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NO. 81758-8

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SUPREME COURT OF THE STATE OF WASHINGTON

EMIRA RESULOVIC,

Petitioner,

v.

DEPARTMENT OF LABOR & INDUSTRIES,

Respondent.

**FILED**  
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STATE OF WASHINGTON

ANSWER TO PETITION FOR REVIEW

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## I. INTRODUCTION

This is a workers' compensation case. Emira Resulović missed the 60-day deadline for appealing the Department of Labor & Industries wage computation and claim closing orders. When she sought extraordinary relief for her late appeals, Resulović admitted her ready access to language translation but did not explain why she did not use it. The Board of Industrial Insurance Appeals dismissed her late appeals, finding she was not diligent. The superior court and the Court of Appeals affirmed.

This case is not appropriate for review because it begins and ends with the established principle: due process allows requiring diligence by persons with limited English proficiency (LEP) receiving English notice. Consistent with precedent, the Court of Appeals, in its unpublished opinion, properly upheld the dismissal of Resulović's late appeals. Resulović was not diligent in using her available translation resources, and, although the Department provides translation services to unrepresented LEP claimants upon request, she never made such a request before hiring her attorney. Resulović presents no basis for review.<sup>1</sup>

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<sup>1</sup> Similar arguments were raised and rejected by the Court of Appeals in four other cases involving six other Bosnian-speaking claimants represented by the same attorney who represents Resulović here: *Meštrovac v. Dep't of Labor & Indus.*, 142 Wn. App. 693, 176 P.3d 536 (2008); *Kustura v. Dep't of Labor & Indus.*, 142 Wn. App. 655, 175 P.3d 1117 (2008) (three consolidated cases); *Ferenčak v. Dep't of Labor & Indus.*, 142 Wn. App. 713, 175 P.3d 1109 (2008); *Mašić v. Dep't of Labor & Indus.*, Supreme Court No. 81759-6. Although review is being sought in all of these cases, these cases are not uniform and do not equally preserve or present the issues claimed.

## II. COUNTERSTATEMENT OF THE ISSUES

1. Does law or equity require excusing Resulović's late appeals for her limited English proficiency, when she did not use the language help readily available to her?
2. Is the Court of Appeals opinion consistent with the established precedent that mere use of English to a LEP person does not violate due process or equal protection?
3. Is the Department *ex parte* claim administration not a legal proceeding covered by chapter 2.43 RCW, because it is neither a court proceeding nor a hearing?
4. Did Resulović show abuse of discretion in the Board provision of interpreter services?

## III. COUNTERSTATEMENT OF THE FACTS

### A. Department Claim Administration

In February 2000, Resulović applied for workers' compensation, which the Department allowed. Certified Appeal Board Record (BR) Ex. 2; Finding of Fact (FF) 1.<sup>2</sup> On April 2, 2001, the Department mailed her an order stating the wage computation for her time-loss benefits. BR 132; FF 1. She received the order in April 2001. BR 134; FF 1. On February 20, 2004, the Department mailed her an order closing her claim with a permanent partial disability award. BR 90; FF 1. She received the order

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<sup>2</sup> This brief refers to the testimony/statements at the Board proceedings by "TR" or the surname of the witness or the maker of the statement, followed by the date of the proceeding and the page number of the transcript where the testimony/statements are found and refers to the Board admitted exhibits as "BR Ex." The transcripts and the exhibits are in the Certified Appeal Board Record. Findings of Fact refer to those made by the Board and adopted by the superior court. Copies of the superior court order (CP 1-6), Board order (BR 2-5), and the Department wage and closing orders (BR 132-33, 90) are attached to this brief as Appendices A, B, and C, respectively.

in February 2004. BR 86; FF 1. Resulović did not appeal either the wage or closing order until January 19, 2005. BR 86-89, 134-37; FF 1, 5.

Resulović then sought an extraordinary relief from her late appeal, which was the only issue decided by the Board.

**B. Board Hearing**

The Board conducted hearings on the timeliness of Resulović's appeals and provided, at its expense, an interpreter throughout the recorded hearings. Resulović testified she was fluent only in Bosnian for speaking and reading but admitted she always had language help available. Resulović (8/17/05) 9-20, 62-63, (9/7/05) 18, 28. She obtained help for completing Department documents from her husband, friends, and neighbors. Resulović (8/17/05) 64-74, (9/7/05) 8-9, 13, 17-18, 28. Resulović testified that after a document is translated into Bosnian, "of course I would understand it." Resulović (9/7/05) 22.

