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

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MIGUEL SANDOVAL ARAMBULA,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF LABOR AND  
INDUSTRIES,

Respondent.

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**BRIEF OF RESPONDENT**

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## **I. INTRODUCTION**

The Department of Labor & Industries denied Miguel Sandoval Arambula's request for time-loss compensation after he refused his employer's job offer for light-duty work. Under RCW 51.32.090(4), a worker's time-loss compensation ends when the worker's physician approves a modified job's physical requirements and the employer makes the job available to the worker. Sandoval's employer offered him a modified, light-duty job that his doctor approved. Sandoval contends that the offer was not valid because the job was located about 36 miles from his home and he had no vehicle or driver's license. But substantial evidence shows that the job was within Sandoval's geographic labor market and that a free public shuttle serviced this location. Sandoval's doctor placed no limits on his ability to travel and approved the physical requirements of the light-duty job. The Board of Industrial Insurance Appeals and the superior court correctly affirmed the Department's order denying time-loss compensation. This Court should affirm.

## **II. ISSUES**

1. An injured worker's time-loss compensation ends when the worker's physician releases the worker to perform modified work and the employer makes this work available to the worker. Sandoval's doctor reviewed his employer's light-duty job offer and released him to perform the work. The job was located within Sandoval's geographic labor market, and the doctor placed no restrictions on Sandoval's ability to travel. Did the Department correctly deny time-loss

compensation to Sandoval after he declined his employer's offer to return to work?

2. A court's written order controls over any apparent inconsistency with an earlier oral ruling. Sandoval contends that the superior court applied an incorrect standard of review in its oral ruling, but he concedes that the court's written order applies the correct standard. Assuming there is inconsistency, does the superior court's written order control over its earlier oral ruling?

### **III. STATEMENT OF FACTS**

#### **A. After Sandoval Was Injured at Work, He Declined His Employer's Offer for Light-Duty Work**

Sandoval worked for Atkinson Staffing Inc. as an agricultural field laborer. CP 61-62, 169-70, 211. In September 2013, he fell off a ladder while picking apples. CP 50, 135, 211. About a month later, he went to see his attending physician, William Spann, M.D., complaining of right shoulder and low back pain. CP 135. Dr. Spann told Sandoval to stay off work for a few days and then return to him for reassessment. CP 137.

On October 7, 2013, Sandoval followed up with Dr. Spann. CP 137. His condition had improved, and Dr. Spann released him to light-duty work. CP 137-38. Dr. Spann imposed work restrictions on twisting, bending, stooping, squatting, and kneeling. CP 138-39. These restrictions prevented Sandoval from performing his job as an agricultural field laborer as well as other jobs he had held in the past. CP 69-75.

An injured worker is totally disabled when the worker is incapacitated from performing any work at any gainful occupation. RCW 51.08.160.<sup>1</sup> If the worker's disability is temporary, the worker is entitled to wage replacement commonly called time-loss compensation. RCW 51.32.090. The Legislature incentivizes employers to keep temporarily totally disabled workers at work. RCW 51.32.090(4). When a worker cannot perform his or her usual work, the employer may offer the worker "light duty or transitional work." RCW 51.32.090(4)(a). The employer must provide the worker's physician with "a statement describing the work available" in terms that allow the physician to determine if the worker is physically able to perform the work described. RCW 51.32.090(4)(b). Once the physician releases the worker to the job and the employer offers it, the worker is no longer entitled to time-loss compensation. *Bayliner Marine Corp. v. Perrigoue*, 40 Wn. App. 110, 115, 697 P.2d 277 (1985).

Atkinson provided Dr. Spann with a job description for a printer operator/office assistant job. CP 154-55, 212. The company designed this light-duty position with agricultural workers like Sandoval in mind—the

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<sup>1</sup> In assessing total disability, the Department considers both medical and vocational evidence, looking to medical evidence of impairment and empirical evidence of the worker's ability to obtain a job. *Leeper v. Dep't of Labor & Indus.*, 123 Wn.2d 803, 812, 872 P.2d 507 (1994).

job would start at “ground zero,” with Atkinson’s bilingual staff teaching basic office skills. CP 215-16. The job required no previous office experience, education, or abilities. CP 215-16. Dr. Spann reviewed the job description and determined that Sandoval was physically capable of performing it. CP 154-55. He released Sandoval to the printer operator/office assistant job on October 8, 2013. CP 154-55, 212.

