

FILED
Court of Appeals
Division III
State of Washington
1/15/2020 3:37 PM

No. 369803

COURT OF APPEALS, DIVISION THREE
OF THE STATE OF WASHINGTON

JANICE BRINSON-WAGNER, Appellant,

v.

KENNEWICK SCHOOL DISTRICT AND DEPARTMENT OF
LABOR AND INDUSTRIES, Respondents.

BRIEF OF RESPONDENT KENNEWICK SCHOOL DISTRICT

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I. INTRODUCTION

The Appellant, Janice Brinson-Wagner (worker), appeals to this Court from a Benton County Superior Court order granting a Motion for Summary Judgment submitted by the Kennewick School District (employer) and joined by the Department of Labor and Industries (Department) which dismissed her Superior Court case. That case stemmed from her appeal to the Superior Court of a Board of Industrial Insurance Appeals decision regarding her workers' compensation claim. It is the employer's position that the Superior Court was correct in granting its motion and that this Court should affirm the decision. The issue sought to be litigated by the worker in Superior Court was subject to a final and binding Superior Court Judgment filed in Superior Court on October 11, 2018, (Judgment) that was drafted by the worker's attorney. The Judgment and the remedy sought by the claimant in Superior Court are mutually exclusive as a matter of law. Therefore, her case was properly dismissed. The Superior Court's grant of the employer's Motion for Summary Judgment dismissing the worker's case should be affirmed by this Court.

II. ISSUE STATEMENT

Whether the Superior Court was correct to grant the employer's Motion for Summary Judgment, dismissing the worker's appeal taken from a Board of Industrial Insurance Appeals Decision and Order, under *res judicata*.

III. STATEMENT OF THE CASE

This is an appeal brought by the worker from a decision of the Benton County Superior Court. Ms. Brinson-Wagner sustained an industrial injury in the course of her employment with the Kennewick School District (employer) on or about October 27, 2008. Certified Board Record (CBR), at 3. Her claim was allowed. The Department of Labor and Industries (Department) issued an Order and Notice dated February 17, 2016, which denied treatment in the form of a left total knee replacement and left knee arthroscopy. CBR, at 4. The worker filed an appeal of that Department order to the Board of Industrial Insurance Appeals (Board). Hearings were conducted and evidence was taken. Following the presentation of evidence, the Board found that the industrial injury proximately caused posttraumatic ankle arthritis of the left ankle along with a left knee contusion and possible sprain. CBR, at 5. The order was dated June 23, 2017. The Board also found within that same order that Ms. Brinson-Wagner had a need for a total knee replacement which resulted from the natural progression of the degenerative arthritis of the left knee which preexisted the industrial injury

and was neither proximately caused nor aggravated by the industrial injury. *Id.* However, the Board further found that the left knee arthritis prevented her from doing some of the therapy and exercises recommended for her accepted left ankle condition, which thus limited her ability to progress with prescribed therapy for the accepted left ankle condition. The Board therefore ordered the employer to authorize and pay for a left total knee replacement as treatment of a preexisting unrelated condition directly retarding recovery of the accepted ankle condition. In other words, as an aid to recovery. This was ordered pursuant to Washington Administrative Code (WAC) 296-20-055. *Id.* at 5-6.

Both the worker and the employer appealed the decision of the Board to Benton County Superior Court which is the trial court in workers' compensation cases. The matters were not consolidated in Superior Court. Report of Proceedings (RP), at 4. The employer's position in Superior Court was that it should not be responsible for the total knee replacement at all, neither as treatment for an unrelated condition as an aid to recovery nor as treatment for a condition proximately caused or aggravated by the injury. The worker sought the opposite result. Her position in Superior Court was that the employer was responsible to pay for the total knee replacement because the arthritis being treated by the total knee replacement was a

condition proximately related to the industrial injury as opposed to an unrelated condition that required treatment as an aid to recovery.

