FILED

MAY 05, 2017

Court of Appeals
Division III
State of Washington

No. 349195

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

PAUL A. SCHOLZ,

Appellant,

vs.

WASHINGTON STATE PATROL,
an agency of the State of Washington

Respondent

BRIEF OF APPELLANT

Scott A. Volyn, WSBA #21829
VOLYN LAW FIRM
23 South Mission Street, Suite B
Wenatchee, WA 98801
(509) 665-6727

Attorney for Appellant
Paul A. Scholz

TABLE OF CONTENTS

A. INTRODUCTION 1

B. ASSIGNMENTS OF ERROR 1

(1) Assignments of Error 1

(2) Issues Pertaining to Assignments of Error 2

C. STATEMENT OF THE CASE 3

D. SUMMARY OF ARGUMENT 5

E. ARGUMENT 5

(1). The Appellant Is Not Disputing The Decision Of The Arbitrator Regarding Interpretation Of The Collective Bargaining Agreement 5

(2) The Distinction Between Arbitration And Superior Court Litigation 6

(3) Summary Judgment Standards 8

(4) Collateral Estoppel is inapplicable to this matter 9

A. Identical Subject Matter 11

B. The Injustice Component 12

(5) Washington's Law Against Discrimination. 19

(6) The Trial Court Erred When It Incorrectly Concluded With Regard to a Genuine Issue of Material Fact 23

F. CONCLUSION 25

Appendix

TABLE OF AUTHORITIES

Cases

Anica v. Wal-Mart Stores, Inc., 120 Wn. App. 481, 488, 84 P.3d 1231 (2004) 20
Berschauer Phillips Constr. Co. v. Mut. of Enumclaw Ins. Co., 175 Wn. App. 222, 230, 308 P.3d 681, 685 (2013) 12
Carver v. State, 147 Wn. App. 567, 197 P.3d 678 (2008) 16
Christensen v. Grant County, 152 Wn.2d 299, 96 P.3d 957 (2009) 16
Civil Serv. Comm'n v. City of Kelso, 137 Wn.2d 166, 177, 969 P.2d 474 (1999) 21
Clark County Pub. Util. Dist. No. 1 v. Int'l Bhd. of Elec. Workers, Local 125, 150 Wn.2d 237, 246, 76 P.3d 248 (2003) 5
Davidson v. Hensen, 135 Wn.2d 112, 118, 954 P.2d 1327 (1998) 5
Endicott Educ. Ass'n v. Endicott Sch. Dist. No. 308, 43 Wn. App. 392, 394-95, 717 P.2d 763 (1986) 7
Gold Star Resorts, Inc. v. Futurewise, 167 Wn.2d 723, 738, 222 P.3d 791, 798-99 (2009) 12
Hegwine v. Longview Fibre Co., 162 Wn.2d 340, 354, 172 P.3d 688 (2007) 20
Kastanis v. Educ. Employees Credit Union, 122 Wn.2d 483, 865 P.2d 507 (1993) 20
Klickitat County v. Beck, 104 Wn. App. 453, 460-61, 16 P.3d 692 (2001).6
Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000) 8
Mack v. South Bay Beer Distribs., Inc., 798 F.2d 1279 (9th Cir.1986).... 19
McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) 20
Nielson v. Spanaway Gen. Med. Clinic, Inc., 135 Wn.2d 255, 264-65, 956 P.2d 312 (1998) 10
Owen v. Burlington N. & Santa Fe R.R., 153 Wn.2d 780, 789, 108 P.3d 1220 (2005) 8
Rains v. State, 100 Wn.2d 660, 665, 674 P.2d 165 (1983) 10
Reese v. Sears, Roebuck & Co., 107 Wn.2d 563, 577-78, 731 P.2d 497 (1987) 19, 22
Reninger v. State Dep't of Corr., 134 Wn.2d 437, 454, 951 P.2d 782, 791 (1998) 6
Renz v. Spokane Eye Clinic, P.S., 114 Wn. App. 611, 60 P.3d 106 (2002) 9
Robinson v. Hamed, 62 Wn. App. 92, 96-97, 813 P.2d 171 (1991) 10
Seattle-First Nat'l Bank v. Kawachi, 91 Wn.2d 223, 225-26, 588 P.2d 725 (1978) 10

Shoemaker v. City of Bremerton, 109 Wash. 2d 504, 508-09, 745 P.2d 858, 861 (1987) 6
Shoemaker v. City of Bremerton, 109 Wn.2d 504, 507, 745 P.2d 858 (1987) 10
State Farm Mut. Auto. Ins. Co. v. Avery, 114 Wn. App. 299, 57 P.3d 300 (2002) 7
State v. Dupard, 93 Wn.2d 268, 276, 609 P.2d 961 (1980) 14
State v. Vasquez, 148 Wn.2d 303, 59 P.3d 648 (2002) 13
State v. Williams, 132 Wn.2d 248, 937 P.2d 1052 (1997) 13
Thompson v. Dep't of Licensing, 138 Wn.2d 783, 795-99, 982 P.2d 601 (1999) 13
United Steelworkers of Am. v. Am. Mfg. Co., 363 U.S. 564, 568, 80 S. Ct. 1343, 4 L. Ed. 2d 1403 (1960). 5
Young v. Key Pharms., Inc., 112 Wn.2d 216, 225, 770 P.2d 182 (1989) ... 8

Statutes

RCW 49.60.180(1) 19
RCW 49.60.180(2)-(3) 20
RCW 49.60.180(3) 19

Rules

CR 56(c) 8

A. INTRODUCTION

Paul A. Scholz was a Washington State Patrol Trooper for over 20 years and was working within the scope of his employment when he was involved in a traumatic multi-vehicle pileup on Interstate 90. Due to the trauma suffered in that multi-vehicle accident, Trooper Scholz developed Post Traumatic Stress Disorder.

Trooper Scholz was put on administrative leave during the investigation and was later terminated, as an arbitrator found him to be "untruthful" in his statements. Appellant vehemently denied he was untruthful, and asserted he was simply confused due to his disability.

Trooper Scholz treated for over a year for PTSD, including during the time of the arbitration. The trial court erred when it affirmed that the arbitrator considered Appellant's disability, as it stated he only treated for one month after the incident.