Atkinson offered the modified job to Sandoval that day, providing a copy in Spanish. CP 211-12, 217. The company had envisioned that he would work in its Pasco office. CP 211-12. But when Sandoval arrived to begin work, Atkinson realized that there was insufficient work for him to do there. CP 211-12. So it offered him the same position in Hermiston, Oregon, about 36 miles from Sandoval’s residence. CP 84, 212.

Sandoval declined the job offer in Hermiston, telling Atkinson that his driver’s license was suspended and that he had no transportation. CP 81-82, 111, 212-13. His driving history included a DUI conviction, multiple moving violations, and driving with a suspended license. CP 83-84, 100, 118-19. Sandoval had declined to install an ignition interlock device in his car to restore his driving privileges. CP 101-02, 120-21.

Sandoval’s usual job as an agricultural field laborer required him to travel to farms and orchards in remote areas outside Pasco—distances

that were about the same as the commute to Hermiston. CP 213, 218-19. Sandoval had typically received rides from a co-worker to reach these jobsites. CP 99, 110-13, 174. An Atkinson staff person suggested he also look for a ride to the job in Hermiston. CP 111. But Sandoval declined the job without investigating his transportation options. CP 111, 178, 212-13.

**B. Free Public Transportation Was Available for Sandoval to Reach the Hermiston Job**

At the time Sandoval rejected Atkinson's job offer (and throughout the relevant time at issue), a free public shuttle service operated between Pasco and Hermiston. CP 175-76. There were pickup and drop off locations within a few blocks of Sandoval's home and Atkinson's Hermiston office. CP 190-91, 199-201. The trip took about an hour to an hour-and-a-half each way. CP 190-93. While the shuttle times did not perfectly match the job's proposed work schedule—arriving early and leaving late—the shuttle would have allowed Sandoval to reach the Hermiston office free of charge and without a driver's license or vehicle. CP 192-94.

Hermiston was within Sandoval's geographic labor market. CP 84, 177-78. Even with Sandoval's transportation issues, the light-duty job offer was "vocationally reasonable." CP 178. If Sandoval had investigated his transportation options, "he would have very easily found this free

public transportation service that he could have used to get to and from work.” CP 178.

**C. Dr. Spann Placed Additional Work Restrictions on Sandoval After He Declined the Light-Duty Job Offer**

Sandoval continued to see Dr. Spann after rejecting Atkinson’s offer for the printer operator/office assistant job. CP 138-51. In subsequent visits, Dr. Spann added several new work restrictions. In mid-October 2013, he restricted Sandoval from reaching and overhead work with his right upper extremity, restrictions that were not in place when Atkinson offered Sandoval the light-duty printer operator/office assistant position. CP 139, 211-12. In March 2014, Dr. Spann released Sandoval to full-duty work without restrictions. CP 149, 155-56. But after Sandoval returned to work (for a different employer), Dr. Spann reimposed the upper extremity restrictions. CP 115-17, 155-56.

A workers’ compensation specialist with Atkinson explained that, if Sandoval had accepted the company’s job offer, Atkinson would have worked with Sandoval to ensure that his assigned duties met any new physical restrictions imposed by Dr. Spann. CP 210, 214-15, 217. Atkinson’s primary goal was to ensure that the light-duty work did not hamper its workers’ recovery or result in re-injury. CP 214-15. The workers’ compensation specialist explained that there was no limit to the

duration of the light-duty job—it would have been available to Sandoval for as long as medically required. CP 215.

**D. The Department Denied Time-Loss Compensation to Sandoval, and the Board and Superior Court Affirmed**

Sandoval applied for time-loss compensation, and the Department issued an order denying this benefit. CP 41, 50-51. It explained that Sandoval had chosen not to accept Atkinson's light-duty job offer and that finding transportation to work was Sandoval's responsibility. CP 40.

Sandoval appealed to the Board. CP 39. There, he argued that (1) Dr. Spann's additional restrictions prevented Sandoval from performing the printer operator/office assistant job; (2) that Dr. Spann had approved the job in Pasco, not Hermiston; (3) that the job was not within Sandoval's training, education, and vocational abilities; and (4) that the job offer was not reasonable because Sandoval lacked transportation to reach Hermiston. CP 33-36.