On July 30, 2018, the employer's appeal of the Board order, Superior Court Docket 17-2-01960-4, proceeded to bench trial. *See*, RP, at 4. Benton County Superior Court Judge Carrie Runge ruled against the employer concluding that the Board was correct when it instructed the employer to cover the total knee replacement as an aid to recovery. Clerks Papers (CP), Defendant's Motion for Summary Judgment Ex. 2, 332-339. She further held that the Board order dated June 23, 2017, was correct as it relates to directing the employer to pay for the total knee replacement. *Id.* The legal authority cited as the basis for the judge's decision was Washington Administrative Code (WAC) 296-20-055. *Id.* Judge Runge issued a decision letter on August 2, 2018. Within this letter, she also cited to WAC 296-20-055, which states that treatment of an *unrelated* condition may be allowed as a necessary aid to the recovery from a related condition. CP, Defendant's Motion for Summary Judgment, April 10, 2019, Exhibit 1, 332-339 (emphasis added). She did not cite any other legal authority as the basis for her decision other than a statute supporting her conclusion that the WAC is to be strictly construed. *Id.*; *See*, Revised Code of Washington 51.04.020(4).

The claimant's attorney drafted the Judgment commemorating the decision of Judge Runge pursuant to her August 2, 2018, letter ruling against the employer. CP, Defendant's Motion for Summary Judgment, Ex. 2, 332-339. The Judgment was signed by Judge Stam and filed in Benton County Superior Court on October 11, 2018. *Id.* No appeal was ever taken by either party to the order filed on October 11, 2018. The time for appeal of that order to this Court past and the Judgment became final and binding upon the parties to this present appeal in November of 2018.

With the worker still not having set a trial in her appeal of the same Board order, Benton County Superior Court Docket 17-2-01893-4, the employer filed a Motion for Summary Judgment in Superior Court on April 10, 2019. CP, at 332-350. The Department joined the motion by filing a responsive brief in support of dismissal. CP, at 370-374. The matter was heard by Judge Runge on July 12, 2019. Report of Proceedings (RP), July 12, 2019. On July 12, 2019, Judge Runge issued an order granting the employer's Motion for Summary Judgment and dismissed the worker's appeal from the Board order. CP, at 377-378. According to the oral ruling of Judge Runge, her decision was based on the conclusion that her prior ruling, commemorated by a final and binding judgment, established that the employer was responsible for the total knee replacement as an aid to recovery. RP, at 11. She concluded that a finding that a preexisting

condition was aggravated or lit up by an injury, and thus proximately related to that injury, could not coexist with a final judgment that treatment for that condition was an aid to recovery under the law. *Id.* This appeal by the worker to this Court from the grant of summary judgment now follows.

IV. ARGUMENT

As an initial matter, the worker is not exactly correct in her brief as to the standard of review in this case. She argues that this Court is to review the trial court record and engage in a substantial evidence analysis with regard to the findings of fact in conjunction with a *de novo* review as to whether the conclusions of law flow from the factual findings. Appellant's Brief, at 4-5. That ignores and confuses the fact that this is an appeal from a grant of summary judgment. To be clear, grants of summary judgment are reviewed *de novo*. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008).

There is no genuine issue of material fact in this case and the employer was entitled to judgment as a matter of law. The burden is upon the party moving for summary judgment, the employer in this case, to show that there is no genuine issue of material fact. *Hash v. Children's Orthopedic Hospital*, 110 Wn.2d 912, 915, 757 P.2d 507 (1988). When considering a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party. *Hill v. BCTI Income-Fund-*