The trial court further erred in refusing Scholz to pursue a wrongful termination matter in state court, forcing Scholz to file a Notice of Appeal and elevating his matter to the Court of Appeals.

B. ASSIGNMENTS OF ERROR

(1) Assignments of Error

1. The trial court erred in entering its summary judgment order on October 4, 2016, dismissing Appellant's claims

of Disability Discrimination, Violation of the Washington Law Against Discrimination, Chapter 49.60, and Breach of Implied Contract.

2. The trial court erred in entering its Order on Reconsideration on November 4, 2016, affirming its October 4, 2016 decision that collateral estoppel bars the Appellant's disability discrimination claim, and that the "identity of issues" factor was satisfied, and denying reconsideration.

(2) Issues Pertaining to Assignments of Error

1. Is the distinction between arbitration and litigation sufficient to overcome the application of collateral estoppel? (Assignment of Error Numbers 1 and 2)

2. Is the subject matter identical, as required for collateral estoppel to apply? (Assignment of Error Numbers 1 and 2)

3. Does it not work a substantial injustice to deny the Appellant the opportunity to pursue a wrongful discharge action in superior court, where the authority of the arbitrator precluded her from addressing these theories in arbitration? (Assignment of Error Numbers 1 and 2)

4. Is it error to apply collateral estoppel effect to a discharge arbitration where tort theories were not addressed, nor legal authority on the issues applied, nor evidence supportive of the theories presented? (Assignment of Error Numbers 1 and 2)

5. Is it error where the trial court incorrectly determined that Appellant ceased treatment for mental health issues one month after the subject incident? The Appellant treated for over one year, including time of arbitration. (Assignment of Error Numbers 1 and 2)

C. STATEMENT OF THE CASE

Prior to his termination, Appellant was a Commercial Vehicle Enforcement Officer 2 (CVEO 2, this is an assistant supervisor, lead, and trainer) with the Washington State Patrol (WSP) for over 20 years. Appellant had eleven years of experience as a military police officer before his employment with the Washington State Patrol.

On January 19, 2012, Appellant was working chain enforcement on Interstate 90 near Snoqualmie Pass, amid heavy snowfall, compact snow, ice on the road, and impaired visibility that obscured the lane markers.

Appellant was working near Mile Post 70 to direct commercial vehicles to put on tire chains in the designated chain-up area, rather than along the shoulder of the road or on on/off ramps.

Appellant was travelling in the right hand lane and had activated his emergency lights as he approached some semi-trucks that were chaining-up on a shoulder. He then noticed in his rearview mirror another semi-truck coming up on him rapidly from behind. The semi-truck swerved into the left lane to avoid Appellant's patrol vehicle. The trailer of the semi-truck slid before coming to a stop in the left lane of I-90.

Appellant pulled his patrol vehicle as far over on the right shoulder as possible because there were trucks also on the right, exited his vehicle, and walked to the semi-truck stopped in the left lane to tell the driver to

slow down.

As Appellant walked back to his patrol vehicle, a commercial vehicle traveling too fast for conditions and with four defective brakes crashed into his patrol vehicle and sent it sliding within feet of the Appellant. Six or seven additional commercial vehicles then crashed into the pileup.

After the collision, Appellant was in an obvious state emotional distress, as one could reasonably expect of a person who nearly died in a traffic accident involving at least six semi-trucks. Appellant's condition after the accident was not merely a state of shock, it was post-traumatic stress disorder (PTSD).

In February 2012 Appellant was placed on administrative leave while WSP investigated.

Arbitration was conducted on June 17-20, 2014, before arbitrator Sandra Smith Gangle, who concluded that the Employer had just cause to terminate the Grievant. CP 21-86

On January 29, 2013, at the conclusion of WSP's investigation, Appellant was terminated.

On October 19, 2015, Appellant filed his Summons and Complaint with the Kittitas County Superior Court. CP 1-6

Respondent moved for Summary Judgment on August 23, 2016, CP

7-20, and on October 4, 2016, Respondent's Motion for Summary Judgment was granted. CP 128-129.

Appellant timely moved for reconsideration on October 13, 2016, CP 130-135, and on November 4, 2016, Kittitas County Superior Court Judge Fran Chmelewski denied Appellant's motion. CP 136-137.

Appellant timely filed his Notice of Appeal on December 1, 2016. CP 138-140.

D. SUMMARY OF ARGUMENT

Collateral estoppel does not apply to the arbitration as the legal theories , evidence considered, authority applied, and scope of the arbitration are wholly distinct from Appellant's superior court litigation for wrongful termination.

E. ARGUMENT

(1). The Appellant Is Not Disputing The Decision Of The Arbitrator Regarding Interpretation Of The Collective Bargaining Agreement

The Court affords great deference to the decisions of a labor arbitrator.[1] The Appellant understands the Court strongly favors the finality of arbitration awards,[2] and that review of arbitration awards is limited.[3] The

---

1 *United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564, 568, 80 S. Ct. 1343, 4 L. Ed. 2d 1403 (1960).
2 *Davidson v. Hensen*, 135 Wn.2d 112, 118, 954 P.2d 1327 (1998).
3 *Clark County Pub. Util. Dist. No. 1 v. Int'l Bhd. of Elec. Workers, Local 125*, 150 Wn.2d 237, 246, 76 P.3d 248 (2003). "Review of an arbitration decision under a

Court will review de novo whether the arbitrator acted within the authority granted him or her by the collective bargaining agreement.[4] Therefore, the Appellant is not asking this Court pass on the merits of the dispute; as the arbitrator is the final judge of both the facts and the law, and "no review will lie for a mistake in either."[5]

(2) The Distinction Between Arbitration And Superior Court Litigation

Washington courts must consider how procedural differences between administrative agencies and courts will affect fairness, incentive to litigate, and the opportunity to litigate claims and issues.[6] The arbitrator is confined to interpretation and application of the collective bargaining agreement.[7] Even so arbitrators have the authority to fashion a remedy to

---

constitutional writ of certiorari is limited to whether the arbitrator acted illegally by exceeding his or her authority under the contract." *Id.* at 245; see *Kitsap County Deputy Sheriff's Guild v. Kitsap County*, 167 Wn.2d 428, 434, 219 P.3d 675 (2009); *City of Yakima v. Yakima Police Patrolman's Ass'n*, 148 Wn. App. 186, 192, 199 P.3d 484 (2009).