The Board rejected each of these arguments. It explained that the light-duty job was within Sandoval's physical abilities when Atkinson had offered it. CP 33. Atkinson had no opportunity to address Dr. Spann's subsequent restrictions when Sandoval rejected the offer based on transportation issues. CP 33. The Board explained that it would be unreasonable for an employer to provide a new job offer addressing

additional physical restrictions when the worker had rejected the job for reasons unrelated to the job's physical requirements. CP 33.

The Board found it irrelevant that Dr. Spann had approved the job for Pasco and not Hermiston. CP 33-34. There was no evidence that Sandoval's physical restrictions would prevent him from traveling to a worksite 36 miles from his home. CP 34. And Dr. Spann provided no indication that the job's location had influenced his decision to approve it: "Presumably, if the geographic discrepancy had any significance, Dr. Spann would have testified he would not have otherwise approved the job." CP 34.

With regard to Sandoval's argument that the job was beyond his training, education, and vocational abilities, the Board noted that Atkinson intended the job as an entry level position and that the company's bilingual staff would work with Sandoval to develop office skills. CP 34. Sandoval needed no previous experience or education. CP 34.

Finally, the Board rejected Sandoval's contention that the offer was unreasonable because his driver's license was suspended and he lacked a means of transportation. CP 34-36. It explained that the job was within his geographic labor market and that nothing required Atkinson to provide him with transportation to work. CP 34-35. During his work as an agricultural field laborer, Sandoval had managed to find his way to remote

jobsites, and the light-duty job in Hermiston was no different. CP 35. If Sandoval had taken time to investigate his transportation options, he would have learned of the free public shuttle that would allow him to reach the Hermiston office without a license or car. CP 35-36.

The Board found:

On [October] 9, 2013, Mr. Sandoval was provided a job offer from his employer for light-duty work that was within his physical limitations as approved by his attending physician, Dr. Spann. On that date, Mr. Sandoval declined the return to work offer based on the fact that the location of the job site was in Hermiston, Oregon, that he had lost his driver's license, and that he did not have transportation to the worksite.<sup>2</sup>

...

The distance between the worksite for the light-duty job offer in Hermiston, Oregon, and Mr. Sandoval's home in Pasco, Washington, was approximately 35 miles. That distance was within his reasonable geographic labor market.

CP 36-37.

Based on these findings, the Board concluded that Sandoval was not entitled to time-loss compensation. CP 37. Because he had rejected a

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<sup>2</sup> The Board's findings contain an error in the date that Atkinson offered Sandoval the light-duty job. While Finding of Fact 4 notes a date of August 9, 2019, the undisputed evidence is that the offer occurred on October 9, 2013. The superior court's order replicates this error in the adopted findings. CP 267 (FF 1.2.3).

valid, light-duty work offer, he was not a “temporarily totally disabled worker . . . pursuant to RCW 51.32.090.” CP 37.<sup>3</sup>

Sandoval appealed to superior court. CP 1-2. The court affirmed, determining that a preponderance of evidence supported the Board’s findings. CP 266-69. It adopted the Board’s findings of fact and conclusions of law as its own findings and conclusions. CP 267-68.

Sandoval appeals.

#### IV. STANDARD OF REVIEW

In workers’ compensation appeals, the ordinary civil standard of review applies. RCW 51.52.140; *Raum v. City of Bellevue*, 171 Wn. App. 124, 139, 286 P.3d 695 (2012). The Administrative Procedure Act does not apply. RCW 34.05.030(2)(a), (c); see *Rogers v. Dep’t of Labor & Indus.*, 151 Wn. App. 174, 180, 210 P.3d 355 (2009). This Court reviews the superior court’s decision, not the Board’s decision. *Rogers*, 151 Wn. App. at 179-81, RCW 51.52.140. It limits its review to examining whether substantial evidence supports the superior court’s findings and whether the court’s conclusions of law flow from those findings. *Ruse v. Dep’t of Labor & Indus.*, 138 Wn.2d 1, 5, 977 P.2d 570 (1999).

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<sup>3</sup> The Board also rejected Sandoval’s contention that he was entitled to “loss-of-earning power” benefits under RCW 51.32.090(3). Sandoval does not challenge that determination on appeal.