I, 144 Wn.2d 172, 187, 23 P.3d 440 (2001) (overruled on other grounds). The court must treat the non-moving party's evidence as true and draw all reasonable inferences from that evidence. *Id.* Summary judgment is appropriate where there is no genuine issue as to material facts and the moving party is entitled to judgment as a matter of law. Washington State Superior Court Civil Rule (CR) 56(c); *See, also, In re Estate of Hibbard*, 118 Wn.2d 737, 826 P.2d 690 (1992); *Hartley v. State*, 103 Wn.2d 768, 698 P.2d 77 (1985). "A material fact is one upon which the outcome of the litigation depends, in whole or in part." *Barrie v. Host of Am., Inc.*, 94 Wn.2d 640, 642, 618 P.2d 96 (1980). The purpose of CR 56 is to grant relief by summary judgment when it is determined by uncontroverted facts, set forth in affidavits, depositions, admissions or answers to interrogatories, as a matter of law, that there is no substantial evidence or reasonable inference to sustain a verdict for the non-moving party. CR 56(c); *Preston v. Duncan*, 55 Wn.2d 678, 349 P.2d 605 (1960); *Clements v. Travelers Indem. Co.*, 121 Wash.2d 243, 249, 850 P.2d 1298 (1993). Substantial evidence exists when there is sufficient evidence to persuade a fair-minded, rational person of the truth of the declared premise. *Brown v. Superior Underwriters*, 30 Wn.App. 303, 306, 632 P.2d 887 (Div. I, 1980). A summary judgment motion should be granted when reasonable

people could only reach but one conclusion. *Hash v. Children's Ortho. Hosp.*, 110 Wn.2d 912, 915, 757 P.2d 507 (1988).

Whether *res judicata* precludes litigation is a question of law and the proponent of the doctrine has the burden of proof. *Weaver v. City of Everett*, 4 Wn.App.2d 303, 314, 421 P.3d 1013 (Div. I, 2018). In the state of Washington, *res judicata* applies where a prior final judgment is identical to the challenged action in subject matter, cause of action, persons and parties, and the quality of persons for or against whom the claim is made. *Id.* at 321; *Lynn v. Washington State Dept. of Labor and Industries*, 130 Wn.App. 829, 836, 125 P.3d 202 (Div. 1, 2005). *Res judicata* prohibits litigation of claims and issues that were litigated or could have been litigated in a prior action. *Chavez v. Department of Labor and Industries*, 129 Wn.App. 236, 118 P.3d 392 (Div. II, 2005). *Res judicata* prevents repetitive litigation of claims or causes of action arising out of the same set of facts. *Hyatt v. Department of Labor and Industries*, 132 Wn.App. 387, 394, 132 P.3d 148 (Div. II, 2006). If a claim is barred by *res judicata*, it is grounds for granting a summary judgment motion. *Id.*

Washington courts have addressed this issue numerous times in the workers' compensation context. It is well established that a final and binding order, for which the time period to appeal has passed, precludes

relitigating the issues encompassed within the order. This applies regardless of whether the order at issue is a Department order, a Board of Industrial Insurance Appeals' order, or a Superior Court order. For example, in *Dep't of Labor & Indus. v. Fields Corp.*, 112 Wn.App. 450, 45 P.3d 1121 (Div. II, 2002), the court applied *res judicata* to a workers' compensation case. In that case, the claimant filed his first industrial claim in 1993. The claim was allowed by Department order in August of 1995. The claimant then filed a second claim which was allowed by Department order October 2, 1995. The employer had a right to appeal the October 2, 1995, order within 60 days, which it did not do. After the October 2 order became final and binding, the employer argued to the Board that the second claim should not have been allowed as a separate claim but, rather, should have been characterized as a continuation of the first claim, thus lowering their insurance premium assessed by the State in 1997. The question on appeal was whether the October 2, 1995, order was *res judicata* precluding relitigation of claim allowance since it was not appealed within 60 days. The appellate court concluded that an unappealed Department order is *res judicata* as to the issues encompassed within its terms and the employer could not reopen the issue of claim allowance. *Id.* at 456; *See, also, Hyatt v. Dep't of Labor & Indus.*, 132 Wn.App. 387, 132 P.3d 148 (Div. II, 2006); *VanHess v. Dep't of Labor &*

Indus., 132 Wn.App. 304, 130 P.3d 902 (Div. II, 2006) (Reasoning that a final and binding Department order carries a preclusive effect on the issue determined by the order).

