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WASHINGTON STATE
SUPREME COURT

ZBIGNIEW M. LASKOWSKI v. STATE OF WASHINGTON

DEPARTMENT OF LABOR

AND INDUSTRIES

THE SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

CAUSE NO. 16-2-04012-34

THE SUPREME COURT OF STATE OF WASHINGTON NO. 95785-1

IN THE SUPREME COURT OF STATE OF WASHINGTON

STATE OF WASHINGTON

DEPARTMENT OF LABOR

AND INDUSTRIES, Respondent

V.

ZBIGNIEW M. LASKOWSKI, Appellant Pro Se

PETITIONER REPLY BRIEF

ZBIGNIEW M. LASKOWSKI

APPELLANT, PRO SE

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TABLE OF AUTHORITIES

Statutes

RCW 51.04.060

RCW 51.52.100

RCW 51.52.102

RCW 51.52.104

I. INTRODUCTION

a) RCW 51.52.100

Proceedings before the board- Contempt.

Hearings should be held in the county of the residence of the worker or beneficiary, or in the county where the injury occurred, at a place designated by the board. Such hearing shall be de novo and summary, but no witness' testimony shall be received unless he or she shall first have been sworn to testify the truth, the whole truth and nothing but the truth in the matter being heard, or unless his or her testimony shall have been taken by deposition according to the statues and rules relating to superior court of this state. The department shall be entitled to appear in all proceedings before the board and introduce testimony in support of its order. The board shall cause all oral testimony to be stenographically reported and thereafter transcribed, and when transcribed, the same, with all depositions, shall be filed in, and remain a part of, the record on the appeal. Such hearings on appeal to the board maybe conducted by one or more of its members, or duly authorized industrial appeal judge, and depositions may be taken by a person duly commissioned for purpose by the board.

Members of the board, its duly authorized industrial appeals judges, and all persons duly commissioned by it for the purpose of taking depositions, should have power to administrate oaths; to preserve and enforce order during such hearings; to issue subpoenas for, and to compel the attendance and testimony of,

witness, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths, and shall be their duty so to do to examine witness; and to do all things conformable to law which may be necessary to enable them, or any of them, effectively to discharge the duties of his or her office.

If any person in proceedings before the board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after been ordered so to do, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the board or any member or duly authorized industrial appeals judge may certify the facts to the superior court having jurisdiction in the place in which said board or member or industrial appeals judge is sitting; the court shall thereupon, in summary manner, hear the evidence as to the act complained of, and, if the evidence so warrants, punish such person in same manner and to the same extent as for contempt committed before the court, or commit such person upon same conditions as if the doing of the forbidden act had occurred with reference to the proceedings, or in the presence, of the court.

b) RCW 51.52.104

**Industrial appeals judge- Recommended decision and order-
Petition for review- Finality of order.**

After all evidence has been presented at hearings conducted by an industrial appeals judge, who shall be active or judicial member of the Washington state bar association, the industrial appeals judge should enter a proposed or recommended decision and order which shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the order based thereon. The industrial appeals judge shall file the signed original of the proposed decision and order with the board, and copies thereof shall be mailed by the board to each party to the appeal and to each party's attorney or representative of record. Within twenty days, or such farther time as the board may allow on written application of the party, filed within said twenty days from the date of communication of the proposed decision and order to the parties or their attorneys or representatives of record, any party may file with the board a written petition for review of the same. Filing of a petition for review is perfected by mailing or personally delivering the petition to the board's office in Olympia. Such petition for review shall set forth in detail the grounds therefor and the party or parties filing the same shall be deemed to have waived all objections or irregularities not specifically set forth therein.

In the event no petition for review is filed as provided herein by any party, the proposed decision and order of industrial appeal judge shall be adopted by the board and become the decision and order of the board, and no appeal may be taken therefor to the courts. If an order adopting the proposed decision and order is not formally signed by the board on the day following the date

the petition for review of the proposed decision and order is due, said proposed decision and order shall be deemed adopted by the board and became the decision and order of the board, and no appeal may be taken therefrom to the courts.

c)

T1)
T2)
T3)
XXX.....T3-T4
T4)
T5)
T6)
T7)
T8)-----SPINE NUMBERED SEGMENTS
T9) DIAGRAM
T10)
T11)
T12)
XT12-L1
L1)
L2)
L3)
XXX.....L3-L4
L4)
OOO
L5)
XXXX.....L5-L6
L6)

II. ISSUE

Two professionals, licensed to do their jobs in the State of Washington, decided not perjure themselves.

Dr. Diana Kraemer, the doctor whose Independent Medical Examination of June 28, 2016 still is presented by the Department as a valid, never was asked to give a deposition or rebuttal deposition under oath as said in RCW 51.52.100.