Evidence is substantial if it is of sufficient quantity to persuade a fair-minded person of the truth or correctness of the decision. *Hahn v. Dep't of Ret. Sys.*, 137 Wn. App. 933, 939, 155 P.3d 177 (2007). An appellate court views the evidence and accepts all reasonable inferences in the light most favorable to the prevailing party, here the Department. *Harrison Mem'l Hosp. v. Gagnon*, 110 Wn. App. 475, 485, 40 P.3d 1221 (2002). The appellate court does not reweigh the evidence or rebalance competing testimony. *Fox v. Dep't of Ret. Sys.*, 154 Wn. App. 517, 527, 225 P.3d 1018 (2009); *Gagnon*, 110 Wn. App. at 485.

The Court reviews legal conclusions de novo. *Birrueta v. Dep't of Labor & Indus.*, 186 Wn.2d 537, 542-43, 379 P.3d 120 (2016). Courts defer to the Department's interpretation of the Industrial Insurance Act. *Jones v. City of Olympia*, 171 Wn. App. 614, 621, 287 P.3d 687 (2012).

## V. ARGUMENT

The superior court correctly determined that Sandoval was not entitled to time-loss compensation after rejecting his employer's valid offer for light-duty work. While Sandoval argues the light-duty job offer was unreasonable, substantial evidence shows that his doctor approved the job's physical requirements and that it was located within his reasonable geographic labor market. There is no statutory requirement for an employer to provide transportation as part of a light-duty job offer.

Sandoval commuted similar distances for his usual work without a license or vehicle, and a free public shuttle ran regularly between his home and the light-duty job. Because Sandoval rejected this “available work,” the court properly concluded that he was not a temporarily totally disabled worker within the meaning of RCW 51.32.090.

Sandoval’s contention that the superior court applied an incorrect standard of review also lacks merit. The court correctly applied a preponderance of evidence standard in upholding the Board’s decision to deny Sandoval’s request for time-loss compensation. This Court should affirm.

**A. Because Atkinson’s Light-Duty Job Offer Met the Requirements of RCW 51.32.090(4)(b), Sandoval Was No Longer Entitled to Time-Loss Compensation After Rejecting this Offer**

An injured worker’s time-loss compensation ends when the worker’s doctor releases the worker to other available work and the employer offers this job to the worker. RCW 51.32.090(4)(b). Sandoval’s employer offered him a light-duty job approved by his doctor and available within his geographic labor market. Because this offer constituted a valid light-duty work offer, the superior court correctly determined that Sandoval was not entitled to time-loss compensation after rejecting the offer.

**1. Sandoval’s doctor approved the light-duty job’s physical requirements, and Atkinson met all statutory requirements when the company offered it to Sandoval**

The Legislature encourages employers to keep injured workers at work by offering “light duty or transitional work.” RCW 51.32.090(4)(a).

When a worker cannot physically perform his or her usual work, the employer may ask the worker’s doctor to determine if the worker can perform other “available work.” RCW 51.32.090(4)(b). The employer must provide a description of the work in terms that enable the doctor to “determine whether the worker is physically able to perform the work described.” *Id.* Once the doctor releases the worker and the employer offers the work, “the worker’s temporary total disability payments end, replaced by wages earned in the temporary transitional position.”

*Richardson v. Dep’t of Labor & Indus.*, \_\_\_ Wn. App. \_\_\_, 432 P.3d 841, 847 (2018), *review denied*, 193 Wn.2d 1009 (2019). A worker’s refusal to accept a valid, light-duty job offer ends the worker’s time-loss compensation. *Bayliner*, 40 Wn. App. at 115.<sup>4</sup>

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<sup>4</sup> The Legislature’s goal is to keep temporarily totally disabled workers at work following an injury. RCW 51.32.090(4)(a). For this reason, a light-duty or transitional job under RCW 51.32.090(4) may consist of “special work”—the job need not constitute permanent, gainful employment in the competitive labor market. *Hunter v. Bethel Sch. Dist. & Educ. Serv. Dist. No. 121 Worker’s Comp. Tr.*, 71 Wn. App. 501, 509, 859 P.2d 652 (1993); *see also Valdez v. Dep’t of Labor & Indus.*, No. 33261-6-III, 2016 WL 4069732, \*8-9 (Wash. Ct. Appeals July 28, 2016) (unpublished).

