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No. 57445-1-I

JUL 16 2007
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

81478-3

HAJRUDIN KUSTURA, GORDANA LUKIĆ, and MAIDA
MEMIŠEVIĆ,

Consolidated Appellants,

vs.

DEPARTMENT OF LABOR & INDUSTRIES,

Respondent.

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2007 JUL 18 AM 10:27

BRIEF OF AMICUS CURIAE
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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Trial Lawyers Association Foundation (WSTLA Foundation) is a not-for-profit corporation organized under the laws of Washington, and a supporting organization of the Washington State Trial Lawyers Association (WSTLA). WSTLA Foundation, which operates the amicus curiae program formerly operated by WSTLA, has an interest in the rights of injured persons seeking legal redress, including an interest in the rights of persons seeking workers' compensation benefits under the Industrial Insurance Act, Title 51 RCW (IIA or act).

II. INTRODUCTION AND STATEMENT OF THE CASE

Overview

This appeal consists of three consolidated cases involving workers' compensation claims under the IIA made by claimants Hajrudin Kustura (Kustura), Gordana Lukić (Lukić), and Maida Memišević (Memišević). In each case claimant challenged computation of wage benefits entitlements by the Department of Labor and Industries (Department) under RCW 51.08.178. Additionally, one or more of these claimants challenged determinations made at the Department level and/or the Board of Industrial Insurance Appeals (Board) level, regarding whether their rights as limited English proficiency (or LEP) claimants were abridged, with respect to either the adequacy of English language time-sensitive notices issued by the Department or the availability of interpretive services before the Department or Board.

The primary language of each of these claimants is Bosnian/Serbo-Croatian (Bosnian), and, at times pertinent, each of them had limited English proficiency. See Kustura Amended Br. at 4 (re: Kustura), 7 (re: Lukić), 12 (re: Memišević).

While this appeal raises a host of issues regarding wage benefit orders and rights of LEP claimants, this amicus curiae brief only addresses: 1) whether any belated appeals by one or more claimants must be deemed timely under equitable principles and the IIA, because of the claimant's LEP status, and 2) the extent to which LEP claimants are entitled to interpretive services before the Department and the Board under the IIA and Ch. 2.43 RCW, which governs the rights of non-English-speaking persons to interpretive services in Washington legal proceedings.¹

Set forth below are facts drawn from the briefing of the parties demonstrating that the issues discussed in this brief are arguably before the court on review.²

¹ WSTLA Foundation is also filing an amicus curiae brief in Meštrovac v. Department of Labor & Industries, et al. (C.A. #58200-3-I), which involves similar issues regarding availability of interpreter services, and may be set for oral argument before the same panel of this court. See Clerk Richard D. Johnson letter to counsel, January 16, 2007.

² In some instances the Department challenges whether an issue raised by one or more claimants was preserved below, or is otherwise subject to review. See e.g. Department Br. at 15. WSTLA Foundation leaves these questions for the court to resolve, and assumes for the purposes of this amicus curiae brief that the merits of the issues discussed will be reached by the court.

Re: Timeliness of Appeals to Board From Department Orders

Kustura timely appealed all wage benefit orders challenged on review. Kustura Amended Br. at 5. However, both Lukić and Memišević failed to timely appeal some wage benefit orders, but each of them seeks to be excused from belated appeals because the orders were issued in English, not understood by the claimant, and the Department knew of the claimant's LEP status at the time they were issued. See Kustura Amended Br. at 10 (Lukić); 14-15, 18 (Memišević); Kustura Reply Br. at 4-7 (Lukić & Memišević); but see Department Br. at 15 (disputing whether Lukić and Memišević ever filed appeals to the pertinent wage orders). Lukić and Memišević contend that the appeal deadline for any wage benefit orders that were not timely appealed must be extended due to the Department's failure to translate the orders into Bosnian. See Department Br. at 28, 31; Kustura Amended Br. at 20.

Re: Interpretive Services Provided Below

At Kustura's hearing before the Board, the Industrial Appeals Judge (IAJ) refused to provide interpreter services throughout the hearing. This determination was upheld by the Board. Kustura Amended Br. at 5-7. In particular, an interpreter was provided during the portion of the hearing when Kustura testified, but there was no translation of other witnesses' testimony before the Board. Id. at 6. Kustura was not allowed an interpreter for communications with his lawyer. Department Br. at 6-7.

Kustura did not seek interpretive services at the pre-appeal stage, when his claim was being administered by the Department. Department Br. at 6-7.

In Lukić's Board hearing the Board denied interpretive services for preparation of her case, while granting such services for the taking of all witnesses' testimony at the hearing. Kustura Amended Br. at 11. Interpretive services were not permitted for perpetuation deposition testimony, or Lukić's confidential communications with her lawyer at the hearing and during breaks in the proceeding. Id.; Department Br. at 9. At the Department level, there is no record Lukić requested interpreter services, nor any Department order addressing this issue. Department Br. at 8. Interpreters were provided for treatment sessions with her physicians and during independent medical examinations. Id. at 9. The Department never communicated with Lukić in her own language. Kustura Amended Br. at 8.

Regarding Memišević, she was denied interpreter services for her communications with her lawyer bearing on preparation for the Board hearing. Kustura Amended Br. at 14-15. At the hearing, Memišević was only provided an interpreter for evidentiary hearings she attended. Id. at 15. The Board never ruled on interpreter services for confidential communications with her lawyer at the hearing. Id.

Memišević unsuccessfully requested interpreter services at the Department adjudication stage, with respect to attorney-client communications. Department Br. at 11-12. The Department

acknowledged below that, by policy, it pays for interpreter services at the adjudication stage when the claimant needs medical treatment, is meeting with a vocational counselor, or needs to speak to the Department about the claim. Id. However, once the claimant is represented by an attorney, the Department contends it communicates with the attorney, and apparently does not provide such interpretive services. Id.

Re: Superior Court Determination

With one minor exception, not relevant to this amicus curiae brief, the superior court, the Honorable William L. Downing, affirmed the Board determinations in each of these cases. See Kustura Amended Br. at Appendix, Attachment I (superior court memorandum opinion, hereafter Memo. Op.). Regarding the timeliness of Board appeals, the superior court recognized an equitable exception for time-barred appeals, based upon Rodriguez v. Dep't of Labor & Indus., 85 Wn.2d 949, 540 P.2d 1359 (1975), but concluded “the factual record simply does not demonstrate facts sufficient to justify the invoking of this narrow exception.” Memo. Op. at 3-4.

Regarding interpretive services, and Ch. 2.43 RCW, the court concluded the law did not require translation “outside of the context of the legal proceeding,” viz. Board hearing. Memo. Op. at 8-9. Consequently, it found interpretive services were not available for private consultations between the claimant and his or her lawyer. Id. at 8. The superior court also determined interpretive services were not required before the

Department, at the initial adjudication stage. *Id.* at 7-8. The court otherwise found no abuse of discretion in connection with the handling of the various interpreter issues. *Id.* at 9.

III. ISSUES PRESENTED

1. Under the Industrial Insurance Act and equitable principles, is an LEP claimant bound by the time limitations in RCW 51.52.060 for appealing a Department determination, when it is in English and the Department knows this is not the claimant's primary language?
2. To what extent does Ch. 2.43 RCW and the Industrial Insurance Act entitle LEP claimants to interpretive services in proceedings before the Department of Labor and Industries and the Board of Industrial Insurance Appeals, and at whose expense?

IV. SUMMARY OF ARGUMENT

Re: LEP Claimants' Entitlement to Equitable Relief for Belated Appeals

Under equitable principles, and in light of the remedial nature of the IIA, LEP claimants should be excused for belatedly filing notices of appeal under RCW 51.52.060, when this results from their lack of understanding of the English language text of the notice, and the Department of Labor and Industries is aware or should be aware of this lack of understanding.