In order to reverse the grant of the employer's Motion for Summary Judgment, it would have to be shown that a material fact upon which the determination of the appeal depends is in dispute. *See, Barrie v. Host of Am., Inc.*, 94 Wn.2d 640, 642, 618 P.2d 96 (1980). The worker has not raised a valid disputed material fact in her brief. She argues there is a dispute as to whether her knee arthritis was lit up or aggravated by the industrial injury and thus allowable as proximately related to the claim. Appellant's Brief, at 7. However, she fails to see that this question of fact has already been settled as a matter of law. There can be no dispute that the Superior Court order filed on October 11, 2018, (Judgment) is now final and binding. There too can be no dispute that the Judgment expressly concludes that "the Board was correct when it instructed the self-insured employer to cover the total knee replacement *as an aid to recovery.*" CP, Defendant's Motion for Summary Judgment, Ex. 2, 332-339. That is a conclusion of law that now binds the parties in this case.

"Aid to recovery" is a legal term of art with a specific meaning. WAC 296-20-055 governs this issue dealing with temporary treatment of unrelated conditions when retarding recovery. This legal theory is a

mechanism to hold the employer responsible to pay for temporary treatment of an unrelated condition when the unrelated condition directly retards recovery of a related condition. It is an exception to the rule that the worker is only entitled to benefits for conditions proximately caused or aggravated by the industrial injury. Treatment allowed as an aid to recovery is mutually exclusive from treatment for a condition proximately related to the industrial injury. A form of treatment legally cannot be an aid to recovery and treatment for a condition proximately related to the industrial injury at the same time. Since there is a final and binding judgment concluding that the total knee replacement is an aid to recovery, it has been established as a matter of law that the total knee replacement is not treatment for a condition proximately related to the injury. It is a final and binding determination that the outcome the worker seeks legally cannot be true.

The worker argued in Superior Court and in her brief to this Court that she preserved her appeal by including within the Judgment language indicating that she is permitted to pursue her appeal under Cause No. 17-2-01893-4. RP, at 7; Appellant's Brief, at 7. However, this statement is of no legal consequence and does not erase the final and binding decision of Judge Runge to affirm the Board order under appeal. As pointed out during oral argument on the motion in Superior Court, she certainly *can* pursue her appeal. But, she cannot prevail as a matter of law.

In turning to the four requirements for application of the Doctrine of *Res Judicata* to the Judgment, all four requirements apply to this present case. The Judgment is identical in subject matter and cause of action to the claimant's appeal at issue herein. In examination of these factors, Washington courts have examined whether the rights or interests established in the prior judgment would be impaired by the second action, whether the same evidence is presented in the two actions, and whether the suits deal with the same rights and arise out of the same transactional nucleus of facts. *Eugster v. The Washington State Bar Association*, 198 Wn.App. 758, 788-89, 397 P.3d 131 (Div. III, 2017).

In this case, the same Board order was appealed to Superior Court by both parties in two separate actions. The appealed Board order was based on the exact same set of facts presented to the Board and neither party can supplement these established facts in support of the respective appeals in Superior Court. No new evidence can be taken once the Board record is established. Revised Code of Washington (RCW) 51.52.115. The issues before the Superior Court in both appeals were exactly the same. In each appeal, the fact-finder was to determine whether the employer is responsible to pay for the total knee replacement at all and, if so, on what basis. When the court determined following the bench trial on July 30, 2018, that the employer was responsible to pay for the surgery as treatment for an

unrelated condition as an aid to recovery, that conclusion settled the claimant's contention that the treatment was for a condition proximately related to the injury. This is because the total knee replacement cannot legally be both treatment for a condition proximately related to the injury and treatment for an unrelated condition as an aid to recovery at the same time. The persons, parties, and qualities of each involved in this appeal and the appeal that resulted in the Judgment are the exact same parties with the exact same attorneys representing each of them.