The Department claim adjudicator who worked on Resulović's claim, Janet Grigsby, testified that Resulović never asked the Department to translate any documents before hiring her attorney. Grigsby (8/17/05) 47-48; FF 4. Resulović sent many English-written documents with her signature to the Department. Grigsby (8/17/05) 42-48, 54; BD Ex. 2-6. Grigsby thus believed Resulović was able to communicate in written English. Grigsby (8/17/05) 38-39, 45-46, 54. Grigsby received calls from

and talked several times in English with Resulović's husband. Grigsby (8/17/05) 47-48. He seemed to speak English "quite well" and never indicated he did not understand Grigsby. Grigsby (8/17/05) 56.

Once in 2000, Resulović requested and was provided with an interpreter for a phone conversation with Grigsby. Resulović (8/17/05) 14. The Department also provided her with interpreters for oral communications at medical examinations and vocational consultations on her claim. Grigsby (8/17/05) 31, 58.

In a proposed decision, the industrial appeals judge (IAJ) dismissed Resulović's appeals as untimely. BR 73-84. Resulović petitioned the Board to review the decision. BR 7-13, 48-71. In her petition, Resulović made no complaint that the interpreter services at the Board were inadequate. BR 7-13, 48-71. The Board issued a decision dismissing Resulović's appeals, adopting the IAJ findings that she never sought translation of the wage and closing orders nor diligently pursued her appeals. BR 2-5; FF 4, 6.

### **C. Court Proceedings**

King County Superior Court affirmed the Board decision, adopting all of the Board findings and conclusions, except for a finding that Resulović did not file an appeal within 60 days after her doctor told her

that his bills had not been paid and she should appeal any Department order she thought was incorrect. CP 1-6.

In an unpublished opinion, the Court of Appeals affirmed, by following its recent published opinions in *Ferenćak*, *Kustura*, and *Meštrovac*. This petition followed.

#### IV. REASONS WHY THE COURT SHOULD DENY REVIEW

Resulović argues that the Court of Appeals opinion conflicts with precedent and that her petition raises an issue of substantial public interest that this Court should determine. Petition at 20. She presents a number of issues juxtaposed with a variety of constitutional provisions, statutes, rules, and policies, some raised for the first time before this Court. Resulović offers scant analysis or authority to support her petition.

The Court of Appeals correctly followed established precedent in upholding the dismissal of Resulović's untimely appeal and rejecting her broad claim for free interpreter services beyond what was provided. *Ferenćak*, *Kustura*, *Meštrovac*, and consistent precedent provide sufficient guidance on the issues raised. Review is not warranted. *See* RAP 13.4(b).

However, if the Court decides that a certain issue meets the review criteria, the Court should identify and limit review to that issue.

**A. Resulović's Admitted Receipt Of The Order Triggered The 60-Day Appeal Period, And The Court Of Appeals Properly Upheld The Denial Of Equitable Relief For Lack Of Diligence**

This Court has held that it is the claimant's receipt, not subjective understanding, of an order that constitutes "communication" to trigger the 60-day appeal period under RCW 51.52.060. *Rodriguez v. Dep't of Labor & Indus.*, 85 Wn.2d 949, 951-53, 540 P.2d 1359 (1975) (extremely illiterate Spanish-speaking worker received a claim closing order).<sup>3</sup>

Resulović argues that the wage and closing orders did not trigger the appeal period because they did not use "black faced" type in stating her appeal right.<sup>4</sup> Petition at 5. She waived this argument by failing to raise it at the Board, despite the IAJ's specific finding that the Department orders contained black faced type.<sup>5</sup> Op. at 11-12; RCW 51.52.104 (party filing petition for review at the Board "shall be deemed to have waived all objections or irregularities not specifically set forth therein"); BR 48-71 (Resulović Board petition for review). In fact, Resulović conceded, "Each

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<sup>3</sup> Without any analysis or support in the record, Resulović claims, "Because the Department knew the English-only orders could not be read by the worker in this case, arguably the orders were never communicated to her, as required by RCW 51.52.060." Petition at 17 n.18. This passing claim without discussion of *Rodriguez* does not merit review. See *State v. Thomas*, 150 Wn.2d 821, 868-69, 83 P.3d 970 (2004) (court "will not review issues for which inadequate argument has been briefed or only passing treatment has been made"). *Rodriguez* has not been overruled or changed by the legislature and appropriately determines the date of communication of the order.