Re: LEP Claimants' Entitlement to Interpretive Services Before the Department and Board

Under the required liberal construction of Ch. 2.43 RCW, LEP claimants are entitled to interpretive services at the claim adjudication stage before the Department of Labor and Industries and on appeal before the Board of Industrial Insurance Appeals. Both the Department and

Board levels involve a “legal proceeding,” as defined in RCW 2.43.040(2). Under this provision, the cost of these services should be borne by the Department of Labor and Industries, as the governmental body initiating the legal proceedings.

V. ARGUMENT

Introduction

Imagine an English-speaking IIA claimant receiving the following notice from the Department regarding the status of a pending workers’ compensation claim:

OVA NARUDŽBA POSTAJE KONAČNA 60 DANA NAKON DATUMA KADA STE DOBILI OBAVIJEST OSIM AKO NE URADITE JEDNO OD SLJEDEĆEG: PODNESETE PISMENI ZAHTEJEV ZA RAZMATRANJE OVOM ODJELU ILI PODNESETE PISMENU ŽALBU ODBORU ZA ŽALBE ZA INDUSTRIJSKO OSIGURANJE.

This Bosnian text is a translation of part of a standard disposition notice form found in the Workers’ Compensation Adjudicator Manual (September, 2006), regarding dispositions on time-loss claims, which provides:

THIS ORDER BECOMES FINAL 60 DAYS FROM THE DATE IT IS COMMUNICATED TO YOU UNLESS YOU DO ONE OF THE FOLLOWING: FILE A WRITTEN REQUEST FOR RECONSIDERATION WITH THE DEPARTMENT OR FILE A WRITTEN APPEAL WITH THE BOARD OF INDUSTRIAL INSURANCE APPEALS.

Id. at G-2.TC.³

³ The translation of the English text quoted above was obtained online from Click2Translate, at [www.http://www.click2translate.com](http://www.click2translate.com), for a fee. (Obtained July 10, 2007).

A. An LEP Claimant Who Belatedly Appeals A Department Determination Issued Under RCW 51.52.060 Is Entitled To Equitable Relief Under The IIA, When The Determination Is In English And The Department Knows Or Should Know The Claimant Is Incapable Of Understanding It.

Lukić and Memišević seek to be excused from belated appeals because the Department wage benefit orders, issued under RCW 51.52.060, were in English and not understood by them, and the Department knew these claimants were incapable of understanding such orders. Assuming such facts are either undisputed or sustained by the record, governing Supreme Court precedent entitles these claimants to such equitable relief.

A claimant aggrieved by a Department determination is required to:

file with the board and the director, by mail or personally, within sixty days from the day on which a copy of the order, decision, or award was communicated to such person, a notice of appeal to the board.

RCW 51.52.060(1)(a).⁴ Ordinarily, under the doctrine of res judicata, if a Department order is not timely appealed the claimant is precluded from re-arguing the same claim. See generally Marley v. Labor and Industries, 125 Wn.2d 533, 537-38, 886 P.2d 189 (1994). However, the Supreme Court has recognized that equitable relief is available under the IIA when a claimant is incapable of understanding the Department order and the Department is aware of this shortcoming. The key cases outlining the circumstances under which equitable relief is available are: Ames v. Dept.

⁴ The full text of the current version of RCW 51.52.060 is reproduced in the Appendix to this brief, for the convenience of the court.

of Labor & Industries, 176 Wash. 509, 30 P.2d 239 (1934); Rodriguez v. Dep't of Labor & Indus., 85 Wn.2d 949, 540 P.2d 1359 (1975); and Kingrey v. Dep't of Labor & Indus., 132 Wn.2d 162, 939 P.2d 565 (1997).

In Ames, involving a predecessor statute to RCW 51.52.060, the claimant was incompetent during the 60-day period for applying for a rehearing before the joint board of the Department, but sought rehearing within 60 days after his competency was restored. 176 Wash. at 510-12. The record before the Court showed that the Department knew of the claimant's incompetency at the time it issued the order in question. Id. at 514. The Court upheld the superior court determination that the claimant was entitled to the requested rehearing. Id. at 512. It rested the decision on "broad equitable principles," concluding that "[c]ertainly, the Department, like the courts, must consider equitable rules in all proper cases." Id. at 513.

In Rodriguez, the Court once again upheld entitlement to equitable relief, concluding that the claimant's belated appeal under RCW 51.52.060 would be deemed timely because he was incapable of understanding the English language and the Department knew or should have known of this inability. See 85 Wn.2d at 954-55. Rodriguez involved an illiterate claimant, who only spoke Spanish. At the time the Department order was received, the claimant's customary interpreter was unavailable. Further, the claimant was required to leave the state for an extended period due to his mother's illness. When he returned, he had the order translated by his

interpreter and filed a belated appeal. Id. at 950. Excusing the untimely filing, the Court relied upon Ames and the “broad principles of equity” developed therein, and reversed the superior court’s determination finding the appeal untimely. Id. at 954-55. The Court concluded:

It is clear appellant was extremely illiterate and himself unable to ascertain or understand the nature and contents of the order communicated and the Department knew or should have known of appellant’s illiteracy at the time it closed his claim.

Id. at 955 (footnote omitted).⁵

In Kingrey, the Supreme Court’s most recent pronouncement on this equitable doctrine, the Court re-affirmed and clarified the doctrine, but declined to apply it under the particular facts because the deceased claimant’s beneficiary was unreasonably tardy in pursuing the claim, and thus barred from doing so by the doctrine of laches. See 132 Wn.2d at 164-78 (lead opinion by Talmadge, J. & concurrence by Madsen, J.)⁶ In the four-justice dissent in Kingrey, which speaks for a majority of the Court because Justice Madsen joined it with respect to its view of the

⁵ Rodriguez provided equitable relief after it first rejected the claimant’s argument that the word “communicated” in RCW 51.52.060 required proof that there was “some actual understanding on the part of the workman of the nature of the order.” 85 Wn.2d at 951. The Court instead concluded “the word ‘communicated’ contained in RCW 51.52.060 requires only that a copy of the order be received by the workman.” Id. at 953.

⁶ Kingrey consists of three separate opinions, none of which involve a majority of the Court. However, different combinations of these opinions form a majority as to different aspects of the case. See e.g. Kingrey at 164-78 (lead opinion by Talmadge, J., joined by three justices); id. at 178 (concurrence by Madsen, J., agreeing with Justice Alexander’s dissent, describing the nature and extent of the Court’s equitable powers, but agreeing with Justice Talmadge’s lead opinion that the claimant beneficiary had not diligently pursued her rights); id. at 178-82 (Alexander, J., dissenting, joined by three justices). The three opinions in Kingrey, and the holdings derived from these opinions, are discussed in detail in the Court of Appeals opinion in Fields Corp. v. Labor & Indus., 112 Wn.App. 450, 457-60, 45 P.3d 1121 (2002).

Court's equitable powers, the underpinnings of the broad equitable doctrine developed in Ames and Rodriguez is clarified:

I do not believe that we intended to foreclose granting relief to persons who, while not non compos mentis (*Ames*) or illiterate (*Rodriguez*), were innocent victims of circumstance, largely beyond their control.

* * *

I submit that the avenue the trial court opened to Mrs. Kingrey was one to justice and equity and we should not close it now. While I agree with the majority that some limits on the equitable powers of the court are appropriate, any such limitations must be viewed in light of the general principle that the workers' compensation act is remedial in character and should be broadly and liberally construed in order to effectuate its purpose to benefit workers. No system, in short, that is designed to protect workers and their beneficiaries should be so procedurally rigid that it prevents the reopening of a claim under circumstances as compelling as these.

132 Wn.2d at 179, 181 (Alexander, J., dissenting; citations omitted); see also id. at 178 (Madsen, J., concurring in dissent in part). This analysis should guide the court here.⁷ As Justice Alexander notes, equitable relief is particularly apt given the mandatory liberal construction of the IIA. See RCW 51.12.010; Dennis v. Labor and Industries, 109 Wn.2d 467, 470, 745 P.2d 1295 (1987).