4 *Klickitat County v. Beck*, 104 Wn. App. 453, 460-61, 16 P.3d 692 (2001).

5 *Clark County Pub. Util. Dist.*, 150 Wn.2d at 245 (internal quotation marks omitted) (quoting *Dep't of Soc. & Health Servs. v. State Pers. Bd.*, 61 Wn. App. 778, 785, 812 P.2d 500 (1991)).

6 E.g., *Christensen*, *infra* note 47 at 313. ("There is nothing inherently unfair about [issue preclusion based on administrative agency findings] provided the party has the full and fair opportunity to litigate, there is no significant disparity of relief, and all the other requirements of collateral estoppel are satisfied."); *Reninger v. State Dep't of Corr.*, 134 Wn.2d 437, 454, 951 P.2d 782, 791 (1998) (finding no injustice in applying issue preclusion where parties "displayed no lack of incentive to litigate" in prior administrative forum); *Shoemaker v. City of Bremerton*, 109 Wash. 2d 504, 508-09, 745 P.2d 858, 861 (1987) (applying Restatement (Second) of Judgments § 83 (1982) to evaluate procedural differences); see also *Carver v. State*, 147 Wash. App. 567, 574-75, 197 P.3d 678, 682 (2008) (finding that injustice element of issue preclusion includes both procedural and substantive unfairness).

7 *Clark County Pub. Util. Dist.*, *supra* note 3, at 245.

resolving the dispute, including remedies not specifically requested in the grievance.[8]

Courts consider the same questions of fairness, incentive and opportunity when deciding whether to accord preclusive effect to decisions from judicial tribunals with limited jurisdiction, or those which operate under less formal procedures,[9] most especially when the original judgment is from a small claims court, a district court that handles traffic infractions, or another tribunal distinct and structure from that of the reviewing court.

Our courts have gradually moved away from the distinction between ultimate facts and evidentiary facts, and between issues of fact and issues of law. The modern view is to grant preclusive effect to issues of both law and fact (whether evidentiary or ultimate fact), but only if the parties recognized the issue's importance in the prior litigation, and the judge viewed it as necessary to the first judgment.[10] Going forward our courts are

---

8 *Endicott Educ. Ass'n v. Endicott Sch. Dist. No. 308*, 43 Wn. App. 392, 394-95, 717 P.2d 763 (1986).; see also *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S. Ct. 1358, 4 L. Ed. 2d 1424 (1960).

9 *State Farm Mut. Auto. Ins. Co. v. Avery*, 114 Wn. App. 299, 57 P.3d 300 (2002). In this case involving a small claims court judgment, the court laid out factors to consider in evaluating whether preclusion will serve the ends of justice: character of the court, scope of its jurisdiction, procedural informality, and procedural safeguards, including opportunity to appeal. *Id.* at 306-09, 57 P.3d at 304-06

10 Restatement (Second) of Judgments § 27 cmt. j, § 28 (1982). Section 27 states that: "When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." See *Chau*, 60 Wash. App. at 119, 802 P.2d at 824 (quoting Restatement (Second) of Judgments § 27 (1982), when analyzing finality of a partial verdict).

increasingly seeking to determine whether focus on the issue was recognized as important during the first "litigation," and, perhaps, whether it was even foreseeable during the first hearing.[11]

(3) Summary Judgment Standards

Summary judgment is not proper if genuine issues of material fact remain and the moving party is not entitled to judgment as a matter of law.[12] "A material fact is one that affects the outcome of the litigation."[13] When considering a summary judgment motion, the court must construe all facts and reasonable inferences in the light most favorable to the nonmoving party.[14] "The moving party bears the initial burden of showing the absence of an issue of material fact."[15] If the moving party is a defendant, it may meet this initial burden by showing there is no evidence to support the Appellant's case.[16]. If the moving-party defendant meets this initial burden,

---

11 *In re Eleanor Lewis*, No. H-614547, at 3 (Wash. Bd. Indus. Ins. App. July 2, 1990) (adopting Professor Trautman's recommendation to instead examine whether importance of issue was foreseeable at time of earlier action); accord *In re Keith O. Browne*, No. W-929966, at 6-7 (Wash. Bd. Indus. Ins. App. June 4, 2007); see also *Nielson By & Through Nielson v. Spanaway Gen. Med. Clinic, Inc.*, 135 Wn.2d 255, 262, 956 P.2d 312, 315 (1998) (providing section 27 as "general rule" of issue preclusion, but not focusing on fact versus law distinction or on foreseeability of issue's importance); *Lemond v. State, Dep't of Licensing*, 143 Wn. App. 797, 804, 180 P.3d 829, 833 (2008) (same).
12 CR 56(c).
13 *Owen v. Burlington N. & Santa Fe R.R.*, 153 Wn.2d 780, 789, 108 P.3d 1220 (2005).
14 *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). The motion should solely be granted if, from all the evidence, reasonable persons could reach but one conclusion. *Vallandigham*, 154 Wn.2d at 26.
15 *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989).
16 *Id.* at 225 n.1

then the inquiry shifts to the Appellant.[17]

The correct analytical framework for summary judgment in an employment discrimination case[18] is: First, the employee must make out a prima facie case of retaliation—this establishes a rebuttable presumption of discrimination.[19] "The evidentiary burden then shifts to the employer to produce admissible evidence of a legitimate, nondiscriminatory, non-retaliatory reason for the discharge."[20] If the employer can do this, then the rebuttable presumption vanishes, and the burden shifts back to the employee, who must then create a genuine issue of material fact by showing that the employer's stated reason for the adverse discrimination was pretextual.[21]

(4) Collateral Estoppel is inapplicable to this matter.