<sup>4</sup> A final Department order must contain "a statement, set in black faced type of at least ten point body or size, that such final order . . . shall become final within sixty days from the date the order is communicated to the parties unless" a written reconsideration or an appeal is filed. RCW 51.52.050.

<sup>5</sup> The IAJ found that the orders "contained black faced ten point type . . . advising [Resulović] of the Department's decision." BR 82 (Finding of Fact 2).

order contained black faced ten point type on the same side as the decision in English stating the Department's decision." BR 68.

Further, the appeal right statement in RCW 51.52.050 is "merely a warning of the statutory requirement that an appeal must be taken within sixty days" and "does not affect the validity of the communication of the 'order' . . . to the person who receives it." *Porter v. Dep't of Labor & Indus.*, 44 Wn.2d 798, 800, 271 P.2d 429 (1954) (order did not contain the language that appeal must be made to the Board in Olympia). A technical deviation from the statute, "while not to be approved, is not particularly important." *Id.* at 800-01. Resulović failed to show prejudice from the use of capitalized (in lieu of bold) letters. She now claims that "the use of bold face type would have brought the importance of that language" to her attention. Petition at 5 n.4. But she never testified to that effect.

Equity did not rescue Resulović's late appeal, because she failed to show diligence. Op. at 10-11; FF 6. It is well-established that equitable relief from the 60-day appeal limits requires diligence. *See Kingery v. Dep't of Labor & Indus.*, 132 Wn.2d 162, 178, 937 P.2d 565 (1997) (equitable relief properly denied when the claimant "did not diligently pursue remedies available to her");<sup>6</sup> *Leschner v. Dep't of Labor & Indus.*, 27 Wn.2d 911, 927, 185 P.2d 113 (1947) ("Equity aids the vigilant, not

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<sup>6</sup> The *Kingery* dissent was in accord with the diligence requirement but believed diligence was shown there. *See Kingery*, 132 Wn.2d at 182 (Alexander, J., dissenting).

those who slumber on their rights.”); *Harman v. Dep’t of Labor & Indus.*, 111 Wn. App. 920, 927, 47 P.3d 169 (2002) (same); *Dep’t of Labor & Indus. v. Fields Corp.*, 112 Wn. App. 450, 459, 45 P.3d 1121 (2002) (same); *Kustura*, 142 Wn. App. at 673 n.20 (claimants had counsel or access to interpreters and failed to explain failure to timely appeal).<sup>7</sup>

Resulović does not address diligence. The superior court finding (adopting the Board finding) that she was not diligent in pursuing her appeals is thus a verity. CP 5; FF 6; *Willoughby v. Dep’t of Labor & Indus.*, 147 Wn.2d 725, 733 n.6, 57 P.3d 611 (2002) (unchallenged finding is a verity). Even if she challenged the finding, the evidence supported it. Resulović admitted that she always had access to language help. Op. at 13; Resulović (8/17/05) 9-20, 62-74, (9/7/05) 8-9, 13, 17-18, 28. She had requested and was provided with an interpreter by the Department for her phone conversation with the claim adjudicator. Resulović (8/17/05) 14. She did not explain why she did not obtain help in translating the wage and closing orders. Nor did she testify she was unable to obtain such help

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<sup>7</sup> Requiring diligence by a LEP person for equitable relief accords with the law in other contexts that require diligence and further inquiry to such a person. See discussion *infra*, IV(B) (due process); *Diaz v. Kelly*, 515 F.3d 149, 154 (2d Cir. 2008) (“diligence requirement of equitable tolling [for habeas corpus]” imposes a duty to “make all reasonable efforts to obtain assistance to mitigate his language deficiency”); *Mendoza v. Carey*, 449 F.3d 1065, 1069-70 (9th Cir. 2006) (courts “have rejected a per se rule” that language limitations can justify equitable tolling). The courts have denied relief also when the claimant fails to show inability to understand the order and the Department misconduct. See *Kingery*, 132 Wn.2d at 174 (plurality); *Lynn v. Dep’t of Labor & Indus.*, 130 Wn. App. 829, 839, 125 P.3d 202 (2005).

when she received the orders. Equitable relief was properly denied. *See Sorenson v. Pyeatt*, 158 Wn.2d 523, 531, 146 P.3d 1172 (1006) (equitable relief is “extraordinary” and “discretionary” with the trial court).