ALJ William P. Gilbert, assigned to the Financial Department of the Board of Industrial Insurance Appeals, after receiving Independent Medical Examination report from Dr. Diana Kraemer was set to issue Order on Agreement of Parties (Proposed Decision and Order), but never had done so. RCW51.52.104

On Page 5 of Medical Examiners Handbook in section Agreed Examination, Departments of Labor and Industries Medical Director Gary Franklin states "An agreed exam is IME in which involved parties draft questions, select the examiner and agree to abide by the findings, conclusions, and recommendations of the examiner. Agreed exams, however, are not always binding. According to state law a worker cannot agree to relinquish any rights (RCW 51.04.060)".

Kwiatkowski v. Drews implied but not applicable.

III. STATEMENT OF THE CASE

Dr. Diana Kraemer acknowledged curative [WAC 296-20-01002(3)] treatment of L 3-4 segment [IME report dated June 28, 2016, page

18 lines 10-13, (CABR page 449)] of Petitioner spine but excluded this particular L3-L4 segment out of 35 accepted by the department segments as unrelated to Claim AB 17747 without providing valid explanation. She is the only medical practitioner out of seven (7) previous IME doctors providing reports to the department, who said that lumbar interspace L3-L4 is not related to Claim AB17747 "Mr. Laskowski is a candidate for lumbar decompression for treatment of spinal stenosis at L 3-L4, unrelated to Claim AB17747". The department's own list of accepted conditions doesn't mention this particular exclusion or any other.

The quality of Dr. Diana Kraemer testimony could change if the witness was sworn or depositions were taken under oath.

Thurston County Superior Court Judge, Hon. Carol Murphy in the Court's verbal ruling dated February 28, 2018, Verbatim Report of Proceedings page 6, stipulates "Additionally the Board of Industrial Insurance Appeal judge incorrectly indicated in the transcript that Proposed Decision and Order would be issued, although the parties had agreed that Order on Agreement of Parties would be issued, and that was the order issued."

This above statement it is contested by the Petitioner due to vague language and incorrectness because Proposed Decision and Order was originally offered by stepping down ALJ Wayne Lucia, who was replaced in process by ALJ William P. Gilbert, who never issued Proposed Decision and Order or Order on Agreement of Parties. Order on Agreement of Parties was issued and signed by the Board only, what constitutes fraud because corrupts the chain

of custody of this judicial process. RCW 51.52.104

The Department implies that Kwiatkowski v. Drews applies to Zbigniew M. Laskowski v. Department of Labor and Industries but forgets that plaintiff in Kwiatkowski v. Drews had always legal representation, GAL included, when Petitioner in this case have been blacklisted and not able retain attorney.

IV. ARGUMENT

When curative or diagnostic treatment is indicated by physician in IME report simply translates that Maximum Medical Improvement was not reach yet as provided in WAC 296-20-01002(3).

After conference took place, initiated in the letter dated August 5, 2016, ALJ William P. Gilbert sized his participation without writing order or without been replaced by another administrative law judge (“If you disagree with my interpretation, please request a conference before August 15, 2016. Otherwise, I will prepare an Agreement of Parties consistent with this letter.” ALJ Gilbert wrote).

Legislative intent of WAC 263-12-093(1) was not meat in department’s, board’s or Thurston County Superior Court decisions because irregularities and discrepancies in interpretation of laws (“[i]f an agreement final deposition of any appeal is reached by all the parties present and represented at the conference, an order shall be issued in conformity with their agreement, providing the board finds the agreement is in accordance with law and facts.”

V. CONCLUSION

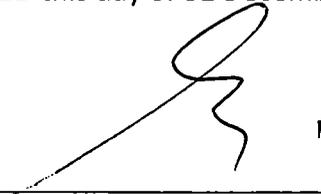
The Department wrongly realize on assumption that binding examination and sworn depositions could substitute for each other. RCW 51.52.100 does not offer that.

Dr. Diana Kraemer IME report shall be null and void.

The trail court decision shall be reverse.

This Court shall order the Department to pay lifetime pension benefits and continue to pay medical expenses to the Petitioner, consider Claim AB17747 was closed without medical certification and with recommendation of curative treatment.

RESPECTFULLY SUBMITTED this day of 31 December, 2018



ZBIGNIEW M. LASKOWSKI, Petitioner Per Se

Certificate of Service

I certify that on December 31, 2018, I deposited in the United States mail, delivered through a legal messenger service, personally delivered, a copy of this document to the attorney(s) of record for Plaintiff/Petitioner X Defendant/Respondent All Other Parties of Record.

Attorney for Plaintiff/Petitioner
 Defendant/Respondent
 Other: _____

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Sign: _____

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