Collateral estoppel, or issue preclusion, bars re-litigation of an issue in a later proceeding involving the same parties.[22] Issue preclusion differs

---

17 See *Young*, 112 Wn.2d at 225; *Vallandigham*, 154 Wn.2d at 26; *Hash by Hash v. Children's Orthopedic Hosp. & Med. Ctr.*, 110 Wn.2d 912, 915, 757 P.2d 507 (1988) [7] ("Only after the moving party has met its burden . . . does the burden shift to the nonmoving party.") The plaintiff then bears the burden of showing sufficient facts to establish the existence of every essential case element required at trial. *Young*, 112 Wn.2d at 225. In making this responsive showing, the plaintiff cannot rely on mere allegations, speculation, or argumentative assertions, but must set forth specific facts showing a genuine issue. *Little v. Countrywood Homes, Inc.,* 132 Wn. App. 777, 780, 133 P.3d 944 (2006); *Baldwin v. Sisters of Providence in Wash., Inc.*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989).
18 *Renz v. Spokane Eye Clinic, P.S.*, 114 Wn. App. 611, 60 P.3d 106 (2002).
19 *Id.* at 618.
20 *Id.*
21 *Id.* at 619.
22 14A Karl B. Tegland, Washington Practice, Civil Procedure § 35.32, at 475 (1st

from claim preclusion " 'in that, instead of preventing a second assertion of the same claim or cause of action, it prevents a second litigation of issues between the parties, even though a different claim or cause of action is asserted.' "[23] Collateral estoppel is not res judicata " ...in that, instead of preventing a second assertion of the same claim or cause of action, it prevents a second litigation of issues between the parties, even though a different claim or cause of action is asserted. "[24]

Collateral estoppel may preclude only those issues actually litigated and necessarily and finally determined in the earlier proceeding.[25] Further, the party against whom the doctrine is asserted must have had a full and fair opportunity to litigate the issue in the earlier proceeding.[26] "It is well settled that in an appropriate case the decision in an arbitration proceeding may be the basis for collateral estoppel or issue preclusion in a subsequent judicial trial."[27]

---

ed.2003).

23 *Rains v. State*, 100 Wn.2d 660, 665, 674 P.2d 165 (1983) (emphasis added) (quoting *Seattle-First Nat'l Bank v. Kawachi*, 91 Wn.2d 223, 225-26, 588 P.2d 725 (1978)); *Kyreacos v. Smith*, 89 Wash.2d 425, 427, 572 P.2d 723 (1977); see *Shoemaker v. City of Bremerton*, 109 Wn.2d 504, 507, 745 P.2d 858 (1987); Philip A. Trautman, Claim and Issue Preclusion in Civil Litigation in Washington, 60 Wash. L.Rev.. 805, 805, 813-14, 829 (1985) (hereafter Trautman, Claim and Issue Preclusion); Tegland, Civil Procedure § 35.32, at 475.

24 *Seattle-First Nat'l Bank v. Kawachi*, 91 Wn.2d 223, 225-26, 588 P.2d 725 (1978).

25 *Shoemaker*, *supra* note 6, at 507..

26 *Nielson v. Spanaway Gen. Med. Clinic, Inc.,* 135 Wn.2d 255, 264-65, 956 P.2d 312 (1998).

27 *Robinson v. Hamed*, 62 Wn. App. 92, 96-97, 813 P.2d 171 (1991); see also *Piel*, 177 Wn.2d at 615 ("an employee who loses in an administrative arbitration proceeding ... may be collaterally estopped from asserting a wrongful discharge claim.").

For collateral estoppel to apply, the party seeking application of the doctrine must establish that (1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding, (2) the earlier proceeding ended in a judgment on the merits, (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding, and (4) application of collateral estoppel works no injustice on the party against whom it is applied.[28]

If the earlier proceeding taking place occurs in an administrative rather than judicial setting, three additional factors must be considered under Washington law before collateral estoppel may be applied to agency findings: (1) whether the agency acted within its competence, (2) the differences between procedures in the administrative proceeding and court procedures, and (3) public policy considerations.[29]

A. Identical Subject Matter

There is a scant authority in which the subject matter test is truly outcome-determinative to the question of claim preclusion.[30] The same subject matter test is redundant to the requirement that preclusion will apply

---

28 *Reninger*, *supra* note 6 at 449; *State v. Williams*, 132 Wn.2d 248, 254, 937 P.2d 1052 (1997); Claim and Issue Preclusion, 60 Wash. L.Rev.. at 831

29 *Reninger*, *supra* note 6 at 450, 951 P.2d 782; *Shoemaker, supra* note 6, at 508; *State v. Dupard*, 93 Wn.2d 268, 275, 609 P.2d 961 (1980).

30 Only one other recent published decision denied preclusion based on the subject matter test. *Hilltop Terrace Homeowner's Ass'n v. Island Cnty.*, 126 Wn.2d 22, 891 P.2d 29 (1995).

only to the same claim or cause of action. Many claim preclusion cases either turn on the identical cause of action test alone, or fail both that element and the same subject matter test.[31] Cases that satisfy all four elements of the claim preclusion test offer little analysis of the subject matter prong.[32] In the few cases that fail the claim preclusion test solely because of non-identical subject matter, the courts have not analyzed the identical cause of action element - making it impossible to know whether the identical cause of action test might have subsumed the same subject matter test.[33] There are no cases in which a court found two successive actions satisfied the same cause of action element but failed the same subject matter test.

B. The Injustice Component

The injustice component is generally concerned with procedural, not

---

31 See, e.g., *Storti v. Univ. of Wash.*, 181 Wn.2d 28, 40, 330 P.3d 159, 165 (2014) (denying preclusion solely based on non-identical causes of action); *Norco Constr., Inc. v. King Cnty.*, 106 Wn.2d 290, 294-95, 721 P.2d 511, 513 (1986) (same); *Hayes v. City of Seattle*, 131 Wn.2d 706, 712, 934 P.2d 1179, 1182-83 (1997) (failing on both elements); *Richert v. Tacoma Power Util.*, 179 Wn. App. 694, 707, 319 P.3d 882, 889 (2014), review denied sub nom. *Richert v. City of Tacoma*, 337 P.3d 326 (Wash. Nov. 6, 2014) (failing on both elements).

32 *Berschauer Phillips Constr. Co. v. Mut. of Enumclaw Ins. Co.*, 175 Wn. App. 222, 230, 308 P.3d 681, 685 (2013) (merging analysis of subject matter into cause of action analysis); *Karlberg v. Otten*, 167 Wn. App. 522, 540, 280 P.3d 1123, 1133 (2012) (same); *Ensley v. Pitcher*, 152 Wn. App. 891, 904-05, 222 P.3d 99, 105 (2009) (noting that court's analysis of identity of parties and claims "demonstrates that the subject matter of the first and second suits is identical"); *Garner v. City of Fed. Way*, No. 65624-4-I, 2011 WL 2993287 (Wash. Ct. App. July 25, 2011) (unpublished).