Resulović cites *Rodriguez* to argue that relief is required when the Department should have known the claimant’s illiteracy and would not suffer prejudice. Petition at 10-11. This argument has no basis in the record or findings, and this Court should therefore disregard her claim that the Department “had actual knowledge of her inability to read or speak English.” Petition at 11. Resulović sent many English-written documents with her signature to the Department, without request for translation, and claim adjudicator Grigsby believed Resulović was able to communicate in written English. Grigsby (8/17/05) 38-39, 42-48, 54; BD Ex. 2-6. Resulović suggests that the Department learned of her inability to communicate in written English when it provided an interpreter for her phone conversation with Grigsby. Petition at 3 (referring to TR (8/17/05) 14). But her suggestion does not impair the unchallenged finding that she was not diligent, because it deals with one instance involving fluency in oral as opposed to written communications.

Nor does *Rodriguez* support Resulović. The “extremely illiterate” Spanish-speaking Rodriguez received a closing order when his interpreter was hospitalized and unable to interpret, and his mother in Texas about to

undergo surgery; he left for Texas, notifying the Department by his doctor of his change of address, and within 60 days of his return, had the order translated and appealed it. *Rodriguez*, 85 Wn.2d at 949-50. *Rodriguez* showed diligence; Resulović did not. Since *Rodriguez*, this Court has confirmed that diligence is required. See *Kingery*, 132 Wn.2d at 178.

Resulović argues, for the first time here, that her untimely appeals should be excused based on the Industrial Insurance Act requirements of uniformity in timeliness and benefits. Petition at 6-7. Her argument is too late and lacks merit. See RAP 2.5(a). The Act sets a uniform 60-day appeal period, and equity rescues diligent workers in extraordinary cases. Resulović failed to show diligence and offers no sound reasons why LEP claimants need not be diligent. Her claim that interpreter services are benefits under the Act is not supported by any authority or analysis. The statutes she cites (Petition at 7) do not show otherwise.<sup>8</sup>

The Court of Appeals opinion accords with this Court's decisions in *Rodriguez* and *Kingery*. Resulović fails to show any basis for review.

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<sup>8</sup> Resulović asserts that in *Ferenčák*, the Board found a different claimant's appeal timely because it was filed within 60 days after an interpreter communicated to the claimant of the Department order. Petition at 6. But the timeliness in *Ferenčák* was based on the parties' stipulation. Resulović fails to explain how such an agreement in an unrelated case with distinct factual circumstances has any relevance here.

**B. Well-Established Precedent Supports The Court Of Appeals Conclusion That The Department Use Of English To Resulović Did Not Violate Due Process Or Equal Protection**

Resulović argues that the Department violated due process and equal protection by sending her English orders. Petition at 13-17. The established precedent rejects this argument. She fails to show otherwise.<sup>9</sup>

**1. The Department order satisfied due process**

Due process requires notice reasonably calculated to inform interested parties of the pendency of the action and afford them an opportunity to present their objections. *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950).

Resulović fails to address the well-established precedent that, in civil cases involving only economic interests as here, due process does not require government to provide notices or services to LEP persons in their primary languages.<sup>10</sup> None of the cases Resulović cites holds otherwise.<sup>11</sup>

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<sup>9</sup> The Department will not engage in separate due process or equal protection analyses under Washington's Constitution, because Resulović never made any such analysis or claimed that a greater protection is provided under Washington's. Nor has she attempted the analysis under *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986).