There are instances in reported decisions of the Supreme Court and Court of Appeals where the equitable doctrine recognized in Ames, Rodriguez, and Kingrey, was not applied because the claimant was otherwise aware of his or her rights, did not exercise them diligently -

⁷ In a slightly different setting, the Court of Appeals permitted the filing of a belated claim for benefits based upon Ames, Rodriguez and Kingrey, in Rabey v. Labor & Indus., 101 Wn.App. 390, 3 P.3d 217, *review granted and later dismissed*, 142 Wn.2d 1007 (2000). The court provided equitable relief where the decedent's widow beneficiary was devastated by grief, finding the circumstances to be roughly similar to the incompetency found in Ames. See Rabey, 101 Wn.App. at 397.

once understood, or the Department was unaware of the claimant's inability to understand the particular determination. See e.g. Leschner v. Dept. of Labor & Ind., 27 Wn.2d 911, 185 P.2d 113 (1947) (refusing to excuse untimely filing of initial claim for compensation outside of 1-year time limit, and noting in *dicta* claimant otherwise not diligent in pursuing claim); Wilbur v. Labor & Industries, 38 Wn.App. 553, 686 P.2d 509 (1984) (indicating in *dicta* equitable estoppel would not lie to extend 1-year period for filing claim, because claimant had received legal advice regarding his duty to file application for benefits within a year of accident), *review denied*, 103 Wn.2d 1016 (1985); Harman v. Labor & Indus., 111 Wn.App. 920, 47 P.3d 169 (denying equitable relief because claimant did not prove reliance upon her physician's or employer's conduct, and the Department was otherwise unaware of the potential claim), *review denied*, 147 Wn.2d 1025 (2002); Lynn v. Labor & Indus., 130 Wn.App. 829, 125 P.3d 202 (2005) (concluding claimant's illiteracy insufficient to warrant equitable relief, where he otherwise had actual knowledge of appeal deadline and Department was unaware of his illiteracy); see also Nafus v. Dept. of Labor & Industries, 142 Wash. 48, 251 P.2d 877 (1927) (denying relief for untimely appeal of notice communicated to claimant, where claimant was aware of existence of notice but chose not to read it; pre-dating Ames).

Whatever uncertainty may remain about the breadth of the equitable doctrine developed in Ames, Rodriguez, and Kingrey,

unquestionably relief is justified for a belated appeal under RCW 51.52.060 when an LEP claimant does not understand a Department order and the Department knows or should know of this shortcoming. In such circumstances, equity and the remedial purposes of the IIA require the belated filing be excused.

Thus, it is well within the province of the court to provide equitable relief for Lukić and Memišević, if justified on the record in each case. The court need go no further in addressing how to solve the problem of notice to LEP claimants generally. It is enough for it to reaffirm that in cases where precedent mandates equitable relief, it will be provided. It is then for the other branches of government, the Legislature and Executive, to consider how to solve this problem on a larger scale. However, the impetus for doing so lies in the proper recognition by this court of the need for equitable relief, to avoid an otherwise manifest injustice resulting from strict application of the limitation period.

B. Under Liberal Construction Of Ch. 2.43 RCW And The IIA, LEP Claimants Are Entitled To Interpreter Services At The Department And Board Levels, Because The Department Claims Adjudication Process Begins The “Legal Proceeding” And The Department Is The Initiating Agency.

Overview of Ch. 2.43 RCW and IIA

Ch. 2.43 RCW governs the use of interpreters in “legal proceedings,” and is designed to protect the rights of non-English-speaking persons in Washington. This chapter is remedial in nature, and must be liberally construed to effectuate this purpose. See Peninsula

School v. Employees, 130 Wn.2d 401, 407, 924 P.2d 13 (1996). The chapter begins with a remarkably strong statement on the public policy of the State of Washington regarding the rights of non-English-speaking persons:

Legislative intent

It is hereby declared to be the policy of this state to secure the rights, constitutional or otherwise, of persons who, because of a non-English-speaking cultural background, are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

It is the intent of the legislature in the passage of this chapter to provide for the use and procedure for the appointment of such interpreters. Nothing in chapter 358, Laws of 1989 abridges the parties' rights and obligations under other statutes or court rules or other law.

RCW 2.43.010.

“Legal proceeding” as used in Ch. 2.43 RCW “means a proceeding in any court in this state, grand jury hearing, or hearing before an inquiry judge, or before [an] administrative board, commission, agency, or licensing body of the state or any political subdivision thereof.”

RCW 2.43.020(3). Under RCW 2.43.030(1) “[w]henver an interpreter is appointed to assist a non-English-speaking person in a legal proceeding, the appointing authority shall, in the absence of a written waiver by the person, appoint a certified or a qualified interpreter to assist the person throughout the proceedings.” Other key provisions of the chapter include: RCW 2.43.030(1)(a)-(2) (qualifications for interpreters); RCW 2.43.040

(fees for interpreters); RCW 2.43.070 (testing and certification of interpreters); and RCW 2.43.080 (ethical standards for interpreters).⁸

Under RCW 2.43.010, two basic criteria govern entitlement to interpretive services for a non-English-speaking person in a legal proceeding. First, the person must have an underlying right - "constitutional or otherwise" - requiring protection. Second, absent interpretive services, the person's right cannot be "fully protected" in the legal proceeding. Underlying this criteria is the notion that in legal proceedings non-English-speaking persons are entitled to be put on an equal footing with those who speak English. The Legislative declaration requires *full* protection.

This mandate of Ch. 2.43 RCW is particularly relevant in the workers' compensation context. All claimants under the IIA are promised "sure and certain relief" for industrial injury or occupational disease. RCW 51.04.010. To this end, the act is liberally construed for the purpose of reducing to a minimum the suffering and economic loss of claimants. See RCW 51.12.010.

Application of Ch. 2.43 RCW at the Department and Board Levels

There are two key questions regarding application of Ch. 2.43 RCW to the Department and Board. First, is there a "legal proceeding," as defined, somewhat awkwardly, in RCW 2.43.020(3)? Second, is such

⁸ The text of the current version of Ch. 2.43 RCW is reproduced in the Appendix, for the convenience of the court.

proceeding “initiated” by the Department, thereby requiring it to fund the interpretive services? See RCW 2.43.040(2),(3).

Regarding the “legal proceeding” issue, there is little doubt that the hearing process before the Board qualifies under the definition in RCW 2.43.020(3). It is markedly quasi-judicial in nature. However, the statute is not limited to judicial or quasi-judicial hearings, and a Board hearing is not the beginning of the claims adjudication process. It starts at the Department level, and this is where the court’s analysis should focus. “Legal proceeding” should include a “proceeding ... before [an] ... agency.” RCW 2.43.020(3). The Department is a state agency. The definition is not limited to hearings, and the Department’s argument that the proceeding must be a hearing should be rejected. See Department Br. at 46. As an undefined term, “proceeding” must be given a liberal construction because of the remedial nature of Ch. 2.43 RCW. Black’s Law Dictionary, 1241 (8th Ed. 2004), defines “proceeding” as including:

1. The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment.
2. Any procedural means for seeking redress from a tribunal or agency.
3. An act or step that is part of a larger action.
4. The business conducted by a court or other official body; a hearing.
5. *Bankruptcy*. A particular dispute or matter arising within a pending case - - as opposed to the case as a whole.

The sensibilities reflected in definition 2. above should control here. The processing of a compensation claim at the Department level is a “means for seeking redress” from an agency. While a definition contemplating something akin to a lawsuit - like the Board appeal process

- is reasonable, it is not the liberal construction required of this remedial provision. Moreover, the Legislature did not confine “proceeding” to the judicial or quasi-judicial context. See RCW 2.42.120(1) (limiting hearing impaired persons’ entitlement to interpretive services to certain judicial and quasi-judicial proceedings); Duffy v. Riveland, 98 F.3d 447, 457-59 (9th Cir. 1996) (concluding prison classification hearing did not constitute a judicial or a quasi-judicial proceeding under RCW 2.42.120(1)).

