be based on a single “happening” in a single day, not multiple injurious events over the course of several days or weeks. *See Cooper*, 49 Wn.2d at 828.

In *Lehtinen v. Weyerhaeuser*, 63 Wn.2d 456, 459-60, 387 P.2d 760 (1963), the Court commented in dicta that it did not interpret *Cooper* to mean that a worker needed to prove that a single trauma caused an event, observing that if a worker established that a series of jars or jolts *on a single day* caused the worker to establish an injury, then the Court would not hesitate to conclude that the worker's claim could be allowed. But this issue was not before the Court, because a final decision had been issued by the joint hearing board that rejected the worker's claim, and the worker failed to appeal this order, instead arguing that the finality of the decision to reject his claim meant that he could file a tort suit against his employer. *See id.* at 461-62.

*Lehtinen's* discussion about whether multiple exposures on a single day could be an injury was dicta because the Court did not have any question before it on whether the worker's industrial insurance claim should be allowed. *See id.* Indeed, the worker in that case was not seeking claim allowance, but trying to use the unfavorable decision about his worker's compensation claim as a basis to override the exclusivity provisions of the Industrial Insurance Act and sue his employer in tort (an attempt that *Lehtinen* rejected). *Lehtinen*, 63 Wn.2d at 461-62. And even under *Lehtinen's* discussion in dicta, the Court went no further than intimating that

a series of jars and jolts in a single day that triggered low back disability could constitute an injury. *See id.*

In *Garrett Freightlines*, the Court rejected the worker's argument that lifting activities over the course of a single day constituted an industrial injury, pointedly observing that *Lehtinen's* reference to a worker suffering repetitive activities over the course of a single day was dicta, and observing that the Industrial Insurance Act defined an injury in narrow terms, which require proof that "a happening" produced the worker's disability.<sup>2</sup> 45 Wn. App. at 343-45.

*Garrett Freightlines* declined to adopt the dicta in *Lehtinen* and emphasized that, even under the analysis in those comments in dicta, the repeated exposures would need to take place over a short period of time. *See id.*

Thus, while there is tension between the analysis in *Cooper* and *Garrett Freightlines* on the one hand and *Lehtinen's* discussion in dicta on the other, none of those cases establish that Chastain demonstrated that he suffered an injury based on exposure to stressful working conditions over a five-week period. *Compare Cooper*, 49 Wn.2d at 828, and *Garrett*

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<sup>2</sup> 45 Wn. App. at 343-45. *Garrett Freightlines* recognized that a worker could argue that repetitive exposure results in an occupational disease, but observed that the worker had waived that as a theory below and declined to consider it on appeal.

*Freightlines*, 45 Wn. App. at 343-45, with *Lehtinen*, 63 Wn.2d at 459-60. Under *Cooper* and *Garrett Freightlines*, Chastain needed to prove his stroke was caused by a single event occurring on a single day. See *Cooper*, 49 Wn.2d at 828; see also *Garrett Freightlines*, 45 Wn. App. at 343-45. Under *Lehtinen*'s discussion in dicta, Chastain could perhaps argue that his exposure to several traumatic events *in a single day* constituted an injury, but this does not help Chastain, both because *Lehtinen*'s dicta has not been adopted in later cases, and because Chastain's claim is based on exposure to stressful working conditions over a five-week period. See *Lehtinen*, 63 Wn.2d at 459-60; see also *Garrett Freightlines*, 45 Wn. App. at 343-45.

In *Rothwell v. Nine Mile Falls School District*, the Court held that an injury claim must be based on exposure to a single traumatic event, not exposure to several traumatic events over a period of several days. *Rothwell*, 149 Wn. App. at 782. The *Rothwell* Court reasoned that an industrial injury claim must be based on a "sudden and traumatic happening" that produced an "immediate and prompt" result, while an occupational disease claim can be (and often is) based on repeated exposure to harmful working conditions over a period of time spanning several days or more.<sup>3</sup> *Rothwell* therefore

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<sup>3</sup> *Rothwell*, 149 Wn. App. at 782. As noted, Chastain does not argue that he developed an occupational disease. Moreover, he waived that as an issue as he did not argue that he developed an occupational disease at the Board or superior court.