<sup>10</sup> *See Soberal-Perez v. Heckler*, 717 F.2d 36, 43 (2d Cir. 1983) (social security benefit denial notice), *cert. denied*, 466 U.S. 929 (1984); *Guerrero v. Carleson*, 512 P.2d 833, 836-37 (Cal. 1973) (welfare benefit), *cert. denied*, 414 U.S. 1137 (1974); *Carmona v. Sheffield*, 475 F.2d 738, 739 (9th Cir. 1973) (unemployment benefit); *Alfonso v. Bd. of Review*, 444 A.2d 1075, 1076-78 (N.J. 1982) (same); *Hernandez v. Dep't of Labor*, 416 N.E.2d 263, 266-67 (Ill. 1981) (same); *Commonwealth v. Olivo*, 337 N.E.2d 904, 909-10 (Mass. 1975) (condemnation); *Toure v. United States*, 24 F.3d 444, 446 (2d Cir. 1994) (administrative seizure); *Kustura*, 142 Wn. App. at 675-77 (workers' compensation); *Frontera v. Sindell*, 522 F.2d 1215, 1221 (6th Cir. 1975) (English civil service exam); *see also Nazarova v. INS*, 171 F.3d 478, 483 (9th Cir. 1999) (deportation hearing notice).

Due process requires “diligence and further inquiry” by a LEP person receiving an English notice. *Soberal-Perez*, 717 F.2d at 43; *Olivo*, 337 N.E.2d at 909; *Guerrero*, 512 P.2d at 836; *Nazarova*, 171 F.3d at 483. The wage and closing orders contained Resulović’s name, claim number, injury date, the Department’s name, address, and phone number. BR 90, 132-33. The orders would thus alert a reasonable LEP claimant that a further inquiry is required. Due process does not require more.

## **2. The Department order satisfied equal protection**

The standard of review under equal protection in a case that does not involve a suspect class or a fundamental right is a minimal “rational basis” scrutiny.<sup>12</sup> *Seattle Sch. Dist. No. 1 v. Dep’t of Labor & Indus.*, 116 Wn.2d 352, 362, 804 P.2d 621 (1991) (citation omitted).

In claiming that the Department’s use of English created a national origin suspect class, Resulović fails to address the well-established

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<sup>11</sup> See *Ruiz v. Hull*, 957 P.2d 984 (Ariz. 1998) (Arizona’s constitutional amendment broadly banned public employees’ use of non-English languages); *Jones v. Flowers*, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006) (a tax lien house sale after its notice sent by a certified mail was returned unclaimed). The Department does not prohibit use of any non-English language. Unlike the house owner who never received notice in *Jones*, Resulović received the wage and closing orders and failed to explain why she did not request translation or make any inquiry into the orders.

<sup>12</sup> Resulović does not claim that this case involves a fundamental right, properly so, because workers’ benefits are “finite state resources,” not a fundamental right. *Willoughby v. Dep’t of Labor & Indus.*, 147 Wn.2d 725, 739, 57 P.3d 611 (2002). Without reference to the record, Resulović asserts that the Department’s policy is to send orders only in English except for Spanish-speaking claimants. Petition at 13. The Department’s policy is to provide interpreters for specified oral and written communications for LEP claimants and authorize translation of written documents to and from unrepresented LEP claimants upon request. Management Update (App. D).

precedent: “Language, by itself, does not identify members of a suspect class.” *Soberal-Perez*, 717 F.2d at 41; *Olivo*, 337 N.E.2d at 911 (inability to read English is “not a suspect class”); *Valdez v. N.Y. City Hous. Auth.*, 783 F. Supp. 109, 122 (S.D.N.Y. 1991) (same); *Moua v. City of Chico*, 324 F. Supp.2d 1132, 1137-38 (E.D. Cal. 2004) (“[N]o case has held that the provision of services in the English language amounts to discrimination against non-English speakers based on ethnicity or national origin.”); *Kustura*, 142 Wn. App. at 685.<sup>13</sup>

The courts have consistently upheld use of English to LEP persons under equal protection.<sup>14</sup> Resulović claims that preserving state funds is *not in itself* a sufficient ground.<sup>15</sup> Petition at 16 (citing *Willoughby*, 147

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<sup>13</sup> Resulović points out language in Executive Order 13,166, 65 Fed. Reg. 50,121, 2000 WL 34508183 (Aug. 11, 2000), that federally-assisted programs should be made meaningfully accessible to LEP persons to avoid Title VI-proscribed discrimination. Petition at 14. She fails to explain how this language contradicts, or can overrule, the established precedent that language alone does not identify a national origin. EO 13,166 is “intended only to improve the internal management of the executive branch” and “does not create any right or benefit, substantive or procedural, enforceable at law or equity”. Exec. Order No. 13,166 § 5. Title VI prohibits only intentional discrimination, and there is no private right to enforce regulations made under Title VI. *Alexander v. Sandoval*, 532 U.S. 275, 280-91, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001).