Assuming the “legal proceeding” requirement is met, it remains to determine if the Department is responsible for funding interpretive services. The Department contends it is not because it does not “initiate” the legal proceeding within the meaning of RCW 2.43.040(2). See Department Br. at 36 n.12. This view should be rejected as inconsistent with the remedial nature of Ch. 2.43 RCW, and because it fails to take into account the unique nature and construction of the IIA.

RCW 2.43.040(2) provides that “in a legal proceeding in which the non-English-speaking person is a party . . . the cost of providing the interpreter shall be borne by the governmental body initiating the legal proceedings.” RCW 2.43.040(3) provides that in those legal proceedings not governed by RCW 2.43.040(2), the cost is borne by the non-English-speaking person, unless he or she is indigent. Under RCW 2.43.040(2), liberally construed, the Department should be deemed the agency “initiating the legal proceedings,” and thus responsible for providing interpretive services for LEP claimants. While the Department argues the

employee or beneficiary “initiates” the proceeding by applying for benefits with the Department, this is not the only reasonable interpretation, nor a liberal construction, of RCW 2.43.040(2)&(3) and RCW 2.43.020(3).

In determining whether the Department “initiates” the proceeding under RCW 2.43.040(2), it is helpful to examine how an employee workers’ compensation claim unfolds. Under the IIA, the Department initially adjudicates the employee’s claim for benefits. See Ch. 51.28 RCW. Claims may not be lodged directly with the Board. Compare Ch. 51.52 RCW. If the employee is successful at the Department, the Board may never become involved. If the Department adjudication of the claim is adverse, the employee may appeal to the Board. See RCW 51.52.050; .060.⁹ At this level, the claim is subject to re-determination in an adversarial setting.

When an industrial accident occurs the employee must report the accident *to the employer*, who must in turn notify the Department once medical treatment is involved. See RCW 51.28.010(1). Upon receipt of the notice of accident from the employer, the Department is obligated to notify the employee of his or her rights. RCW 51.28.010(2) requires that:

The department shall immediately forward to the worker or his or her beneficiaries or dependents notification, in non-technical language, of their rights under this title.

⁹ The full text of the current version of RCW 51.52.050, like RCW 51.52.060, is reproduced in the Appendix, for the convenience of the court.

See also RCW 51.28.030 (requiring similar notice to beneficiaries). This mandated notification should be deemed the first step in the claims process under the IIA, rendering the Department the initiating agency for purposes of RCW 2.43.040(2). This also means that the entitlement to interpretive services under Ch. 2.43 RCW begins at this point – as it should.

The briefing is unclear as to the sequence of events in these cases, regarding the reports of injury and applications for benefits. It appears that under current practice a Department accident report form may also serve as the claimant's application for compensation. Notably, in the current version of that form the very first line asks for the claimant's language preference. See "REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE" (Effective 9/06), a copy of which is reproduced in the Appendix to this brief. It is unclear as to whether there is an *employer* accident report form, developed pursuant to RCW 51.28.010(1), that likewise asks for the claimant's language preference.

After the required notification to the claimant by the Department, the properly advised claimant must timely apply for benefits. See RCW 51.28.020(1)(a) (requiring application for compensation); RCW 51.28.050 (establishing one-year limitation period for applying for benefits based upon injury); RCW 51.28.055 (establishing two-year limitation period for filing claims based upon occupational disease or

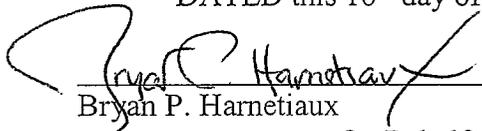
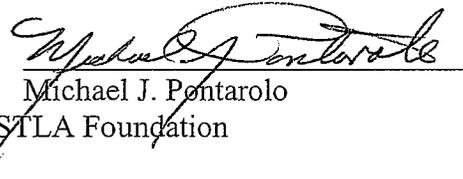
infection). This application triggers the Department investigation and adjudication of the claim itself.

A liberal construction of RCW 2.43.040(2) casts the Department as the “governmental body initiating the legal proceedings,” and renders it responsible for funding interpretive services for the proceeding.¹⁰ The proceeding continues until final resolution of the claim, whether it is ultimately resolved at the Department level, Board level, or in the courts. The Department’s role as initiating agency is fixed throughout the course of the proceeding, and it is thus responsible for the costs of interpretive services throughout the life of the claim.¹¹

VI. CONCLUSION

The Court should adopt the reasoning advanced in this brief and resolve this appeal accordingly.

DATED this 16th day of July, 2007.


Bryan P. Harnetiaux

Michael J. Pontarolo
On Behalf of WSTLA Foundation

¹⁰ There is another way of looking at RCW 2.43.040(2) which also supports recognizing the Department as the governmental body initiating the legal proceedings. RCW 2.43.040(2) contemplates the non-English-speaking person is involved in a proceeding with one or more *governmental bodies*. The phrase “the cost of providing the interpreter shall be borne by the governmental body initiating the legal proceedings” may be viewed as the basis on which to allocate costs as between different governmental bodies. As between the Department and the Board, the Department is the governmental body that initiates the claims adjudication process. The “appointing authority” for an interpreter may or may not be the governmental body “initiating the legal proceedings.” See RCW 2.43.020(5); RCW 2.43.040(2).

¹¹ Under the views expressed in this brief, it is questionable whether the Board regulation, WAC 263-12-097, indicating the Board, as appointing authority, will pay for ordered interpreter services, is consistent with Ch. 2.43 RCW. The current version of this regulation is reproduced in the Appendix to this brief, for the convince of the court.

Appendix

RCW 2.43.010

Legislative intent.

It is hereby declared to be the policy of this state to secure the rights, constitutional or otherwise, of persons who, because of a non-English-speaking cultural background, are unable to readily understand or communicate in the English language, and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

It is the intent of the legislature in the passage of this chapter to provide for the use and procedure for the appointment of such interpreters. Nothing in chapter 358, Laws of 1989 abridges the parties' rights or obligations under other statutes or court rules or other law.

[1989 c 358 § 1. Formerly RCW 2.42.200.]

RCW 2.43.020

Definitions.

As used in this chapter:

(1) "Non-English-speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the English language, but does not include hearing-impaired persons who are covered under chapter 2.42 RCW.

(2) "Qualified interpreter" means a person who is able readily to interpret or translate spoken and written English for non-English-speaking persons and to interpret or translate oral or written statements of non-English-speaking persons into spoken English.

(3) "Legal proceeding" means a proceeding in any court in this state, grand jury hearing, or hearing before an inquiry judge, or before an administrative board, commission, agency, or licensing body of the state or any political subdivision thereof.

(4) "Certified interpreter" means an interpreter who is certified by the administrative office of the courts.

(5) "Appointing authority" means the presiding officer or similar official of any court, department, board, commission, agency, licensing authority, or legislative body of the state or of any political subdivision thereof.

[2005 c 282 § 2; 1989 c 358 § 2. Formerly RCW 2.42.210.]

RCW 2.43.030

Appointment of interpreter.

(1) Whenever an interpreter is appointed to assist a non-English-speaking person in a legal proceeding, the appointing authority shall, in the absence of a written waiver by the person, appoint a certified or a qualified interpreter to assist the person throughout the proceedings.

(a) Except as otherwise provided for in (b) of this subsection, the interpreter appointed shall be a qualified interpreter.

(b) Beginning on July 1, 1990, when a non-English-speaking person is a party to a legal proceeding, or is subpoenaed or summoned by an appointing authority or is otherwise compelled by an appointing authority to appear at a legal proceeding, the appointing authority shall use the services of only those language interpreters who have been certified by the administrative office of the courts, unless good cause is found and noted on the record by the appointing authority. For purposes of chapter 358, Laws of 1989, "good cause" includes but is not limited to a determination that:

(i) Given the totality of the circumstances, including the nature of the proceeding and the potential penalty or consequences involved, the services of a certified interpreter are not reasonably available to the appointing authority; or

(ii) The current list of certified interpreters maintained by the administrative office of the courts does not include an interpreter certified in the language spoken by the non-English-speaking person.