concluded that even when a worker alleges exposure to a series of traumatic events over several days, the claim still cannot constitute an industrial injury under the Industrial Insurance Act. 149 Wn. App. at 782. This is because, to be an injury, the worker's disability must be proximately caused by a single traumatic event, not a disability caused by repeated exposure to harmful working conditions over several weeks. *Id.*

Notably, the worker in *Rothwell* alleged exposure to events at her employment that were undoubtedly traumatic and that occurred over a relatively short period of time, yet the *Rothwell* court still concluded that such a claim could not qualify as an industrial injury as a matter of law. Specifically, the worker, a school custodian, alleged that her employer directed her to perform various duties relating to the fact that a student—whom the worker personally knew—had committed suicide at the front gate of the school. *Id.* at 774. The worker alleged that she was told to stand outside the front gate to prevent the media or any other unauthorized persons to come into the school while the police investigated the shooting. *Id.* Later, the superintendent allegedly told the worker to clean the scene of the shooting. *Rothwell*, 149 Wn. App. at 774. But before she performed any cleaning, the police informed the worker that she should not touch anything at the crime scene. *Id.* at 775. The school principal then allegedly directed her to go to the classrooms that the suicide victim had attended that day and

search for bombs. *Id.* Later, the worker's employer told her to clean the suicide shooting, after the police had completed their investigation, which required the worker to remove needles, plastic gloves, brain matter, bone bits, and blood. *Rothwell*, 149 Wn. App. at 776. The worker finished completing the cleaning at 4:15 A.M. *Id.* The next day, the worker was told to report between 7:30 A.M. and 8:00 A.M., to hand out cookies and coffee to students, parents, and staff members. *Id.* For several days after the shooting, students brought candles and cards to the scene of the suicide. *Id.* The worker was ordered to clean up those items each night. *Id.*

The worker reported extreme emotional upset based on all of these alleged events, and medical evidence supported a finding that her exposure to them caused her to develop disabling mental health conditions. *Rothwell*, 149 Wn. App. at at 779. Nonetheless, the court held that the worker did not establish an industrial injury as a matter of law because her disability was caused by exposure to several events over the course of several days, rather than exposure to a *single* traumatic event. *Rothwell*, 149 Wn. App. at 781-82.

Chastain similarly fails to establish an injury because he failed to establish that his stroke resulted from exposure to a single traumatic event. Under *Rothwell*, Chastain's claim cannot be classified as an injury because it resulted from multiple exposures to events allegedly occurring over the

course of several weeks rather than exposure to a single traumatic event on a single day that caused him to develop the stroke. *See id.* at 781-82. Chastain's own evidence shows that his condition did not result from a single traumatic event: his claim is based on his allegation that his stroke was caused by his exposure to stressful working conditions over a five-week period, not an assertion that his stroke resulted from a single traumatic incident that occurred in a single day. And unlike the worker in *Rothwell*, who suffered several incidents that might independently qualify as an injury if one of them proximately caused her to develop a disabling condition, Chastain did not establish that there was any one event that he experienced over the course of the five-week period that could have caused him to spontaneously develop a stroke. *See Rothwell*, 149 Wn. App. at 774-76.

Although *Rothwell* involved a worker who developed a mental health condition rather than a physiological condition, the *Rothwell* court's analysis applies equally to a case involving a physical condition such as a stroke. 149 Wn. App. at 781-82. The court based its decision on the fundamental distinction between an industrial injury (which is a condition arising from a sudden and traumatic event occurring in a single day) and an occupational disease (which is a condition arising from exposure to harmful working conditions over a period of time spanning several days or more). *Rothwell*, 149 Wn. App. at 781-82. This distinction applies to any type of

claim, whether it is for a mental health condition or for a physical injury or disease.

Relying on dicta in *Lehtinen*, Chastain argues that so long as his injury claim is based on a “definite” period of time (rather than an indefinite one), and so long as it is possible for a person to investigate the claim, the claim falls within the requirements of an injury. AB 10. But, while showing that an injury occurred at a “definite” time and place that is “susceptible to investigation” is part of the test for establishing an injury, the case law makes clear that a series of traumatic events over several weeks cannot constitute an injury. See *Garrett Freightlines*, 45 Wn. App. at 343-45; *Rothwell*, 149 Wn. App. at 781-82. And what *Lehtinen* commented in dicta was that a series of jars and jolts over the course of a single day could constitute an injury, not that a series of exposures over several weeks, or longer, could constitute an injury. 63 Wn.2d at 459-60.