<sup>14</sup> See *Carmona*, 475 F.2d at 739; *Soberal-Perez*, 717 F.2d at 42-43; *Olivo*, 337 N.E.2d at 911; *Guerrero*, 512 P.2d at 837-39; *Guadalupe Org. v. Tempe Elementary Sch. Dist.*, 587 F.2d 1022, 1026-29 (9th Cir. 1978); *Frontera*, 522 F.2d at 1218-20; *Moua*, 324 F. Supp. 2d at 1139 (police not providing interpreter for crime victims did not violate equal protection); *Kustura*, 142 Wn. App. at 687.

<sup>15</sup> Resulović also claims that the “Department’s assertions about added costs are unsupported by any actual or estimated cost figures or by any other documented proof”. Petition at 16 n.17. But under the rational basis test, “the court may assume the existence of any conceivable state of facts that could provide a rational basis for the classification.” *Andersen v. King County*, 158 Wn.2d 1, 31, 138 P.3d 963 (2006); *Gossett v. Farmers Ins. Co.*, 133 Wn.2d 954, 979, 948 P.2d 1264 (1997) (“The rationality of a classification does not require production of evidence to sustain the classification.”). It is rational to assume

Wn.2d at 741). Added cost is not the only ground; the Department has a legitimate interest in using the common language used in this state to provide swift relief to injured workers.<sup>16</sup> Resulović's reliance on a foreign accent employment discrimination case is misplaced.<sup>17</sup> There is a distinction between a foreign accent and LEP. *Napreljac v. John Q. Hammons Hotels, Inc.*, 461 F. Supp.2d 981, 1030 n.31 (S.D. Iowa 2006) (distinguishing termination for a foreign accent and inability to "understand and communicate in English"). A Bosnian accent may identify a Bosnian national; inability to speak English does not.

Resulović complains that the Department provides some services in Spanish. Petition at 15. Equal protection allows a step at a time approach to attacking a societal issue, as long as the practice is "rationally based and free from invidious discrimination." *Dandridge v. Williams*, 397 U.S. 471, 486, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970). Providing Spanish services does not show any invidious discrimination against Resulović. It reflects the recognition that English and Spanish are the primary languages used in this state. *See Kustura*, 142 Wn. App. at 687.

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that providing interpreter services to all LEP claimants for all claim-related written or oral communications (Resulović claims) would create additional cost to the Department.

<sup>16</sup> *See Soberal-Perez*, 717 F.2d at 42 ("English is the national language of the United States."); *Frontera*, 522 F.2d at 1220 ("Our laws are printed in English and our legislatures conduct their business in English."); *Olivo*, 337 N.E.2d at 911 (same); 8 U.S.C. § 1423 (generally requiring English literacy for nationalization); RCW 28A.180.040(1) (transitional bilingual instruction to "achieve competency in English").

<sup>17</sup> *Xieng v. Peoples Nat'l Bank of Wash.*, 120 Wn.2d 512, 844 P.2d 389 (1993) (employer conceded discrimination violating RCW 49.60 based on foreign accent).

The Court of Appeals opinion accords with established due process and equal protection law. Resulović fails to show any basis for review.

**C. Chapter 2.43 RCW Does Not Apply To Department Claim Administration, And The Board Properly Provided Resulović With An Interpreter Throughout The Hearing**

The Court of Appeals properly followed *Kustura*, *Meštrovac*, and *Ferenčak* to conclude that Washington interpreter statute, chapter 2.43 RCW, does not cover the Department claim administration or require the Board to pay for interpreter services. Op. at 9-10. Given the published opinions in *Kustura*, *Meštrovac*, and *Ferenčak*, review is unnecessary.

The statute requires appointment of an interpreter for a LEP person involved in a “legal proceeding.” RCW 2.43.030(1). The statute defines a “legal proceeding” as a (1) court proceeding, (2) grand jury hearing, or (3) hearing before an inquiry judge or an administrative agency:

“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.

RCW 2.43.020(3) (emphasis added). The prepositional phrase “before an administrative . . . agency . . . of the state” modifies only the immediately preceding noun “hearing.” *Kustura*, 142 Wn. App. at 680; *Berrocal v. Fernandez*, 155 Wn.2d 585, 593, 121 P.3d 82 (2005) (unless contrary intent appears, qualifying words “refer to the last antecedent”).