Atkinson correctly followed these statutory procedures. After Sandoval's injury, the company asked his attending physician, Dr. Spann, to determine if Sandoval could physically perform work as a printer operator/office assistant. CP 212. It provided a description of the work in terms that enabled Dr. Spann to relate the job's physical activities to Sandoval's injury-related restrictions. CP 64-65, 154-55, 171-73. Dr. Spann determined that Sandoval was physically able to perform the printer operator/office assistant job, releasing him to begin this work. CP 154-55, 212. Atkinson then offered the modified work to Sandoval. CP 211-12.

Contrary to Sandoval's argument, the statute does not require a worker's physician to approve the precise location of a light-duty job. *See* Appellant's Brief (AB) 7-8. Sandoval contends that Dr. Spann approved the job in Pasco, not Hermiston, and that this means Atkinson's job offer was invalid. But RCW 51.32.090(4)(b) requires only that the worker's physician "relat[e] the physical activities of the job to worker's disability." Under the statute, the physician's role is limited to "determin[ing] whether the worker is physically able to perform the work." RCW 51.32.090(4)(b).

Here, it is undisputed that the work in Hermiston was identical to the work in Pasco. CP 212. And there is no indication that Sandoval's physical restrictions would prevent him from traveling to this location.

Sandoval himself did not testify about any such restrictions. *See* CP 104-22. Dr. Spann likewise placed no restrictions on Sandoval's ability to travel. CP 92. Sandoval asserts that "[w]e are left to speculate whether Dr. Spann would have approved the job had he known it was in Hermiston." AB 7. But Sandoval called Dr. Spann as a witness and never asked him to opine on this issue. *See* CP 132-58. As the Board noted, "[p]resumably, if the geographic discrepancy did have any significance, Dr. Spann would have testified that he would not have otherwise approved the job." CP 34.

Dr. Spann did not place Sandoval "back on time loss benefits" after Sandoval rejected Atkinson's job offer, as Sandoval asserts. *See* AB 10. Rather, in subsequent visits, Dr. Spann imposed additional right extremity restrictions for reaching and overhead work—restrictions that were not present when Atkinson offered Sandoval the printer operator/office assistant job. CP 139, 149, 155-56, 212. And while Sandoval appears to argue that these new restrictions would prevent him from physically performing the light-duty work, the record does not reflect his assertion.

No witness testified that Sandoval was physically incapable of performing the printer operator/office assistant job. As noted above, Dr. Spann certified that Sandoval could perform this job. CP 154-55. Despite lengthy testimony about Sandoval's upper right extremity

restrictions, Dr. Spann never retracted his opinion. *See* CP 139-53. In fact, he reiterated that Sandoval could have used his left arm to perform any required reaching or overhead work and that Sandoval would be able to perform the printer operator/office assistant job on a “physical basis.” CP 155-57. Sandoval’s own vocational witness agreed, noting that Sandoval “would have been physically capable of performing this job with slight modifications” that Sandoval himself could implement. CP 69. The record does not support Sandoval’s assertion that Dr. Spann’s restrictions would prevent him from physically performing the printer operator/office assistant job.

More importantly, Atkinson had no opportunity to address the new restrictions when Sandoval rejected the printer operator/office assistant job for reasons unrelated to its physical requirements. It is undisputed that the job complied with Dr. Spann’s approved restrictions when Atkinson offered Sandoval this modified work. CP 155-57, 212. If he had accepted the company’s job offer, it would have worked with him to ensure that his assigned duties met any new physical restrictions imposed by Dr. Spann. CP 210, 214-15, 217. Nothing in RCW 51.32.090(4) requires an employer to provide a new job offer addressing additional physical restrictions when the worker has rejected the job for reasons unrelated to the worker’s

physical abilities. Atkinson's light-duty job offer met all statutory requirements.

**2. The light-duty job was reasonably available to Sandoval when it was within his geographic labor market**

The superior court properly determined that Atkinson's job offer to Sandoval was a valid light-duty work offer. CP 268 (CL 2.2.2).