The Board’s decision in *David T.D. Erickson*, No. 65,990, 1985 WL 57345 (Wash. Bd. Indus. Ins. App. July 15, 1985), was erroneous but in any event it does not support Chastain’s argument. In *Erickson*, the Board concluded that a worker who was continually harassed by a co-worker over the course of three weeks and who then developed a mental health condition that resulted in the worker taking his own life, was sufficient to demonstrate that the worker developed an “industrial injury.” *Erickson*, 1985 WL 57345,

at \*7. Chastain argues that his case is like *Erickson* and that it should be allowed on that basis. AB 11.

First, *Erickson* is incorrect as it conflicts with *Rothwell*, *Cooper*, *Garrett Freightlines*, and RCW 51.08.100. Under *Rothwell*, *Cooper*, and *Garrett Freightlines*, a worker must show that a condition resulted from a single “happening” in a single day to establish an injury, not exposure to several traumatic experiences over the course of several weeks. It also conflicts with the Department’s interpretation of the statute, which affirms that to show an industrial injury a worker must show “a sudden and tangible happening, of a traumatic nature, producing an immediate and prompt result, and occurring from without” and that a “sudden . . . happening” cannot occur over weeks. RCW 51.08.100. The Department’s interpretation of the law about industrial injury tracks the language of RCW 51.08.100, and this court should not follow the Board’s decision. The court defers to the Department when there is a conflict in interpretation between the Department and the Board because the Department is the executive agency charged by the Legislature to administer the statute. *Dep’t of Labor & Indus. v. Slaugh*, 177 Wn. App. 439, 452, 312 P.3d 676 (2013).

Second, *Erickson* is distinguishable because it involved an allegation that a worker was exposed to a constant pattern of intimidation, threats, and harassment from a coworker over the course of three weeks,

rather than a broad allegation of being exposed to stressful working conditions over a five-week period. The Board's discussion in *Erickson* makes plain that the Board saw the facts in that case as unique and requiring a special disposition. The Board commented that "the depth and magnitude of the mental stress and harassment to which [the worker] was constantly subjected over a period of three weeks from a mentally deranged co-worker defies practical description." *Erickson*, 1985 WL 57345, at \*1 (emphasis added.) On the other hand, Chastain does not allege that he was subjected to anything comparable to the harassment and intimidation to which the worker in *Erickson* was subjected.

Chastain's stroke was not the immediate and prompt result of a sudden and tangible happening and it cannot be allowed as an injury, because an injury must arise out of a traumatic happening on a single day, not multiple exposures to multiple traumas over several weeks. The superior court properly granted the Department's motion for summary judgment and this Court should affirm.

**2. Chastain presented no medical evidence that his stroke was proximately caused by his exposure to stressful working conditions over a five-week period**

Aside from the fact that Chastain did not establish that he suffered an industrial "injury" because his claim is based on several weeks of workplace stress rather than a single traumatic event, Chastain also failed

to establish a proximate cause connection between the five-week period of stress and the later event of a stroke. A worker applying for benefits under the Industrial Insurance Act must show that a happening at work “[produced] an immediate or prompt result” that led to the physical conditions or harm. RCW 51.08.100. Medical evidence is necessary to establish that the worker’s condition was proximately caused by the alleged injury, unless the proximate causal connection between the events is so obvious that medical testimony is unnecessary. *See Jackson v. Dep’t of Labor & Indus.*, 54 Wn.2d 643, 648, 343 P.2d 1033 (1959). Chastain does not claim that the cause of his stroke is so obvious that medical testimony is unnecessary, nor would such an assertion survive scrutiny.

Chastain failed to provide medical evidence that the alleged injury—stressful working conditions over the five weeks preceding the stroke—proximately caused the stroke. Chastain’s doctor testified that the stroke was caused by workplace stress, but did so only in general terms, and did not link the stroke to the five-week period immediately preceding the stroke or any other specific timeframe. And since Chastain’s argument is that this five-week period is what constitutes the injury, Dr. James’ failure to link the stress to the five-week period means that Dr. James’ testimony does not show that the stroke was caused by the alleged injury.