The Department *ex parte* claim administration process is not a court proceeding, grand jury hearing, or hearing. Resulović does not argue otherwise. Thus, chapter 2.43 RCW does not apply to the process.

Resulović argues that the Department claim administration is a “legal proceeding” by reading the phrase “or before an administrative . . . agency . . . of the state” to modify all the preceding phrases, including “a proceeding in any court in this state.” Petition at 9. Her interpretation does not work for several reasons, but particularly because the modifying phrase cannot grammatically follow another antecedent “grand jury hearing.” See *Berrocal*, 155 Wn.2d at 593-94 (last antecedent rule requires the modifier to “follow any one of the phrases, standing alone, to produce a structurally seamless sentence”).

The Board hearing is a “legal proceeding,” but the Board was not required to pay for interpreter services, because it did not initiate the proceeding. RCW 2.43.040. The statute allocates interpreter costs to “the governmental body initiating the legal proceeding,” RCW 2.43.040(2), or to “the non-English-speaking person, unless such person is indigent,” RCW 2.43.040(3).<sup>18</sup> The statute contemplates that some proceedings are initiated by individuals. Here, Resulović initiated the proceeding by filing

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<sup>18</sup> The due process law likewise distinguishes “government-initiated proceedings seeking to affect adversely a person’s status” from “hearings arising from the person’s affirmative application for a benefit”. *Abdullah v. INS*, 184 F.3d 158, 165 (2d Cir. 1999) (no right to interpreter at INS interview for special agricultural worker status).

appeals, triggering the Board jurisdiction. RCW 51.52.060. She never claimed indigency. The statute thus allocated interpreter costs to her.

Resulović argues, for the first time here, that the Department initiated a legal proceeding because it is required by RCW 51.04.020(6) to “investigate the cause of all serious injuries and report to the governor from time to time any violations or laxity in performance of protective statutes or regulations”. Petition at 10. Her argument is waived. *See* RAP 2.5(a). Further, it makes no sense. There is no evidence the Department investigated the cause of her injury under RCW 51.04.020(6). Any such investigation occurs only if, and after, the claimant fulfills her duty of reporting her industrial injury. RCW 51.28.010(1). Resulović’s unsupported claim that the Department acts like police in other contexts (e.g., issuing WISHA<sup>19</sup> citations or investigating fraud) is irrelevant.<sup>20</sup>

Resulović argues that differently treating hearing-impaired and LEP persons violates equal protection, citing RCW 2.42.120(4) (providing

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<sup>19</sup> Washington Industrial Safety & Health Act, chapter 49.17 RCW.

<sup>20</sup> Resulović cites to the Board admitted Exhibit 1 (B-U) and claims that she had to provide statements to the Department under civil and criminal penalty. Petition at 19. But the Board rejected Exhibit 1. BR 4. In any event, the statement in the forms a worker completes in requesting benefits that persons making false statements in obtaining benefits are subject to civil or criminal penalties under the law only reminds the worker that such false statements may result in penalties. *See, e.g.*, RCW 51.48.250 (civil penalties for a person who willfully obtains benefits to which the person is not entitled). This is not a case where the Department pursued a fraud action against Resulović. It is absurd to claim that the Department initiated a legal proceeding against Resulović simply because she had to provide information to receive benefits. Resulović provides no authority to support such a proposition.

interpreter services to a hearing-impaired person interviewed by law enforcement in a criminal investigation) and *State v. Marintorres*, 93 Wn. App. 442, 969 P.2d 501 (1999) (convicted defendant may not be assessed interpreter cost under RCW 2.43.040(4)). Petition at 12-13. But the Department did not interview Resulović in any criminal investigation.<sup>21</sup> *Marintorres* is a criminal case, involving a Sixth Amendment interpreter right. See *State v. Gonzales-Morales*, 138 Wn.2d 374, 379, 979 P.2d 826 (1999). In civil cases, it is not irrational to differently address interpreter services for the hearing-impaired and LEP. “A hearing impairment is a physical disability”; LEP is not. Op. at 12 n.6. Sign language covers most hearing-impaired, while there are thousands of languages.<sup>22</sup>