33 *Gold Star Resorts, Inc. v. Futurewise*, 167 Wn.2d 723, 738, 222 P.3d 791, 798-99 (2009); *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 866, 93 P.3d 108, 115 (2004).

substantive irregularity.[34] The requirement is this: Did the individual have full and fair opportunity to litigate the issue in the first forum?

Collateral estoppel is improper where the issue is first determined after an informal, expedited hearing with relaxed evidentiary standards.[35] Also, the relief potentially available to a claimant in the first litigation may be so distinct from that available that same party in the second litigation that a party would be unlikely to have vigorously litigated the crucial issues in the first forum and so it would be unfair to preclude relitigation of the issues in a second forum.[36]

The injustice factor "recognizes the significant role of public policy." [37] Case authority indicates collateral estoppel is inapplicable where, for example, in a criminal prosecution where the charges were based on conduct that had been the subject of a parole revocation decision by the Board of Prison Terms and Paroles. The court concluded that the legislature contemplated that new crimes would be processed initially in the criminal justice system and not in a parole revocation hearing. The court specifically found that RCW 9.95.120 provided a parole hearing for violations other than felonies or misdemeanors. This legislative intent

---

34 *Thompson v. Dep't of Licensing*, 138 Wn.2d 783, 795-99, 982 P.2d 601 (1999).
35 *State v. Vasquez*, 148 Wn.2d 303, 59 P.3d 648 (2002); *State v. Williams*, 132 Wn.2d 248, 937 P.2d 1052 (1997).
36 *Reninger*, *supra* note 6, at 453.
37 *Vasquez*, *supra* note 35 at 309; *Williams*, *supra* note 35, at 257.

weighed against application of collateral estoppel.[38] In another case the court determined that public policy reasons weighed against application of collateral estoppel to bar a criminal prosecution for welfare fraud where the same conduct had been the subject of Department of Social and Health Services proceedings. The differences between the purposes for the two hearings (one to determine had overpayments been received, and the other to determine whether a crime had been committed) and the result that the State must effectively choose between prosecuting for criminal charges in the administrative forum, or forgoing the administrative hearing and recovery of financial losses because of the potential collateral estoppel effect of the administrative decision prevailed against application of the doctrine.[39] The case decisions further stand for the proposition that both the procedural aspects of the injustice inquiry and public policy considerations are to be considerations of the Court in determining application of the doctrine.

Counsel for the Respondent cites *Reninger* for support of their position.[40] In *Reninger*, two correctional officers were demoted for leaving weapons unattended. A hearing examiner rejected their challenge to the demotions. The officers appealed to the Personnel Appeals Board.

---

38 *State v. Dupard*, 93 Wn.2d 268, 276, 609 P.2d 961 (1980).
39 *Williams*, *supra* note 35, at 258.
40 *Reninger v. State Dep't of Corr.*, 134 Wn.2d 437, 454, 951 P.2d 782, 791 (1998)

The Board, after another hearing, concluded that the officers committed gross misconduct, and their demotions were appropriate. The board rejected their arguments they had been "set up" by other officers. The officers resigned and later sued the State, alleging wrongful discharge in violation of public policy and tortious interference with their employment. The court held that the officers failed to state a claim for wrongful discharge because they did not show their employment was terminated for a reason that contravenes public policy,[41] leaving unresolved whether the tort claim was available with public employees terminable only for cause. Later decisions following *Reninger* hold that public employees terminable only for cause may later bring a tort action for wrongful discharge in violation of public policy.

Shoemaker discusses the general term res judicata as encompassing claim preclusion (often itself called res judicata) and issue preclusion, also known as collateral estoppel.[42] As the case decision describeswith issue preclusion, only those issues actually litigated and necessarily determined are precluded.[43]

The elements of collateral estoppel as stated in *Shoemaker*: (1)

---

41 *Id.*, at 446.
42 *Id.* at 507.
43 *Id.*, citing *Seattle-First Nat'l Bank v. Kawachi*, 91 Wn.2d 223, 228, 588 P.2d 725 (1978).

identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.[44] If the initial decision is made before an administrative body and not a trial court, then additional factors ("step two elements") must be considered: (1) whether the agency acting within its competence made a factual decision; (2) agency and court procedural differences; and (3) policy considerations.[45]

Regarding *Carver*[46], the court relied upon prior authority in affirming preclusive effect, as long as the party had the full and fair opportunity to litigate, there is no significant disparity of relief, and all the other requirements of collateral estoppel are satisfied.[47] As in the present case, while the Carver court found collateral estoppel may apply to a WLAD[48] case, it also found the need to satisfy the burden of establishing the absence of injustice.

---

44 *Id.*, at 508, citing *Malland v. Department of Retirement Sys.*, 103 Wn.2d 484, 489, 694 P.2d 16 (1985); *Rains v. State*, 100 Wn.2d 660, 674 P.2d 165 (1983). In addition, the issue to be precluded must have been actually litigated and necessarily determined in the prior action. *Peterson v. Department of Ecology*, 92 Wn.2d 306, 312, 596 P.2d 285 (1979); *Haslund v. Seattle*, 86 Wn.2d 607, 547 P.2d 1221 (1976); *King v. Seattle*, 84 Wn.2d 239, 525 P.2d 228 (1974). See Restatement (Second) of Judgments § 27 (1982).
45 *Id.*, at 508, citing *State v. Dupard*, 93 Wn.2d 268, 275, 609 P.2d 961 (1980).
46 *Carver v. State*, 147 Wn. App. 567, 197 P.3d 678 (2008).
47 *Christensen v. Grant County*, 152 Wn.2d 299, 96 P.3d 957 (2009); *Reninger v. Dep't of Corr.*, 134 Wn.2d 437, 449, 951 P.2d 782 (1998); *Luisi Truck Lines, Inc. v. Wash. Utils. & Transp. Comm'n*, 72 Wn.2d 887, 894, 435 P.2d 654 (1967).
48 Washington Law Against Discrimination.