The only way Chastain could show that Dr. James linked the stroke to an “injury” would be for Chastain to redefine the alleged “injury” as constituting not just the job stress Chastain experienced in the five weeks immediately preceding the stroke, but all of the workplace stress Chastain experienced over the course of his employment. But Chastain would then have to abandon his argument that he established an “injury” under the rationale that the five-week period preceding the stroke is a “fixed” period of time that can qualify as an injury. Chastain does not argue that an indefinite period of employment-related stress can constitute an “injury” under the Industrial Insurance Act, nor could he plausibly make such an argument under RCW 51.08.100’s definition of an “injury” and the case law defining that term. But he would have to do so to be able to show that his medical evidence establishes a causal connection between the stroke and the alleged injury.

Chastain failed to establish that the alleged injury proximately caused the stroke. This is fatal to his appeal, independent of the fact that five weeks of exposure cannot constitute an injury.

**B. Chastain’s Claim for a Stroke Must Also Be Rejected Because He Did Not Establish It Was Caused by an Unusual Exertion**

To show that a stroke qualifies as an industrial injury, an injured worker must, in addition to proving the elements necessary to establish an

“injury” claim, prove that the stroke resulted from an “unusual exertion” occurring in the course of the worker’s employment. *See Spino*, 1 Wn. App. at 736. *Spino* states that it is “necessary to apply the ‘unusual exertion rule’ to determine if the stroke” is allowable as an industrial injury. *Id.*

Under the unusual exertion rule, a worker alleging that certain vascular conditions—including strokes—must show that the injury occurred while the worker was performing a work activity requiring “more than ordinary exertion.” *Spino*, 1 Wn. App. at 734 (citing *Metcalf v. Dep’t of Labor & Indus.*, 168 Wash. 305, 308, 11 P.2d 821 (1932)). Chastain did not establish that he performed any work activities during the five-week period that he alleges constitutes his injury that involved an “unusual exertion.” Rather, the record shows that Chastain was performing his usual work activities throughout that time period. While Chastain may have personally experienced a level of stress during that five-week period that was unusual for him, he did not establish that any of the work activities that he actually performed during that period subjected him to unusual exertion. And under *Spino*, the stroke must be caused by a worker performing a job activity that subjected the worker to unusual exertion. *See Spino*, 1 Wn. App. at 734. Chastain’s failure to make such a showing warrants rejection of his claim. *See id.*

While the courts have found that unusual emotional exertion can satisfy the unusual exertion rule, the records in those cases demonstrated that the worker's unusual emotional exertion arose from the unusual nature of the job duties themselves: it was not just the worker's reaction to the job duties that was unusual, but the requirements of the job duties that were unusual. In *Sutherland v. Department of Labor & Industries* ,, a worker suffered a heart attack immediately after attending an unusually contentious union meeting, at which the members of the union rejected a contract that Sutherland had negotiated and recommended to them. 4 Wn. App. 333, 335-38, 481 P.2d 453 (1971). But here, Chastain did not have a stroke immediately after an unusually contentious meeting, nor immediately after performing any other job activity that placed an unusual exertion on him, emotional or physical. This distinguishes his case from *Sutherland* and precludes a finding that he has satisfied the unusual exertion rule.

Chastain did not establish that an "unusual exertion" caused the stroke. This, independent of the other problems with his case, is fatal to his claim. *See Spino*, 1 Wn App. at 734. The superior court properly disposed of the case on summary judgment and this Court should affirm.

## VI. CONCLUSION

Five weeks of stressful employment is not an injury under the Industrial Insurance Act. Chastain failed to establish that he suffered an

injury under that Act, as he did not show that he suffered a sudden and traumatic “happening” at work that immediately and promptly produced an injury. Chastain also failed to show that his alleged five-weeks of exposure proximately caused his stroke, and he failed to show that he was performing an unusual exertion at the time he suffered his stroke. Each of these failures independently warrants rejection of his claim. The superior court properly granted summary judgment to the Department and this Court should affirm.

RESPECTFULLY SUBMITTED this 19 day of December,  
2018.



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**PROOF OF SERVICE**

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 17<sup>th</sup> day of August, 2018, at Port Angeles, WA.



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VIVIAN HALICOUT  
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**OFFICE OF ATTORNEY GENERAL**

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