(c) Except as otherwise provided in this section, when a non-English-speaking person is involved in a legal proceeding, the appointing authority shall appoint a qualified interpreter.

(2) If good cause is found for using an interpreter who is not certified or if a qualified interpreter is appointed, the appointing authority shall make a preliminary determination, on the basis of testimony or stated needs of the non-English-speaking person, that the proposed interpreter is able to interpret accurately all communications to and from such person in that particular

proceeding. The appointing authority shall satisfy itself on the record that the proposed interpreter:

(a) Is capable of communicating effectively with the court or agency and the person for whom the interpreter would interpret; and

(b) Has read, understands, and will abide by the code of ethics for language interpreters established by court rules.

[2005 c 282 § 3; 1990 c 183 § 1; 1989 c 358 § 3. Formerly RCW 2.42.220.]

RCW 2.43.040

Fees and expenses — Cost of providing interpreter.

(1) Interpreters appointed according to this chapter are entitled to a reasonable fee for their services and shall be reimbursed for actual expenses which are reasonable as provided in this section.

(2) In all legal proceedings in which the non-English-speaking person is a party, or is subpoenaed or summoned by the appointing authority or is otherwise compelled by the appointing authority to appear, including criminal proceedings, grand jury proceedings, coroner's inquests, mental health commitment proceedings, and other legal proceedings initiated by agencies of government, the cost of providing the interpreter shall be borne by the governmental body initiating the legal proceedings.

(3) In other legal proceedings, the cost of providing the interpreter shall be borne by the non-English-speaking person unless such person is indigent according to adopted standards of the body. In such a case the cost shall be an administrative cost of the governmental body under the authority of which the legal proceeding is conducted.

(4) The cost of providing the interpreter is a taxable cost of any proceeding in which costs ordinarily are taxed.

[1989 c 358 § 4. Formerly RCW 2.42.230.]

RCW 2.43.050

Oath.

Before beginning to interpret, every interpreter appointed under this chapter shall take an oath affirming that the interpreter will make a true interpretation to the person being examined of all the proceedings in a language which the person understands, and that the interpreter will repeat the statements of the person being examined to the court or agency conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment.

[1989 c 358 § 5. Formerly RCW 2.42.240.]

RCW 2.43.060

Waiver of right to interpreter.

(1) The right to a qualified interpreter may not be waived except when:

- (a) A non-English-speaking person requests a waiver; and
- (b) The appointing authority determines on the record that the waiver has been made knowingly, voluntarily, and intelligently.

(2) Waiver of a qualified interpreter may be set aside and an interpreter appointed, in the discretion of the appointing authority, at any time during the proceedings.

[1989 c 358 § 6. Formerly RCW 2.42.250.]

RCW 2.43.070

Testing, certification of interpreters.

(1) Subject to the availability of funds, the administrative office of the courts shall establish and administer a comprehensive testing and certification program for language interpreters.

(2) The administrative office of the courts shall work cooperatively with community colleges and other private or public educational institutions, and with other public or private organizations to establish a certification preparation curriculum and suitable training programs to ensure the availability of certified interpreters. Training programs shall be made readily available in both eastern and western Washington locations.

(3) The administrative office of the courts shall establish and adopt standards of proficiency, written and oral, in English and the language to be interpreted.

(4) The administrative office of the courts shall conduct periodic examinations to ensure the availability of certified interpreters. Periodic examinations shall be made readily available in both eastern and western Washington locations.

(5) The administrative office of the courts shall compile, maintain, and disseminate a current list of interpreters certified by the office.

(6) The administrative office of the courts may charge reasonable fees for testing, training, and certification.

[2005 c 282 § 4; 1989 c 358 § 7. Formerly RCW 2.42.260.]

RCW 2.43.080

Code of ethics.

All language interpreters serving in a legal proceeding, whether or not certified or qualified, shall abide by a code of ethics established by supreme court rule.

[1989 c 358 § 8. Formerly RCW 2.42.270.]

RCW 51.52.050

**Service of departmental action — Demand for repayment —
Reconsideration or appeal.**

Whenever the department has made any order, decision, or award, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with a copy thereof by mail, which shall be addressed to such person at his or her last known address as shown by the records of the department. The copy, in case the same is a final order, decision, or award, shall bear on the same side of the same page on which is found the amount of the award, a statement, set in black faced type of at least ten point body or size, that such final order, decision, or award shall become final within sixty days from the date the order is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia: PROVIDED, That a department order or decision making demand, whether with or without penalty, for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker, shall state that such order or decision shall become final within twenty days from the date the order or decision is communicated to the parties unless a written request for reconsideration is filed with the department of labor and industries, Olympia, or an appeal is filed with the board of industrial insurance appeals, Olympia.

Whenever the department has taken any action or made any decision relating to any phase of the administration of this title the

worker, beneficiary, employer, or other person aggrieved thereby may request reconsideration of the department, or may appeal to the board. In an appeal before the board, the appellant shall have the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal: PROVIDED, That in an appeal from an order of the department that alleges willful misrepresentation, the department or self-insured employer shall initially introduce all evidence in its case in chief. Any such person aggrieved by the decision and order of the board may thereafter appeal to the superior court, as prescribed in this chapter.

[2004 c 243 § 8; 1987 c 151 § 1; 1986 c 200 § 10; 1985 c 315 § 9; 1982 c 109 § 4; 1977 ex.s. c 350 § 75; 1975 1st ex.s. c 58 § 1; 1961 c 23 § 51.52.050. Prior: 1957 c 70 § 55; 1951 c 225 § 5; prior: (i) 1947 c 281 § 1, part; 1943 c 210 § 1, part; 1939 c 41 § 1, part; 1937 c 211 § 1, part; 1927 c 310 § 1, part; 1921 c 182 § 1, part; 1919 c 131 § 1, part; 1911 c 74 § 2, part; Rem. Supp. 1947 § 7674, part. (ii) 1947 c 247 § 1, part; 1911 c 74 § 20, part; Rem. Supp. 1947 § 7676e, part. (iii) 1949 c 219 § 6, part; 1943 c 280 § 1, part; 1931 c 90 § 1, part; 1929 c 132 § 6, part; 1927 c 310 § 8, part; 1911 c 74 § 20, part; Rem. Supp. 1949 § 7697, part. (iv) 1923 c 136 § 7, part; 1921 c 182 § 10, part; 1917 c 29 § 3, part; RRS § 7712, part. (v) 1917 c 29 § 11; RRS § 7720. (vi) 1939 c 50 § 1, part; 1927 c 310 § 9, part; 1921 c 182 § 12, part; 1919 c 129 § 5, part; 1917 c 28 § 15, part; RRS § 7724, part.]

RCW 51.52.060

Notice of appeal — Time — Cross-appeal — Departmental options.

(1)(a) Except as otherwise specifically provided in this section, a worker, beneficiary, employer, health services provider, or other person aggrieved by an order, decision, or award of the department must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within sixty days from the day on which a copy of the order, decision, or award was communicated to such person, a notice of appeal to the board. However, a health services provider or other person aggrieved by a department order or decision making demand, whether with or without penalty, solely for repayment of sums paid to a provider of medical, dental, vocational, or other health services rendered to an industrially injured worker must, before he or she appeals to the courts, file with the board and the director, by mail or personally, within twenty days from the day on which a copy of the order or decision was communicated to the health services provider upon whom the department order or decision was served, a notice of appeal to the board.

(b) Failure to file a notice of appeal with both the board and the department shall not be grounds for denying the appeal if the notice of appeal is filed with either the board or the department.