As regards the application of *Shoemaker*, the identical issues element fails. The factual issues before the arbitrator regarding termination under the collective bargaining agreement and before the trial court hearing a disability discrimination claim are not identical. The arbitrator did not determine the reliance, as a substantial factor, upon the presence, nature, and extent of Appellant's disability, but merely found the Appellant was untruthful. This does not address disability or disability discrimination, which Appellant contends is the very reason for the claimed untruthfulness.

Respondent argues that the arbitrator decided an issue of fact that is common to both Appellant's grievance before the arbitrator and to his discrimination claim, and therefore the issue has been decided for all purposes. The issue of fact the arbitrator did not and could not consider was the substantial nature of the disability as motivation for termination. Rather, the arbitrator only focused upon untruthfulness.

Further, the first of the "step two" elements is not present here. The arbitrator did not possess the power to conduct the inquiry into disability discrimination but only the enforceability of the collective bargaining agreement provisions and did not make findings necessary to resolve the factual issue of disability discrimination.

The second of the "step two" elements also falls short as applied to the present matter. The *Shoemaker* court described the differences between

agency and ordinary adjudication relevant in determining the adequacy of agency adjudication for collateral estoppel, and relied upon the Restatement (Second) of Judgments § 83.[49] Section (c) of the provision requires a formulation of issues of law and fact in terms of applying rules to specific parties and a specific status. Here the arbitration is deficient, for the arbitrator failed to determine the role of disability in determining the Patrol to terminate Officer Scholz, focusing rather on Officer Scholz' conduct and not the decision-making of the Patrol in termination, an essential element of Appellant's claim for disability discrimination.

Finally, as regards *Shoemaker*, the final factor not adequately considered by this Court in its decision on summary judgment is that of public policy. The disparity between the relief offered by the administrative agency and the superior court will inevitably lead litigants to forgo their administrative remedies fearing preclusion in other, more substantial

---

49 *Id.*, at 509, citing Restatement (Second) of Judgements 83: "(2) An adjudicative determination by an administrative tribunal is conclusive under the rules of res judicata only insofar as the proceeding resulting in the determination entailed the essential elements of adjudication, including: (a) Adequate notice to persons who are to be bound by the adjudication, as stated in § 2; (b) The right on behalf of a party to present evidence and legal argument in support of the party's contentions and fair opportunity to rebut evidence and argument by opposing parties; (c) A formulation of issues of law and fact in terms of the application of rules with respect to specified parties concerning a specific transaction, situation, or status, or a specific series thereof; (d) A rule of finality, specifying a point in the proceeding when presentations are terminated and a final decision is rendered; and (e) Such other procedural elements as may be necessary to constitute the proceeding a sufficient means of conclusively determining the matter in question, having regard for the magnitude and complexity of the matter in question, the urgency with which the matter must be resolved, and the opportunity of the parties to obtain evidence and formulate legal contentions."

claims.[50] The Shoemaker court described this inevitability as "persuasive" as it relates to denying preclusive effect.[51] It is the disparity in relief available in the two forums which justifies denying preclusion.

(5) Washington's Law Against Discrimination.

Washington's law against discrimination, codified at RCW 49.60, protects employees from disability discrimination. The statute provides in part: It is an unfair practice for any employer . . . to discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, race, creed, color, national origin, or any sensory, mental, or physical disability.[52] Discrimination claims in Washington are based on statute and permit individual employees to vindicate their civil rights in court without first exhausting remedies provided by a collective bargaining agreement. [53]

It is an unfair practice for any employer to refuse to hire any person because of the presence of any sensory, mental, or physical disability unless based on a bona fide occupational qualification.[54] In addition, it is an unfair practice for any employer to discharge, bar from employment, or

---

50 *Mack v. South Bay Beer Distribs., Inc.*, 798 F.2d 1279 (9th Cir.1986).
51 *Shoemaker, supra* note 6, at 513.
52 RCW 49.60.180(3).
53 *Reese v. Sears, Roebuck & Co.*, 107 Wn.2d 563, 577-78, 731 P.2d 497 (1987), overruled on other grounds by *Phillips v. City of Seattle*, 111 Wn.2d 903, 766 P.2d 1099 (1989); *Bruce v. Nw. Metal Prods. Co.,* 79 Wn. App. 505, 513, 903 P.2d 506 (1995).
54 RCW 49.60.180(1).

discriminate in compensation or other terms or conditions of employment because of the presence of any sensory, mental, or physical disability.[55] "Disability" means any sensory, mental, or physical impairment that (1) is medically cognizable or diagnosable, (2) exists as a record or history, or (3) is perceived to exist whether it exists in fact.[56]

The essential elements of disability discrimination in a termination context are that the Appellant was disabled, the Appellant was terminated, the Appellant was doing satisfactory work, and the termination occurred under circumstances that raise a reasonable inference of unlawful discrimination.[57] Where there is no direct evidence of discrimination, our courts apply the "McDonnell Douglas" test.[58] Under this test, the Appellant must first establish a prima facie case of discrimination by showing he or she was: (1) within a protected group, (2) suffered adverse employment action, (3) replaced by a person outside the protected group, and (4) qualified.[59]

In *Yakima County v. Yakima County Law Enforcement Officers Guild*[60], the grievant/Appellant alleged wrongful termination due to gender

---

55 RCW 49.60.180(2)-(3).
56 Former RCW 49.60.040(25)(a) (2007) (LAWS OF 2007, ch. 317, § 2).
57 *Anica v. Wal-Mart Stores, Inc.*, 120 Wn. App. 481, 488, 84 P.3d 1231 (2004).
58 *Hegwine v. Longview Fibre Co.*, 162 Wn.2d 340, 354, 172 P.3d 688 (2007); *Kastanis v. Educ. Emp. Union*, 122 Wn.2d 483, 490, 859 P.2d 26, 865 P.2d 507 (1993).
59 *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973); *Kastanis , supra* note 58, at 490.
60 157 Wn. App. 304, 237 P.3d 316 (2010).

and disability discrimination and violation of the CBA disciplinary provisions. The sheriff denied the grievance on the grounds it was not disciplinary, asserting the Civil Service Commission was the appropriate forum for appeal. The Guild did not participate in the civil service proceeding or represent grievant. The issues were not decided because the grievant voluntarily dismissed that appeal in favor of filing the civil suit for discrimination.