RCW 51.32.090(4) imposes no explicit requirements on an employer's job offer beyond the medical certification process discussed above. But the employer must offer "available work," suggesting that it may not present an unrealistic offer that the worker cannot reasonably accept. *See* RCW 51.32.090(4)(b). The Board has required that an offered job fall within the injured worker's relevant "labor market," defined as "the geographic area where the worker was last gainfully employed." *Gramelt*, Nos. 09 21629 & 09 21630, 2011 WL 12483527, at \*8 (Wash. Bd. Ind. Ins. App. 2011) (citing WAC 296-19A-010(4)). The job must be within a "reasonable commuting distance" and consistent with the injured worker's physical and mental capacities. *Id.*<sup>5</sup>

Here, substantial evidence supports the superior court's finding that the Hermiston job was within Sandoval's "reasonable geographic

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<sup>5</sup> This Court treats the Board's decisions as "nonbinding, but persuasive authority." *O'Keefe v. Dep't of Labor & Indus.*, 126 Wn. App. 760, 766, 109 P.3d 484 (2005).

labor market.” CP 267-68 (FF 1.2.4). The office was approximately 36 miles from Sandoval’s Pasco residence, and Sandoval often travelled similar distances to reach remote farms and orchards for his usual work as an agricultural field laborer. CP 84, 213, 218-19. While Sandoval lacked a driver’s license, a free public shuttle operated between Pasco and Hermiston, and there were pickup and drop-off locations within a few blocks of Atkinson’s office and Sandoval’s home. CP 175-76, 190-91, 199-201. Sandoval’s treating physician placed no limitations on his ability to travel. CP 92. Both vocational witnesses testified that Hermiston was within Sandoval’s labor market. CP 84, 176-78.

There is no statutory requirement for an employer to provide transportation to an injured worker as part of a light-duty job offer. *See* RCW 51.32.090(4). Sandoval’s lack of a car and driver’s license does not change this result. *See* AB 7-8. He notes that his vocational witness, Maui Garza, testified that Atkinson’s job offer was unreasonable. AB 8. But this is merely a request to reweigh the evidence, which this Court does not do on substantial evidence review. *Gagnon*, 110 Wn. App. at 485. Garza was unaware of the free public shuttle between Pasco and Hermiston. CP 93. He admitted that the existence of public transportation would be relevant in assessing whether Atkinson’s job offer was reasonable. CP 83. And he conceded that when public transportation is available within a worker’s

job market, “is it generally considered reasonable that they will utilize that public transportation.” CP 92.

Indeed, the Hermiston commute was nearly identical to the distances Sandoval traveled for his usual work as an agricultural field laborer. CP 213, 218-19. As the Board noted, despite his lack of license or vehicle, “Sandoval was able to make the necessary arrangements for a ride to the various worksites, some that were located a similar distance away from his residence in Pasco.” CP 35. In fact, Sandoval admitted he had traveled to work in Hermiston for a former employer. CP 113. Sandoval cannot argue that Atkinson’s job offer in Hermiston was unreasonably distant when he traveled similar distances as part of his usual work.

Vocational expert Trevor Duncan testified that, in light of the labor market and Sandoval’s transportation issues, Atkinson’s job offer was “vocationally reasonable.” CP 178. Sandoval could easily have discovered the shuttle if he had investigated his transportation options. CP 178. And while the shuttle times did not perfectly match the job’s proposed work schedule—arriving early and leaving late—this public transportation system would have allowed Sandoval to reach the Hermiston office free of charge and without a driver’s license or vehicle. CP 192-94. In fact, Sandoval admitted that his usual work as an agricultural field laborer already involved long wait times. CP 113. He testified that he would

sometimes arrive home very late after waiting for his co-worker to finish his workday. CP 113.

Contrary to Sandoval's suggestion, Duncan never indicated the Atkinson's light-duty job offer was vocationally unreasonable. *See* AB 9. While Duncan declined to say whether Sandoval's potential wait times were "reasonable or unreasonable," he did not retract his ultimate opinion that Atkinson's offer was "vocationally reasonable." CP 178, 194, 201-02. And he explained that Sandoval and his employer could have worked together to accommodate the shuttle schedule, with Sandoval "work[ing] four tens, or perhaps some other conversation." CP 202. None this could happen when Sandoval simply rejected the light-duty job offer without investigating his transportation options. CP 178, 202.<sup>6</sup>

Finally, the record does not support Sandoval's suggestion that the printer operator/office assistant job was unreasonable because it was beyond his abilities. AB 8. He notes that he is "nearly functionally illiterate," speaks only Spanish, and has no experience in an office setting. AB 8. But again, this is merely a request to reweigh the evidence. Atkinson designed the job for agricultural workers who, like Sandoval, had no experience in office work. CP 215-16. The job would start at

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<sup>6</sup> Sandoval's lack of driver's license was within his control. He had declined an ignition interlock device that would have restored his driving privileges. CP 101-02, 120-21.