(2) Within ten days of the date on which an appeal has been granted by the board, the board shall notify the other interested parties to the appeal of the receipt of the appeal and shall forward a copy of the notice of appeal to the other interested parties. Within twenty days of the receipt of such notice of the board, the worker or the employer may file with the board a cross-appeal from the order of the department from which the original appeal was taken.

(3) If within the time limited for filing a notice of appeal to the board from an order, decision, or award of the department, the department directs the submission of further evidence or the investigation of any further fact, the time for filing the notice of appeal shall not commence to run until the person has been advised in writing of the final decision of the department in the matter. In the event the department directs the submission of further evidence or the investigation of any further fact, as provided in this section, the department shall render a final order, decision, or award within ninety days from the date further submission of

evidence or investigation of further fact is ordered which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days.

(4) The department, either within the time limited for appeal, or within thirty days after receiving a notice of appeal, may:

(a) Modify, reverse, or change any order, decision, or award; or

(b)(i) Except as provided in (b)(ii) of this subsection, hold an order, decision, or award in abeyance for a period of ninety days which time period may be extended by the department for good cause stated in writing to all interested parties for an additional ninety days pending further investigation in light of the allegations of the notice of appeal; or

(ii) Hold an order, decision, or award issued under RCW 51.32.160 in abeyance for a period not to exceed ninety days from the date of receipt of an application under RCW 51.32.160. The department may extend the ninety-day time period for an additional sixty days for good cause.

For purposes of this subsection, good cause includes delay that results from conduct of the claimant that is subject to sanction under RCW 51.32.110.

The board shall deny the appeal upon the issuance of an order under (b)(i) or (ii) of this subsection holding an earlier order, decision, or award in abeyance, without prejudice to the appellant's right to appeal from any subsequent determinative order issued by the department.

This subsection (4)(b) does not apply to applications deemed granted under RCW 51.32.160.

(5) An employer shall have the right to appeal an application deemed granted under RCW 51.32.160 on the same basis as any other application adjudicated pursuant to that section.

(6) A provision of this section shall not be deemed to change, alter, or modify the practice or procedure of the department for the payment of awards pending appeal.

[1995 c 253 § 1; 1995 c 199 § 7; 1986 c 200 § 11; 1977 ex.s. c 350 § 76; 1975 1st ex.s. c 58 § 2; 1963 c 148 § 1; 1961 c 274 § 8; 1961 c 23 § 51.52.060. Prior: 1957 c 70 § 56; 1951 c 225 § 6; prior: 1949

c 219 §§ 1, part, 6, part; 1947 c 246 § 1, part; 1943 c 280 § 1, part;
1931 c 90 § 1, part; 1929 c 132 §§ 2, part, 6, part; 1927 c 310 §§ 4,
part, 8, part; 1923 c 136 § 2, part; 1919 c 134 § 4, part; 1917 c 28 §
1, part; 1913 c 148 § 1, part; 1911 c 74 §§ 5, part, 20, part; Rem
Supp. 1949 §§ 7679, part, 7697, part.]

WAC 263-12-097

Interpreters.

(1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in a hearing before the board of industrial insurance appeals, the industrial appeals judge may appoint an interpreter to assist the party or witness throughout the proceeding. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of chapters 2.42 and 2.43 RCW and General Rule provisions GR 11, GR 11.1, and GR 11.2.

(2) The provisions of General Rule 11.3 regarding telephonic interpretation shall not apply to the board's use of interpreters.

(3) The industrial appeals judge shall make a preliminary determination that an interpreter is able to accurately interpret all communication to and from the impaired or non-English-speaking person and that the interpreter is impartial. The interpreter's ability to accurately interpret all communications shall be based upon either (a) certification by the office of the administrator of the courts, or (b) the interpreter's education, certifications, experience, and the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding. The parties or their representatives may question the interpreter as to his or her qualifications or impartiality.

(4) The board of industrial insurance appeals will pay interpreter fees and expenses when the industrial appeals judge has determined the need for interpretive services as set forth in subsection (1). When a party or person for which interpretive services were requested fails to appear at the proceeding, the requesting party or the party's representative may be required to bear the expense of providing the interpreter.

[Statutory Authority: RCW 51.52.020. 06-12-003, § 263-12-097, filed 5/25/06, effective 6/25/06; 00-23-022, § 263-12-097, filed 11/7/00, effective 12/8/00.]



The Report of Industrial Injury or Occupational Disease

Dept of Labor & Industries

AF 05019

This form is used to apply for workers' compensation benefits from the Department of Labor and Industries State Fund. If L&I accepts the claim, it will pay the worker's medical bills and - if unable to work - a portion of lost wages. L&I will consider each section of this form before making a decision.

Keep your paperwork moving smoothly

- Use a ball-point pen, press firmly and print legibly.
- Answer each question completely. Without full information, benefits could be delayed. If you need to attach additional pages, be sure to write the claim number on each page.
- Describe the accident or occupational disease in detail. If an arm was injured in a fall, tell us which arm and describe how the fall occurred.

Worker instructions

- Help us accurately calculate time-loss benefits for which you may be eligible. Report your marital status and dependents. Be prepared to show documents to verify your information.
- Let us know if you had more than one paying job at the time of the injury.
- Select a health care provider. You have the right to choose any health care provider who is qualified to treat your condition and is reasonably convenient for you to visit. Qualified health care providers include medical, osteopathic, chiropractic, naturopathic, and podiatric physicians, dentists, optometrists and ophthalmologists. Advanced registered nurse practitioners and physician assistants also may provide treatment.
- It is best to stay in touch with your employer and health care provider. If your health care provider says you cannot work, let your employer know. He/she may be able to find work you can do safely while you recover.
- Tell us if you move or change health care providers.
- Do not pay related medical bills unless we inform you your claim was denied. If a pharmacy requires you to pay, keep the receipt so we can reimburse you if the claim is allowed.
- Keep your claim number handy. It is printed on all correspondence we send you.

Health care provider instructions

- Give the worker's copy of this form to the patient BEFORE you complete your section.
- Give us a specific diagnosis with an objective description of your findings and patient observations. Provide the ICD code and the part of the body specifically affected.
- Estimate how long your patient may be unable to work and describe physical restrictions. This will help us decide whether to arrange for time-loss benefits or whether your patient, with your approval, may benefit from light-duty or modified work while recovering.
- Provide a medical treatment plan. Include needed diagnostic testing or treatments.
- Indicate whether the patient has previously been treated for the same or similar condition. If available, please indicate the health care provider's name and city of treatment.
- Include your individual L&I provider number-not your hospital's or clinic's.
- Mail or fax the L&I copy to us within FIVE days of treatment. Keep the health care provider's page for your records.

Where to send this report:

Mail: Department of Labor & Industries
P.O. Box 44299
Olympia WA 98504-4299
FAX: 1-800-941-2976

How to get help:

Provider Hotline: 1-800-848-0811
Easy -Access Line: 1-800-831-5227
Information Hotline: 1-800-547-8367
Information Online: www.lni.wa.gov

[Note: This form is reproduced here in a reduced size format.]

Legal Notices:

- **False information:** RCW 51.48.020 sub section (2) provides: Any person claiming benefits under this title, who knowingly gives false information required in any claim or application under this title shall be guilty of a Class C felony when such claim or application involves an amount of five hundred dollars (\$500) or more. When such claim or application involves an amount less than \$500, the person giving such information shall be guilty of a gross misdemeanor.
- **Medical Release:** RCW 51.36.060 provides: All medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any worker whose injury or occupational disease is the basis of a claim under this title shall be made available at any stage of the proceedings to the employer, the claimant's representative and the department upon request, and no person shall incur any legal liability by reason of releasing such information.
- **Social Security Number Disclosure:** Disclosure of your social security number is not mandatory, it is requested as part of your application for compensation under Chapter 51.28 RCW and will be used to facilitate the handling of your claim under Title 51 RCW.