Then the grievant became an Appellant and sued the County and alleged as causes of action (1) gender discrimination and harassment, (2) disability discrimination, (3) retaliation, and (4) wrongful termination in violation of public policy.

The court found the Guild's grievance was different, as the Guild sought contract remedies of reinstatement and back pay for violation of just cause, progressive discipline, and due process provisions of the CBA.[61] While the court found the existence of privity, this finding did not alter the decision regarding the distinct nature of statutory theory and remedy under RCW 49.60 and the separate analysis of CBA violation determination.[62]

The court went further, highlighting this distinction by referring to *City of Kelso*[63] for the proposition that the Civil Service Commission's and

---

61 *Id.* at 329.
62 *Id.*
63 *Civil Serv. Comm'n v. City of Kelso*, 137 Wn.2d 166, 177, 969 P.2d 474 (1999).

the court's proceedings are not dispositive of the Guild's CBA grievance.

In *City of Kelso*, the question was whether a civil service commission decision upholding a police officer's suspension under a statutory civil service standard requiring that the suspension be "in good faith and for cause" barred the officer from also challenging the suspension in arbitration under the CBA, which required "just cause."[64] The *Kelso* court concluded that the two standards and the issue in the proceedings were different, even though both involved whether the officer's suspension was valid,[65] because the commission hearing was based statutory rights, whereas the arbitration was based on CBA contractual rights. The court in *Yakima* found that the evidence also differed, as the commission focused on whether the officer violated department regulations, and the arbitrator examined whether the punishment was in proportion to the officer's offense.[66] The commission's decision, albeit correct under the civil service rules, was not dispositive of whether the police department had the authority to suspend him under the union contract.[67]

Finally, the court in *Kelso* referred for precedential support to *Reese v. Sears, Roebuck & Co.*[68], citing this portion of the opinion:

---

64 *Yakima, supra* note 60, at 330.
65 *Id.*, quoting *Kelso* at 172.
66 *Id.* referring to *Kelso* at 175.
67 *Id.*
68 *Reese v. Sears, Roebuck & Co.*, 107 Wn.2d 563, 577-78, 731 P.2d 497 (1987),

"In submitting his grievance to arbitration, an employee seeks to vindicate his contractual right under a collective-bargaining agreement. By contrast, in filing a lawsuit under Title VII, an employee asserts independent statutory rights accorded by Congress. The distinctly separate nature of these contractual and statutory rights is not vitiated merely because both were violated as a result of the same factual occurrence."[69]

The court in *Yakima* found that, while the factual "genesis" of all three of grievant/Appellant's actions was an unfitness for duty finding that led to her termination, the precise contract claims raised in the Guild's grievance were not raised or resolved by the Appellant's prior proceedings, and that the contractual and statutory rights are distinctly separate in nature.[70]

(6) <u>The Trial Court Erred When It Incorrectly Concluded With Regard to a Genuine Issue of Material Fact</u>

On October 4, 2016 the Court granted Respondent's Motion for Summary Judgment. However, as the Court rendered its opinion, if

---

overruled on other grounds by *Phillips v. City of Seattle*, 111 Wn.2d 903, 766 P.2d 1099 (1989); *Bruce v. Nw. Metal Prods. Co.*, 79 Wn. App. 505, 513, 903 P.2d 506 (1995).
69 *Kelso* at 175 (quoting *Reese*, 107 Wn.2d at 576 (quoting *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 49-50, 94 S. Ct. 1011, 39 L. Ed. 2d 147 (1974)) and citing *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 409-10, 108 S. Ct. 1877, 100 L. Ed. 2d 410 (1988) (no conflict between state statutory retaliatory discharge claim and CBA grievance governed by federal labor law involving same factual considerations when statutory claim not dependent on meaning of any CBA provision)).
70 *Reese*, 107 Wn.2d at 576; *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 94 S. Ct. 1011, 39 L. Ed. 2d 147, 1974 U.S. LEXIS 95, 7 Fair Empl. Prac. Cas. (BNA) 81, 7 Empl. Prac. Dec. (CCH) P9148 (U.S. 1974).

became clear that support for the decision was based primarily upon the *Shoemaker* and *Carver* cases, and the alleged fact that Officer Scholz was no longer being treated for mental health issues after approximately one month following the January 19, 2012 multi-vehicle accident.

The Declaration of Appellant Paul Scholz, filed on or about September 16, 2016, states: "Immediately following the incident I was disabled and suffering from PTSD, and continued to suffer during the investigation. *I treated with Dr. James Cole, Ed.D for one year due to the trauma I suffered and diagnosed me with Acute Stress Disorder and Anxiety Disorder. I was diagnosed with PTSD in October of that year by Dr. Freedman, and he recommended additional counseling for more months.* Evidence was presented during the arbitration, and there was discussion about the statements I gave immediately following the incident and during the investigation, but *there was never any questioning or statements regarding the state of my disability during the times I was providing the statements, and whether the employer considered my disability at the time it adjudged me untruthful."*[71]

The Appellant asks this Court to review the Declaration of Paul Scholz, filed with the responsive pleadings to Respondent's Motion for

71 Emphasis added.

Summary Judgment, noting the factual inaccuracy underlined by the Court in its opinion granting the Respondent's Motion. Appellant contends the Court was in error in its decision.

F. CONCLUSION

The Opinion and Award in PERC Case No. 25970-P-13-1120, contained at Exhibit A to Declaration of Morgan Napieralski, filed on behalf of the Respondent, contains the entire list of authorities applied by arbitrator Gangle. These authorities include full citation and relevant portions of Articles 29 and 32 of the collective bargaining agreement. The entire list of authorities relied upon by the arbitrator is:

a. *Brady v. Maryland*, 373 U.S. 83 (1963) (regarding disclosure of officer untruthfulness to defense counsel;
b. ATU Local 587 and King County Department of Transportation, unpublished Award by Arb. Kathryn Whalen, April 5, 2013;
c. Brand and Biren, Discipline and Discharge in Arbitration, Second Edition, (2008), at 451-52;
d. Lankford et al., *"Did He Do It?:Employer Handbook 'Just Cause' Meets the Collective Bargaining Agreement,* Monograph No. 17, *University of Oregon LERC (2003)*, 17;
e. *Elkouri and Elkouri, How Arbitration Works (6th Ed., 2008 Supplement) at 190; See also Cleo, Inc., 117 LA 1479 (Curry, 2002).*

One case cited by the arbitrator. Just one. And the case? *Brady v. Maryland*, a criminal case in which the Supreme Court held that withholding exculpatory evidence violates due process "where the evidence

is material either to guilt or to punishment"; and the court determined that under Maryland state law the withheld evidence could not have exculpated the defendant but was material to the level of punishment he would be given.

