

FILED
Court of Appeals
Division II
State of Washington
1/18/2019 12:45 PM

NO. 52126-1

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

CARL CHASTAIN

Appellant/Defendant,

v.

DEPARTMENT OF LABOR AND INDUSTRIES

Respondent.

REPLY BRIEF OF APPELLANT

Drew D. Dalton, WSBA No. 39306
Of Attorneys for Appellant Carl Chastain

FORD & DALTON, P.S.

320 S. Sullivan Rd.
Spokane Valley, WA 99037
Tel. 509.924.2400

PAGE 1 – BRIEF OF APPELLANT

FORD & DALTON, PS
320 S. Sullivan Rd
Spokane Valley, WA 99025
(509)-924-2400

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
I. ARGUMENT.....	4
1. CASE LAW SUPPORTS AN INJURY IN THIS SCENARIO.....	4
II. CONCLUSION.....	7

TABLE OF AUTHORITIES

CASES

In re: David T. D. Erickson, BIIA dec. 65,990 (1985).....4
Lehtinen v. Weyerhaeuser Co., 63 Wn. 2d 456 (1964).....4
Spino v. Dep’t, 1 Wn. App. 730 (1969)4, 5, 6

STATUTES

RCW 51.08.1005

I. ARGUMENT

The Department does not address the Appellant's main argument on credibility so there is no dispute as to that issue. Therefore, if the law supports a potential finding of an injury claim with the facts alleged the case must be returned to the superior court for a jury hearing. We submit that it does.

1. CASE LAW SUPPORTS AN INJURY IN THIS SCENARIO

There are two cases onpoint. *Spino v. Dep't*, 1 Wn. App. 730 (1969) and *In re: David T. D. Erickson*, BIIA dec. 65,990 (1985). The Department tries to muddy the waters and compare this case to and say this case conflicts with other precedent. That is not correct.

The the statute requires we objectively connect the alleged injury to "some identifiable happening, event, cause or occurrence capable of being fixed as some point in time and connected with employment." *Spino*, 1 Wn. Ap at 733. In other words, can we be specific about a time frame such that it subjects that time frame to investigation. See. *Lehtinen v. Weyerhaeuser Co.*, 63 Wn. 2d 456 (1964). Can we fix the perceived injury to a "fixed as to time" period versus an indefinite period?

If the answer is yes, the condition can be considered an industrial injury. If no, then the only option is occupational disease. There is nothing in the statute that says a sudden and tangible happening is limited to the scope of one day. see RCW 51.08.100. The more accurate definition is did an event or series of events lead to “a sudden and tangible happening.” Id.

In this case we can define a stroke as an immediate or prompt result consistent with the statute. The definition allows for a distinction between occupational disease claims, conditions that require time to develop such as arthritis, other wear and tear conditions and some disease. It also differs in that it is not a disease process itself. That is not the case here. We now exactly when the stroke happened. Thus, we have a “sudden and tangible” result.

The question then becomes can we define the event (happening) based on outside factors, ie. Industrial injury stress, unusual exertion or only internal factors, ie. Occupational disease. In this case we have the doctors, who disagree on causation. That creates the issue of fact and allows for this case to move to the jury.

All Carl needs show is a definitive time frame for investigation to determine if the stress was unusual. See Spino. Carl, through Dr. James. Established that stress can cause

strokes. Carl, established the stress was unusual and abusive in the last 5 weeks before the event. A change that had not been there prior. Carl showed that at the time of the stroke he had just faxed off the completed 501(c) paperwork that was the cause of his stress. At the exact moment it was faxed off he had the stroke and went to the hospital.

The Department's attack of Erickson and Spino is not justified in light of the facts, statute and other cases. The statute lays out what an industrial injury is. (1) a sudden and tangible happening. In this case we have a stroke. That meets the definition.

Spino lays out the process by which we go to determine if it is related to work. We must have a specific time period subject to investigation. *Id.* at 733. Here Mr. Chastain has limited that to the five weeks prior to the stroke.

We have testimony supporting a stroke can be caused by stress. We have testimony of the sudden and tangible event. Filing the 501 (c) paperwork led to stroke immediately after it was filed. There is sufficient evidence for a finding consistent with Mr. Chastain's stroke being related to work. The law also does not prevent this issue from going to the jury.

II. CONCLUSION

As such, there is a triable issue of fact and this case should proceed to the jury.

DATED: January 18, 2019



Drew D. Dalton, WSBA 39306
FORD & DALTON, PS.

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I hereby certify under penalty of perjury that I faxed the document to the Court of Appeals and mailed the document referenced below on January 18, 2019

Claim No. : ZB-16529
Docket No. : 16 17482
Court of Appeals No : 52126-1-II
Clallam County No : 17-2-00683-4
Claimant : Carl E. Chastain
Document : **Reply Brief**

FAX TO:
COURT OF APPEALS
950 BROADWAY STE 300
TACOMA, WA 98402-4454
FAX: 253-593-2806

COPY TO:
PACIFIC COAST SALMON COALITION
PO BOX 2527
FORKS, WA 98331

BRANDON R. MACK, AAG
OFFICE OF THE ATTORNEY GENERAL
115 EAST RAILROAD, SUITE 306
PORT ANGELES, WA 98362

CARL E CHASTAIN
680 TERRA EDEN ST
FORKS, WA 98331-9114

DATED: January 18, 2019

FORD & DALTON, PS



BRIEF OF APPELLANT - 8

FORD & DALTON, P.S.
320 S. Sullivan Road
Spokane Valley, Washington 99037
(509) 924-2400 / FAX: (509) 927-1311

FORD & DALTON

January 18, 2019 - 12:45 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52126-1
Appellate Court Case Title: Carl Chastain, Appellant v. Department of Labor and Industries, Respondent
Superior Court Case Number: 17-2-00683-4

The following documents have been uploaded:

- 521261_Answer_Reply_to_Motion_20190118124430D2122918_4400.pdf
This File Contains:
Answer/Reply to Motion - Reply to Response
The Original File Name was Chastain Reply Brief.pdf

A copy of the uploaded files will be sent to:

- brandonm@atg.wa.gov
- rsdporappeals@ATG.WA.GOV

Comments:

Sender Name: Drew Dalton - Email: ddaltonlaw@gmail.com

Address:

320 S SULLIVAN RD

SPOKANE VALLEY, WA, 99037-8835

Phone: 509-924-2400

Note: The Filing Id is 20190118124430D2122918