Online, L&I's secure Claim & Account Center

Get the most up to date, complete information about your patients' claims online at L&I's secure Claim & Account Center www.ClaimInfo.LNI.wa.gov

Check the status of a workplace injury

- View claim documents, medical reports and L&I's notes about the claim
- Find out if L&I has authorized treatment or paid a bill

Send information to L&I

- Send us a secure message
- Let us know your patient's medical ability to work

Technical Support Assistance:

call: 1--360-902-5999

e-mail: websupport@LNI.wa.gov

NOTE: Workers' compensation claims from employees of self-insured businesses and claims for crime victims are not available in the Claim & Account Center.



REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE

Language Preference (circle one) English Spanish Russian Korean Chinese Vietnamese Laotian Cambodian Other:										Claim # AF 05019			
1. Name (First-Middle-Last)			2. Sex (circle one) Male Female		14. Date of Injury or Last Occupational Exposure / /		15. Time of Injury (circle one) AM PM		16. Shift (circle one) Day Swing Night				
3. Social Security Number ()			4. Home Phone ()		5. Birthdate / /		17. Have you ever been treated for same or similar condition? (circle one) YES NO			18. Is this condition due to a specific incident? (circle one) YES NO			
6. Home Address City State ZIP Code			7. Height (ft./inch)		8. Weight		19. Tell us what body part was injured and how the injury or exposure occurred. (include tools, machinery, chemicals or fumes that may have been involved)						
9. Mailing Address (if different from home address) City State ZIP Code			10. Marital Status (circle one) Married Widowed Separated Single Divorced		20. Were you doing your regular job? YES NO		21. Where did the injury or exposure occur? (circle one) Employer Premises Jobsite Other:						
You may be required to show proof of marital or dependent eligibility													
11. Dependent Children Include unborn, estimate birthdate. Benefits will be based in part on number of legally dependent children. If you don't have custody, complete item 13.				12. Spouse's Name				22. Address where injury or exposure occurred? (Business Name if at Business Location)					
Name Relationship Legal Custody (circle one) Birthdate				Y N / /				23. Was this incident caused by failure of a machine or product OR someone who is not a co-worker? (circle one) YES NO POSSIBLY					
Y N / /				Y N / /				24. List any Witnesses					
Y N / /				Y N / /				26. When did you last work? / /					
Y N / /				27. Did you report the incident to your employer? Name/Title of Person Reported To				28. Date you reported it					
13. Name & Address of Children's Legal Guardian													
30. Business Name of Employer				31. Type of Business				32. How long have you worked there? Years Months Weeks Days		33. Employer's Phone # ()			
34. Employer Address City State ZIP Code				35. Your Job Title & Duties				36. Rate of Pay at this Job (write amount, circle one) Hour Work Day Month		37. Hours Per Day		39. Additional earning (circle all that apply) (daily average) Piecework Tips Commission Bonuses	
38. Day Per Week				40. How may paying jobs do you have? 41. Are you? <input type="checkbox"/> Owner <input type="checkbox"/> Partner <input type="checkbox"/> Corp. Officer				42. Signature I declare that these statements are true to the best of my knowledge and belief. In signing this form, I permit health care provider, hospitals, or clinics to release medical reports generated by themselves & others to the Dept. of Labor and Industries.				Today's Date / /	
Note: READ LEGAL NOTICES ON LAST PAGE													

1. Diagnosis										2. ICD Diag. Codes		3. Date you first saw patient for this condition. / /		Claim # AF 05019	
4. Is the injury due to a specific incident? YES NO										7. Was the diagnosed condition caused by this injury or exposure? (circle one of four) PROBABLY (50% or more) YES POSSIBLY (Less than 50%) NO		8. Will the condition cause the patient to miss work? (circle one) YES NO if YES, indicate Return to work in _____ days			
5. Objective findings supporting your diagnosis (include physical, lab and X-ray findings)										9. Is there any pre-existing impairment of the injured area? YES if YES, describe briefly or attach report NO		10. Has patient ever been treated for the same or similar condition? YES if YES, give year, name of health care provider and city of treatment NO			
6. Treatment and diagnostic testing recommendations										11. Are there any conditions that will prevent or retard recovery? YES if YES, describe briefly or attach report NO		12. Referral health care provider. Complete if you refer patient to another health care provider for follow up Name Phone ()			
13. Name of Hospital or Clinic Name Phone ()					14. Attending Health Care Provider Name Phone ()					L&I USE ONLY					
Address City State ZIP Code					Address City State ZIP Code										
15. Place of Service (circle one) Inpatient ER Dr's Office/Clinic		16. Attending Health Care Provider Provider Number NPI Number (after 3-1-07)			17. Signature Licensed Health Care Provider must sign report		Today's Date / /								



REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE

Language Preference (circle one) English Spanish Russian Korean Chinese Vietnamese Laotian Cambodian Other:				Claim # AF 05019	
1. Name (First-Middle-Last)		2. Sex (circle one) Male Female	14. Date of Injury or Last Occupational Exposure		15. Time of Injury (circle one) 16. Shift (circle one) AM PM Day Swing Night
3. Social Security Number		4. Home Phone ()	5. Birthdate / /	17. Have you ever been treated for same or similar condition? (circle one) YES NO	
6. Home Address			7. Height (Fe-Inch)	18. Is this condition due to a specific incident? (circle one) YES NO	
City		State	ZIP Code	19. Tell us what body part was injured and how the injury or exposure occurred. (Include tools, machinery, chemicals or fumes that may have been involved)	
9. Mailing Address (if different from home address)			10. Marital Status (circle one) Married Widowed Separated Single Divorced	20. Were you doing YES YES NO your regular job? NO Employer Premises Jobsite Other:	
21. Where did the injury or exposure occur? (circle one)			22. Address where injury or exposure occurred? (Business Name if at Business Location)		
11. Dependent Children Include unborn, estimate birthdate. Benefits will be based in part on number of legally dependent children. If you don't have custody, complete item 13.			12. Spouse's Name	Address	
Name	Relationship	Legal Custody (circle one) Y N	Birthdate / /	City	
State	ZIP Code	23. Was this incident caused by failure of a machine or product OR someone who is not a co-worker? (circle one) YES NO POSSIBLY	24. List any Witnesses	25. When will you return to work? / /	
26. When did you last work? / /	27. Did you report the incident to your employer? Name/Title of Person Reported To	28. Date you reported it / /	29. Was your employer contributing to your and/or family's medical, dental and/or vision insurance on the day you were injured? (circle one) YES NO	30. Business Name of Employer	
31. Type of Business	32. How long have you worked there? Years Months Weeks Days	33. Employer's Phone # ()	34. Employer Address	35. Your Job Title & Duties	
City	State	ZIP Code	36. Rate of Pay at this Job (circle amount, circle one) Hour Week Day Month	37. Hours Per Day	39. Additional earning (circle all that apply) Daily Average Piecework Tips Commission Bonuses
38. Day Per Week	40. How many paying jobs do you have?	41. Are you? <input type="checkbox"/> Owner <input type="checkbox"/> Partner <input type="checkbox"/> Corp. Officer <input type="checkbox"/> Does not apply <input type="checkbox"/> Corp. Shareholder <input type="checkbox"/> Corp. Director <input type="checkbox"/> Optional Coverage	42. Signature I declare that these statements are true to the best of my knowledge and belief. In signing this form, I permit health care provider, hospitals, or clinics to release medical reports generated by themselves & others to the Dept. of Labor and Industries.	Today's Date / /	

1. Diagnosis		2. ICD Diag. Codes	3. Date you first saw patient for this condition. / /	Claim # AF 05019	
4. Is the injury due to a specific incident? YES NO		5. Objective findings supporting your diagnosis (Include physical, lab and X-ray findings)	7. Was the diagnosed condition caused by this injury or exposure? (circle one of four) PROBABLY (50% or more) YES POSSIBLY (Less than 50%) NO	8. Will the condition cause the patient to miss work? (circle one) YES NO if YES, indicate Return to work in _____ days	
6. Treatment and diagnostic testing recommendations		9. Is there any pre-existing impairment of the injured area? YES IF YES, describe briefly or attach report NO	10. Has patient ever been treated for the same or similar condition? YES IF YES, give year, name of health care provider and city of treatment NO	11. Are there any conditions that will prevent or retard recovery? YES IF YES, describe briefly or attach report NO	
13. Name of Hospital or Clinic		14. Attending Health Care Provider	15. Place of Service (circle one) Inpatient ER Dr's Office/Clinic	16. Attending Health Care Provider Provider Number NPI Number (after 1-1-07)	
Name	Phone ()	Name	Phone ()	L&I USE ONLY	
Address	City	State	ZIP Code	17. Signature Licensed Health Care Provider must sign report	
18. Referral health care provider. Complete if you refer patient to another health care provider for follow up	Name	Phone ()	Today's Date / /		

Online, L&I's secure Claim & Account Center

010207A

Get the most up to date, complete information about your patients' claims online at L&I's secure Claim

& Account Center www.ClaimInfo.LNI.wa.gov

Check the status of a workplace injury

- * View claim documents, medical reports and L&I's notes about the claim
- * Find out if L&I has authorized treatment or paid a bill

Send information to L&I

Send us a secure message!