The worker argues in her brief that the worker's appeal and the employer's appeal to the trial court did not deal with the same subject matter. Appellant's Brief, at 7. She argues that the question of whether the worker's preexisting left knee arthritis was "lit up" or aggravated by the industrial injury has not been adjudicated. *Id.* To be clear, arthritis is the condition being treated by the total knee replacement. She goes on to say that there is nothing in Judge Runge's order indicating that the worker's preexisting arthritis was unrelated. *Id.* This is incorrect and demonstrates a failure or refusal to acknowledge the legal meaning of "aid to recovery" and WAC 296-20-055, as detailed above.

It too cannot be overemphasized that the worker's attorney, the same attorney of record in this appeal, drafted the Judgment. With that in mind, one must consider the contractual Doctrine of *Contra Proferentem*. A

judgment by consent or stipulation of the parties is construed as a contract between them embodying the terms of the judgment. It excuses all prior errors and operates to end all controversy between the parties, within the scope of the judgment. *Washington Asphalt Co. v. Harold Kaeser Co.*, 51 Wn.2d 89, 91, 316 P.2d 126 (1957). While the Judgment commemorated a ruling against the employer and was not a stipulated judgment, it *was* an agreement by the parties that the Judgment properly commemorated the ruling of the court as expressed in the judge's August 2, 2018, letter ruling and it was drafted by the claimant's attorney. While it is the employer's position that there are no ambiguities here, the Doctrine of *Contra Proferentem* is well-settled in law. Ambiguities in contracts are construed against the drafter.

In sum, the employer and the claimant both appealed the Board order of June 23, 2017. The employer believed that it should not be responsible for the total knee replacement at all, even as treatment of an unrelated condition as an aid to recovery. The claimant believed that the Board was correct in ordering the employer to pay for the total knee replacement but that it was incorrect in determining it was merely unrelated treatment necessary as an aid to recovery. Rather, she believed the Board should have concluded that the need for a total knee replacement was treatment for a condition proximately related to the injury. Following the bench trial in the

employer's appeal, the claimant's appeal then became subject to a final and binding Superior Court order concluding that the Board was correct in determining that the total knee replacement was treatment for an unrelated condition as an aid to recovery. That judgment settled, as a matter of law, the claimant's contention that the total knee replacement was treatment for a condition proximately related to the industrial injury, that is, the claimant's left knee arthritis.

Once it was determined that the employer was responsible to cover the surgery, the two legal theories under which the employer could be directed to cover the surgery are mutually exclusive. The employer's basis for appealing the Board order and the claimant's basis for appealing the Board order are mutually exclusive. Both outcomes cannot coexist as a matter of law. Both legal theories cannot be true as a matter of law. The Judgment that controls this case was drafted by the claimant's attorney and establishes that the Board conclusion that the total knee replacement is to be covered as treatment for an unrelated condition as an aid to recovery under WAC 296-20-055 is correct. The claimant's contention that it now can revisit that issue and argue that the Board's determination was not correct on that issue is barred by *res judicata*.

As noted above, the policy rationale behind this doctrine is to prevent repetitive litigation of claims or causes of action arising out of the same

facts and to avoid repetitive litigation, conserve judicial resources, and prevent the moral force of court judgments from being undermined. *Hyatt*, 132 Wn.App. at 394. The following is the crux of this matter: If the claimant's appeal to Superior Court is allowed to proceed on the merits and the claimant prevails, there will be two competing Superior Court judgments. One judgment, which is already final, indicates that the total knee replacement is unrelated to the industrial injury but must be paid for by the employer as an aid to recovery from the ankle condition that was caused by the injury. The second order, a presently hypothetical one, would indicate that the total knee replacement is not treatment for an unrelated condition as an aid to recovery but is, rather, treatment for a condition proximately related to the industrial injury. This is not legally possible or appropriate. The fact that two such orders cannot coexist is the very purpose behind doctrines of issue and claim preclusion. If the grant of the employer's motion is not upheld, the claimant will succeed in doing exactly what these doctrines seek to prevent. If the claimant were then to prevail in Superior Court, the parties would be left with the absurd result of two competing orders that cannot legally be reconciled.