“ground zero,” and the company’s bilingual staff would teach the workers basic office skills. CP 215-16. As Atkinson’s workers’ compensation specialist testified, the position required no previous office experience. CP 215-16. Sandoval had the ability to do this job.

Substantial evidence supports the superior court’s finding that the Hermiston job was within Sandoval’s reasonable geographic labor market. CP 267-68 (FF 1.2.4). The court correctly concluded that Atkinson’s job offer was a valid light-duty work offer within the meaning of RCW 51.32.090(4).

**3. The superior court correctly determined that Sandoval was not entitled to time-loss compensation**

Because Atkinson’s job offer for light-duty work was valid, the superior court correctly determined that Sandoval was not entitled to time-loss compensation benefits. CP 268 (CP 2.2.3). The Department properly terminates an injured worker’s time-loss compensation when the worker declines the employer’s valid job offer for available work. *Bayliner*, 40 Wn. App. at 115; *Thompson*, No. 02 21102, 2004 WL 3218298, \*4 (Wash. Bd. Indus. Ins. Appeals Dec. 6, 2004). Here, Sandoval does not dispute that he rejected Atkinson’s job offer. AB 3-4. Because the offer was a valid light-duty offer, the Department correctly denied his request for time-loss compensation.

**B. The Superior Court Applied the Correct Standard of Review**

The superior court applied the correct standard of review, explicitly finding in its written order that a “preponderance of evidence supports the Board’s Findings of Fact.” CP 267 (FF 1.2). Sandoval agrees, as he must, that this is the correct standard. AB 5 (citing *Ravsten v. Dep’t of Labor & Indus.*, 108 Wn.2d 143, 146, 736 P.2d 265 (1987)). But he argues that the superior court applied a different standard in its oral ruling, pointing to the court’s statement that “[the Board’s] findings are supported by substantial evidence and that there’s not other substantial evidence that is more persuasive.” AB 6 (citing RP 33). Sandoval contends this statement shows that the court applied the substantial evidence standard of review reserved for the Court of Appeals.

Sandoval is wrong for two reasons. First, “[a] written order controls over any apparent inconsistency with [a] court’s earlier oral ruling.” *Pham v. Corbett*, 187 Wn. App. 816, 830-31, 351 P.3d 214 (2015). In its written decision, the superior court applied the correct standard of review, finding the Board’s findings supported by “a preponderance of evidence.” CP 267 (FF 1.2). Because the court’s written order uses the correct standard, any inconsistency present in its earlier oral ruling is irrelevant. *See Pham*, 187 Wn. App. at 830-31.

Second, contrary to Sandoval's argument, the court adhered to the preponderance of evidence standard in its oral ruling. It did not apply a substantial evidence standard. Rather, the court's oral ruling shows that it balanced competing evidence, comparing the evidence supporting the Board's findings with the evidence supporting Sandoval's position. RP 33. There is no indication that the court disregarded competing evidence or drew inferences in favor of the Department, as it would on substantial evidence review. Rather, because the weight of the evidence showed the Board to be correct, the superior court affirmed its findings, as is required under the preponderance of evidence standard. The superior court did not err.

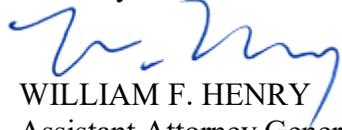
## **VI. CONCLUSION**

Sandoval is not entitled to time-loss compensation when he rejected his employer's valid job offer for light-duty work. The job was located within his reasonable geographic labor market, and Sandoval's doctor determined that he could meet the job's physical requirements.

Because Sandoval was not a temporarily totally disabled worker within the meaning of RCW 51.32.090, this Court should affirm.

RESPECTFULLY SUBMITTED this 28th day of October, 2019.

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NO. 36714-2-III

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

MIGUEL SANDOVAL ARAMBULA,

Appellant,

v.

WASHINGTON STATE  
DEPARTMENT OF LABOR  
AND INDUSTRIES,

Respondent.

CERTIFICATE OF  
SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served the Brief of Respondent and this Certificate of Service in the below described manner:

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