

**FILED**

**SEP 23 2013**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

Case No.: 313336

WASHINGTON COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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DIANA K. LELAND,

Petitioner/Plaintiff,

v.

JR SIMPLOT, CO.

Respondent/Cross-Appellant

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**CROSS-APPELLANT REPLY BRIEF**

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Dated: September 18, 2013

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## **I. CROSS-APPELLANT'S ASSIGNMENT OF ERROR**

Respondent/cross appellant requests reversal of the Grant County Superior Court decision entitling appellant to further medical treatment for a psychological disorder not proximately caused by the industrial injury. The trial court applied an incorrect legal standard in awarding further treatment of the psychological disorder.

## **II. STATEMENT OF THE CASE**

Appellant appealed the Department of Labor and Industries Order dated August 12, 2008 that closed the claim, awarded no permanent partial disability, and ended time-loss compensation as paid to March 28, 2008. Appellant raised issues of a psychiatric condition, entitlement to time loss, and loss of earning power from March 27, 2008 through August 12, 2008, permanent and totally disability from the injury, and in the alternative, contended entitlement to further treatment and/or increased permanent partial disability.

Industrial Appeals Judge Steven R. Yeager presided over the hearing. Judge Yeager, in his October 30, 2009 Proposed Decision and Order, affirmed the August 12, 2008 Department Order. The Board held the January 7, 2005 industrial injury did not proximately cause mental health conditions diagnosed or described as depression or pain disorder. CP 88. The Board held appellant was not entitled to temporary disability

or loss of earning power benefits from March 27, 2008 to August 12, 2008 due to the industrial injury. CP 89. The Board determined appellant's conditions proximately caused by the industrial injury had reached maximum medical improvement by August 12, 2008. CP 89. Appellant failed to establish a prima facie case that she was permanently partially disabled. The Appellant appealed to Grant County Superior Court. CP 1306-1337.

Judge Evan Sperline of Grant County Superior Court reversed the Board Order November 5, 2012. CP 1479-1485. Judge Sperline held appellant was temporarily totally disabled from March 27, 2008 through August 12, 2008. CP 1482. The Court held appellant's physical conditions, proximately caused by the January 7, 2005 industrial injury, reached maximum medical improvement as of August 12, 2008; however the pain and disability proximately caused by the injury because of her unrelated psychological disorder had not reached maximum medical improvement and may respond to further treatment. CP 1482. Judge Sperline held appellant was entitled to further medical treatment. CP 1482. Judge Sperline reversed the Department's August 12, 2008 Order and remanded the matter to the Department for further treatment and proceedings. CP 1483.

### III. ARGUMENT

#### A. **The Superior Court Erred in Awarding Further Medical Treatment for Appellant's Pain Disorder, a Condition not Caused by the Industrial Injury.**

##### 1. **Appellant Agrees Claimant is not Entitled to Further Medical Treatment.**

The Superior Court's Finding of Fact Number 3 correctly determined the injury was not a "proximate cause" of appellant's mental health condition diagnosed as a pain disorder. The Superior Court erred in its Conclusion Number 4 to allow further treatment for this condition by the following contrary and conflicting statement:

"However, the pain and disability proximately caused by said injury because her psychological disorder had not reached maximum medical/psychological improvement and may respond to further psychological treatment. Therefore, she was entitled to further medical treatment as contemplated by RCW 51.36.010."

This is in direct conflict with the court's finding of fact that the injury did not cause the pain disorder and the physical injury was at maximum medical improvement. CP 1481. If the injury is stable and did not cause the pain disorder condition or the need for such treatment, the treatment cannot be related back to the injury.

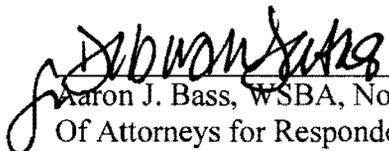
Appellant agrees in her Reply Brief that she is not entitled to further medical treatment. Appellant's Reply Brief, 12. The Superior Court applied an incorrect legal standard, and its conclusion is an error of law. Therefore, Finding of Fact 4 should be vacated and claimant should not be provided further medical treatment.

#### IV. CONCLUSION

The Superior Court's Findings of Fact the injury was not a proximate cause of the pain disorder and that appellant was not permanently and totally disabled are supported by substantial evidence and should be affirmed. The Superior Court's Conclusion of Law 4 which states that appellant's pain and disability proximately caused by the injury had not reached maximum medical improvement as of August 12, 2008 is legally incorrect and should be reversed. Appellant is not entitled to further medical treatment for the unrelated pain disorder.

Dated: September 18, 2013

Respectfully submitted,

 WSA 22102  
\_\_\_\_\_  
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## CERTIFICATE OF SERVICE

I hereby certify that on this date, I filed the original and one copy of **CROSS-APPELLANT REPLY BRIEF** via first class mail, postage prepaid, with the United States Postal Service to the following the following:

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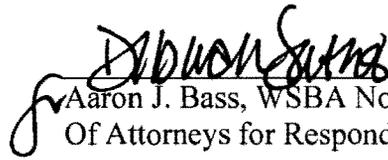
I further certify that on this date, I mailed a copy of the foregoing **CROSS-APPELLANT REPLY BRIEF** via first class mail, postage prepaid, with the United States Postal Service to the following:

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