V. ATTORNEY'S FEES

The worker is not entitled to attorney's fees if she were to prevail in this Court of Appeals matter under the statute cited. The statute cited by the

worker in support of her request, RCW 51.52.130, states she is entitled to attorney's fees in two general scenarios: 1) if she appealed a decision of the Board and said decision is reversed or modified and additional relief is granted to a worker; or 2) in cases where a party other than the worker is the appealing party and the worker's right to relief is sustained. Neither situation exists here. This is her appeal to the Court of Appeals. Therefore, scenario two does not apply. Under scenario one, if the worker prevails in this particular appeal to the Court of Appeals, it results in a remand to Superior Court for trial. It does not result in a reversal or a modification of a Board order. Therefore, scenario one does not apply. Should this court find for the worker and remand this case to Superior Court for a trial on the merits, the employer asks the Court to deny the request for attorney's fees under RCW 51.52.130 as requested by the worker.

VI. CONCLUSION

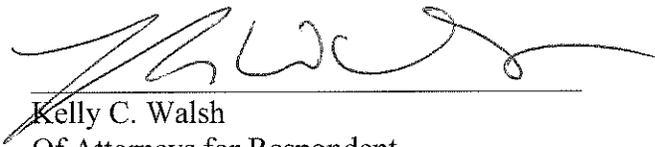
Based on the argument set forth above, the employer asks this court to **AFFIRM** the trial court's grant of the employer's Motion for Summary Judgment which resulted in dismissal of the worker's case. The employer further asks this court to conclude that the claimant is not entitled to attorney's fees under RCW 51.52.130 in the event she were to prevail in the appeal to this court.

January 15, 2020

Respectfully Submitted,



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VII. APPENDIX

Revised Code of Washington 51.04.020(1, 4) – Powers and Duties.

The director shall: 1) Establish and adopt rules governing the administration of this title; 4) supervise the medical, surgical, and hospital treatment to the intent that it may be in all cases efficient and up to the recognized standard of modern surgery.

Revised Code of Washington 51.52.115 - Court appeal—Procedure at trial—Burden of proof.

Upon appeals to the superior court only such issues of law or fact may be raised as were properly included in the notice of appeal to the board, or in the complete record of the proceedings before the board. The hearing in the superior court shall be de novo, but the court shall not receive evidence or testimony other than, or in addition to, that offered before the board or included in the record filed by the board in the superior court as provided in RCW 51.52.110: PROVIDED, That in cases of alleged irregularities in procedure before the board, not shown in said record, testimony thereon may be taken in the superior court. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. In all court proceedings under or pursuant to this title the findings and decision of the board shall be prima facie correct and the burden of proof shall be upon the party attacking the same. If the court shall determine that the board has acted within its power and has correctly construed the law and found the facts, the decision of the board shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the department with an order directing it to proceed in accordance with the findings of the court: PROVIDED, That any award shall be in accordance with the schedule of compensation set forth in this title. In appeals to the superior court hereunder, either party shall be entitled to a trial by jury upon demand, and the jury's verdict shall have the same force and effect as in actions at law. Where the court submits a case to the jury, the court shall by instruction advise the jury of the exact findings of the board on each material issue before the court.

Revised Code of Washington 51.52.130 - Attorney and witness fees in court appeal.

(1) If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained, a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the court. In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fee fixed for the services in the court. If in a worker or beneficiary appeal the decision and order of the board is reversed or modified and if the accident fund or medical aid fund is affected by the litigation, or if in an appeal by the department or employer the worker or beneficiary's right to relief is sustained, or in an appeal by a worker involving a state fund employer with twenty-five employees or less, in which the department does not appear and defend, and the board order in favor of the employer is sustained, the attorney's fee fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department. In the case of self-insured employers, the attorney fees fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer.