What authority is relied upon by the arbitrator? The sole authorities are those involving the analysis of the applicability of collective bargaining agreement provisions – contract provisions, not tort authority, which is the underpinning of disability discrimination law. The record is devoid of any evidence which might signal to this Court that the issue was even considered by the arbitrator, much less decided. Collateral estoppel requires this showing, and the record is without such support.

There is no clearer example of the distinction between the analysis of collective bargaining agreement provisions and applying statutory and legal authority to the question of disability discrimination. The issue is not identical, and applying the doctrine of collateral estoppel works a terrible injustice upon the Appellant, who is entitled to the right to present his case in the trial courts on disability discrimination.

As in *Yakima*, while the genesis of the present action and the arbitration involve the question of untruthfulness, the precise contract claims at issue in the arbitration are wholly unlike those to be heard in the trial court.

Disability and discriminatory treatment based upon that disability, was not actually litigated.

Also, disability discrimination, or its lack, was not necessary and finally determined, and is not found in the opinion of the arbitrator. Where was Mr. Scholz's opportunity to fully and fairly litigate disability discrimination, when the subject was not addressed by the parties? Finally, the relief sought was reinstatement, whereas in this matter it is monetary compensation for harm suffered.

Paul Scholz wanted his job back. He was a highly-commended employee of decades-long duration. He fought for his job in arbitration. He lost. Now he seeks a judicial remedy based upon the fact the Patrol not only recognized his mentally compromised state but used it against him to argue untruthfulness, an assertion not litigated in the arbitration forum. Public policy considerations should permit him his day in court; otherwise, this Court is signaling to union employees they must forgo trying to regain their employment, but rather only pursue litigation in state and federal court, out of the fear a court will employ preclusive effect to those decisions.

Carver and *Shoemaker* both recognize the need to weigh this important public policy issue, and, respectfully, the trial court has not done so.

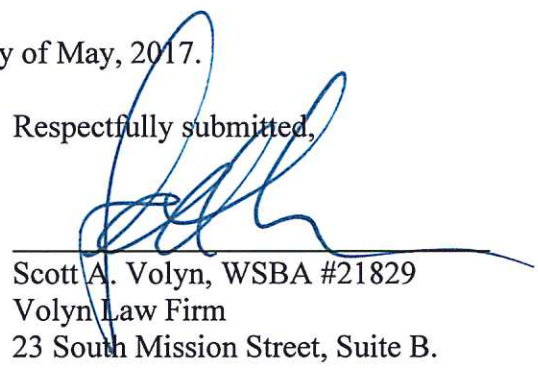
On the applicability of collateral estoppel, the Respondent's motion

must be denied with prejudice.

Finally, the trial court specifically found that Mr. Scholz ceased treatment one month after the collision, while Mr. Scholz' declaration holds otherwise. The declaration identifies a genuine issue of material fact the existence of which precludes an affirmative decision on the Respondent's motion for summary judgment.

DATED this 5 day of May, 2017.

Respectfully submitted,



Scott A. Volyn, WSBA #21829
Volyn Law Firm
23 South Mission Street, Suite B.
Wenatchee, WA 98801
(509) 665-6727

Attorney for Appellant
Paul A. Scholz

APPENDIX

RCW 49.60.180

It is an unfair practice for any employer:

(1) To refuse to hire any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification: PROVIDED, That the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular worker involved: PROVIDED, That this section shall not be construed to require an employer to establish employment goals or quotas based on sexual orientation.

(2) To discharge or bar any person from employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

(3) To discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability: PROVIDED, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the commission by regulation or ruling in a particular instance has found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes.

(4) To print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged

veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: PROVIDED, Nothing contained herein shall prohibit advertising in a foreign language.

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the Brief of Appellant in Court of Appeals, Division III Cause No. 349195 to the following parties:

Carl P. Warring
Washington State Attorney General
1116 W. Riverside Avenue, Suite 100
Spokane, WA 99201-9106
carlw@atg.wa.gov

Original E-filed with:
Court of Appeals, Division III
Clerk's Office
500 N. Cedar Street
Spokane, WA 99201

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

DATED: May 5, 2017, at Wenatchee, Washington.

Melissa G. Campbell, Paralegal
Volyn Law Firm

VOLYN LAW FIRM
May 05, 2017 - 10:41 AM
Transmittal Letter

Document Uploaded:	349195-20170505 Brief of Appellant.pdf
Case Name:	Scholz v. Washington State Patrol
Court of Appeals Case Number:	34919-5
Party Respresented:	Plaintiff
Is This a Personal Restraint Petition?	☐ Yes ☑ No
	Trial Court County: Kittitas - Superior Court #: 15-2-00338-3

Type of Document being Filed:

- ☐ Designation of Clerk's Papers / ☐ Statement of Arrangements
- ☐ Motion for Discretionary Review
- ☐ Motion: ___
- ☐ Response/Reply to Motion: ___
- ☑ Brief
- ☐ Statement of Additional Authorities
- ☐ Affidavit of Attorney Fees
- ☐ Cost Bill / ☐ Objection to Cost Bill
- ☐ Affidavit
- ☐ Letter
- ☐ Electronic Copy of Verbatim Report of Proceedings - No. of Volumes: ___
  Hearing Date(s): _____
- ☐ Personal Restraint Petition (PRP)
- ☐ Response to Personal Restraint Petition / ☐ Reply to Response to Personal Restraint Petition
- ☐ Petition for Review (PRV)
- ☐ Other: _____

Comments:

Brief of Appellant

Proof of service is attached and an email service by agreement has been made to carlw@atg.wa.gov.

Sender Name: Melissa G Campbell - Email: melissa@volynlawfirm.com