- * Let us know if your patient can return to work
- * Update medical information

Technical Support Assistance:

call: 1-360-902-5999

email: websupport@LNI.wa.gov

NOTE: Workers' compensation claims from employees of self-insured businesses and claims for crime victims are not available in the Claim & Account Center.

Medical Release - RCW 51.36.060: All medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any worker whose injury or occupational disease is the basis of a claim under this title shall be made available at any state of the proceedings to the employer, the claimant's representative and the department upon request, and no person shall incur any legal liability by reason of releasing such information

010207A



REPORT OF INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE

Language Preference (circle one) English Spanish Russian Korean Chinese Vietnamese Laotian Cambodian Other:				Claim # AF05019	
1. Name (First-Middle-Last)		2. Sex (circle one) Male Female		14. Date of Injury or Last Occupational Exposure / /	
3. Social Security Number		4. Home Phone ()		15. Time of Injury (circle one) AM PM Day Swing Night	
5. Birthdate / /		6. Home Address		17. Have you ever been treated for same or similar condition? (circle one) YES NO	
7. Height (F-I-inch) / /		8. Weight		18. Is this condition due to a specific incident? (circle one) YES NO	
9. Mailing Address (if different from home address) City State ZIP Code		10. Marital Status (circle one) Married Widowed Separated Single Divorced		19. Tell us what body part was injured and how the injury or exposure occurred. (Include tool, machinery, chemicals or fumes that may have been involved)	
11. Dependent Children Include unborn, estimate birthdate. Benefits will be based in part on number of legally dependent children. If you don't have custody, complete item 13.		12. Spouse's Name		20. Were you doing YES YES NO your regular job? NO	
21. Where did the injury or exposure occur? (circle one) Employer Premises Jobsite Other:		22. Address where injury or exposure occurred? (Business Name if at Business Location)		23. Was this incident caused by failure of a machine or product OR someone who is not a co-worker? (circle one) YES NO POSSIBLY	
Name Relationship Legal Custody (circle one) Y N Birthdate / /		Address County		24. List any Witnesses	
City State ZIP Code		25. When will you return to work? / /		26. When did you last work? / /	
27. Did you report the incident to your employer? YES NO Name/Title of Person Reported To		28. Date you reported it / /		29. Was your employer contributing to your and/or family's medical, dental and/or vision insurance on the day you were injured? (circle one) YES NO	
13. Name & Address of Children's Legal Guardian		30. Business Name of Employer		31. Type of Business	
32. How long have you worked there? Years Months Weeks Days		33. Employer's Phone # ()		34. Employer Address City State ZIP Code	
35. Your Job Title & Duties		36. Rate of Pay at this Job (write amount, circle one) Hour Week S Day Month		37. Hours Per Day 38. Day Per Week	
40. How may you be paid? <input type="checkbox"/> Owner <input type="checkbox"/> Partner <input type="checkbox"/> Corp. Officer		41. Are you? <input type="checkbox"/> Does not apply <input type="checkbox"/> Corp. Shareholder <input type="checkbox"/> Corp. Director <input type="checkbox"/> Optional Coverage		42. Signature Note: READ LEGAL NOTICES ON LAST PAGE I declare that these statements are true to the best of my knowledge and belief. In signing this form, I permit health care provider, hospitals, or clinics to release medical reports generated by themselves & others to the Dept. of Labor and Industries. X Today's Date / /	

WORKERS INFORMATION

Keep your claim moving smoothly:

- Help us accurately calculate time-loss benefits for which you may be eligible. Report your marital status and dependents. Be prepared to show documents to verify your information.
- Let us know if you had more than one paying job at the time of the injury. Select a health care provider. You have the right to choose any health care provider who is qualified to treat your condition and is reasonably convenient for you to visit. Qualified health care providers include medical, osteopathic, chiropractic, naturopathic, and podiatric physicians, dentists, optometrists and ophthalmologists. Advanced registered nurse practitioners and physician assistants also may provide treatment.
- It is best to stay in touch with your employer and health care provider. If your health care provider says you cannot work, let your employer know. He/she may be able to find work you can do safely while you recover.
- Tell us if you move or change health care providers.
- Do not pay related medical bills unless we inform you your claim was denied. If a pharmacy requires you to pay, keep the receipt so we can reimburse you if the claim is allowed.
- Keep your claim number handy. It is printed on all correspondence we send you.

Legal Notices:

- False information: RCW 51.48.020 sub section (2) provides: Any person claiming benefits under this title, who knowingly gives false information required in any claim or application under this title shall be guilty of a Class C felony when such claim or application involves an amount of five hundred dollars (\$500) or more. When such claim or application involves an amount less than \$500, the person giving such information shall be guilty of a gross misdemeanor.
- Medical Release: RCW 51.36.060 provides: All medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any worker whose injury or occupational disease is the basis of a claim under this title shall be made available at any stage of the proceedings to the employer, the claimant's representative and the department upon request, and no person shall incur any legal liability by reason of releasing such information.
- Social Security Number Disclosure: Disclosure of your social security number is not mandatory, it is requested as part of your application for compensation under Chapter 51.28 RCW and will be used to facilitate the handling of your claim under Title 51 RCW.

F242-130-000 report of industrial injury or occupational disease 9-06

WORKERS COPY

This is your claim number: **AF 05019**

Keep this card handy when contacting us about your claim or to check if L&I has received your claim.

Name _____ Date of injury _____

Use this card to get medical services for the treatment of your work-related injury or occupational disease.

This card does not mean your claim has been allowed.

Cut this card out. Keep it with you.

Online, L&I's secure Claim & Account Center

Get the most up to date, complete information about your claim online at L&I's Claim & Account Center:
www.ClaimInfo.LNI.wa.gov

Check the status of a workplace injury

- * View claim documents and L&I's notes about the claim
- * See if a time-loss check has been issued
- * Find out if L&I has authorized treatment or paid a bill

Send information to L&I

- * Send us a secure message
- * Off work or returning to work? Update work status
- * Protest a claim decision
- * Change worker's address or phone

NOTE: Workers' compensation claims from employees of self-insured businesses and claims for crime victims are not available in the Claim & Account Center.

Technical Support Assistance:
call 1-360-902-5999
e-mail websupport@LNI.wa.gov

How to get help

Call any L&I field office. They are listed in your local phone book under Washington State, Labor and Industries.

ABERDEEN	EAST WENATCHEE	MOSES LAKE	SPOKANE	VANCOUVER
BELLINGHAM	EVERETT	MT VERNON	TACOMA	YAKIMA
BREMERTON	KENNEWICK	PORT ANGELES	TUKWILA	
COLVILLE	LONGVIEW	SEATTLE	TUMWATER	

L&I claim information:

Easy-Access Line: 1-800-831-5227
Information Helpline: 1-800-547-8367
Information Online: www.lni.wa.gov