(2) In an appeal to the superior or appellate court involving the presumption established under RCW 51.32.185, the attorney's fee shall be payable as set forth under RCW 51.32.185.

Washington Administrative Code 296-20-055 - Limitation of treatment and temporary treatment of unrelated conditions when retarding recovery.

Conditions preexisting the injury or occupational disease are not the responsibility of the department. When an unrelated condition is being treated concurrently with the industrial condition, the attending doctor must notify the department or self-insurer immediately and submit the following:

- (1) Diagnosis and/or nature of unrelated condition.
- (2) Treatment being rendered.
- (3) The effect, if any, on industrial condition.

Temporary treatment of an unrelated condition may be allowed, upon prior approval by the department or self-insurer, provided these conditions directly retard recovery of the accepted condition. The department or self-insurer will not approve or pay for treatment for a known preexisting unrelated condition for which the claimant was receiving treatment prior to his industrial injury or occupational disease, which is not retarding recovery of his industrial condition.

A thorough explanation of how the unrelated condition is affecting the industrial condition must be included with the request for authorization.

The department or self-insurer will not pay for treatment of an unrelated condition when it no longer exerts any influence upon the accepted industrial condition. When treatment of an unrelated condition is being rendered, reports must be submitted monthly outlining the effect of treatment on both the unrelated and the accepted industrial conditions.

The department or self-insurer will not pay for treatment for unrelated conditions unless specifically authorized. This includes prescription of drugs and medicines.

Washington State Superior Court Civil Rule 56(c) – Summary Judgment

(c) Motion and Proceedings. The motion and any supporting affidavits, memoranda of law, or other documentation shall be filed and served not later than 28 calendar days before the hearing. The adverse party may file and serve opposing affidavits, memoranda of law or other documentation not later than 11 calendar days before the hearing. The moving party may file and serve any rebuttal documents not later than 5 calendar days prior to the hearing. If the date for filing either the response or rebuttal falls on a Saturday, Sunday, or legal holiday, then it shall be filed and served not later than the next day nearer the hearing which is neither a Saturday, Sunday, or legal holiday. Summary judgment motions shall be heard more than 14 calendar days before the date set for trial unless leave of court is granted to allow otherwise. Confirmation of the hearing may be required by local rules. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered

on the issue of liability alone although there is a genuine issue as to the amount of damages.

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**COURT OF APPEALS FOR DIVISION
III
STATE OF WASHINGTON**

JANICE BRINSON-WAGNER,)	No. 369803
)	
Appellant,)	
)	
v.)	
)	
KENNEWICK SCHOOL DISTRICT AND)	PROOF OF MAILING
DEPARTMENT OF LABOR AND)	BRIEF OF RESPONDENT
INDUSTRIES,)	
)	
Respondents.)	

The undersigned states that on the 15th of January 2020 I deposited in the United States mail, with proper postage prepaid, Brief of Respondent as attached, addressed as follows:

Marcus R. Henry
Smart, Connell, Childers & Verhulp, P.S.
PO Box 7284
Kennewick, WA 99336

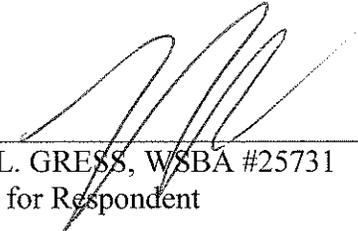
Benton County Superior Court
County Clerk
Prosser Courthouse
620 Market Street
Prosser, WA 99350-1300

1 I declare under penalty of perjury under the laws of the State of Washington that
2 the foregoing is true and correct:

3 DATED: January 15, 2020.

4 Respectfully submitted,

5
6 **GRESS, CLARK, YOUNG & SCHOEPPER**

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10 _____
11 JAMES L. GRESS, WSBA #25731
12 Attorney for Respondent
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GRESS, CLARK, YOUNG & SCHOEPPER

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Appellate Court Case Title: Janice Brinson-Wagner v. Kennewick School District
Superior Court Case Number: 17-2-01893-4

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