Although not required, the Board provided Resulović with an interpreter throughout the hearings. See WAC 263-12-097 (the Board *may* pay for an interpreter). Resulović argues that the Board was required to reimburse her for her expenses in hiring an interpreter to respond to the Department’s discovery request for admission. Petition at 7-8. This

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<sup>21</sup> Resulović’s reliance on cases in different legal contexts is misplaced. See *State v. Smith*, 97 Wn.2d 856, 859-63, 651 P.2d 207 (1982) (assault victim’s under oath statement to police that is inconsistent with the victim’s testimony is not hearsay under ER 801(d)(1)(i)); *Davis v. Washington*, 547 U.S. 813, 826-30, 126 S. Ct. 2266, 165 L. Ed. 2d 224 (2006) (statements to law enforcement during a 911 call to resolve emergency was not “testimonial” and did not trigger the Confrontation Clause, but a victim’s statement in affidavit to police during investigation of a possible crime was “testimonial”). These cases are inapposite here.

<sup>22</sup> There are 6900 plus living languages in the world. Raymond G. Gordon, Jr., *Ethnologue: Languages of the World* (15<sup>th</sup> ed. 2005), available at <http://www.ethnologue.com>; see also *World Almanac & Book of Facts* 731-32 (2006).

argument was properly rejected for the above reasons and because the discovery process was not part of the Board hearing. Op. at 10.<sup>23</sup> She fails to demonstrate otherwise. Further, Resulović waived this argument by failing to raise it in her petition for review at the Board. RCW 51.52.104; BR 7-13, 48-71 (Resulović Board petition for review).

Costs or attorney fees may be awarded to a worker only if he prevails on the merits in court. RCW 51.52.130 (fourth sentence). Resulović's policy argument that all LEP claimants should receive free interpreter services related to their claims (including discovery) is inconsistent with RCW 2.43.040(3) and RCW 51.52.130 and should be made to the Legislature.<sup>24</sup>

Resulović argues, for the first time, that GR 33 requires free interpreter services and that the rule applies to the Board under WAC 263-12-125.<sup>25</sup> Petition at 19. Her argument is waived. RAP 2.5(a). Further, GR 33 requires accommodations (with certain exceptions such as undue

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<sup>23</sup> Resulović's prejudice argument in reliance on *Steele v. Lundgren*, 85 Wn. App. 845, 935 P.2d 671 (1997) (party may waive right to arbitration by first conducting lengthy and aggressive litigation), is thus misplaced. In any event, prejudice in the arbitration right waiver context is different from prejudice that *may justify a reversal* – "Absent a showing of prejudice to the outcome of the trial, an error does not constitute grounds for reversal." *Rice v. Janovich*, 109 Wn.2d 48, 63, 742 P.2d 1230 (1987). Resulović fails to demonstrate any such prejudice required for relief here.

<sup>24</sup> Resulović refers to certain documents entitled *Washington Civil Legal Needs Study, Ensuring Equal Access for People with Disabilities: A guide for Washington Courts*, and *Washington State LEP Plan*. Petition at 17-18. She fails to explain how these documents create any enforceable right or obligation relevant in this case.

<sup>25</sup> The rule adopts "the statutes and rules regarding procedures in civil cases in the superior courts of this state" if applicable and "not in conflict with these rules".

burden) to a “person with a disability” covered by the Americans with Disabilities Act, chapter 49.60 RCW, or other similar local, state, or federal laws. GR 33(4). Resulović provides no analysis to show that her limited English proficiency is a “disability” covered by any of such laws.

In sum, Resulović fails to demonstrate any basis for review under RAP 13.4(b).

#### V. CONCLUSION

For the reasons stated above, the Department requests that the Court deny Resulović’s petition for review.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of August, 2008.

ROBERT M. MCKENNA  
Attorney General

*Masako Kanazawa*  
MASAKO KANAZAWA  
WSBA 32703  
Assistant Attorney General  
Attorneys for Respondent

# APPENDIX A

Superior court order

ORIGINAL

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

EMIRA RESULOVIC,

NO. 06-2-07059-3 SEA

Plaintiff,

JUDGMENT

v.

DEPARTMENT OF LABOR AND  
INDUSTRIES,

Defendant.

JUDGMENT SUMMARY (RCW 4.64.030)

1. Judgment Creditor:	State of Washington Department of Labor and Industries
2. Judgment Debtor:	EMIRA RESULOVIC
3. Principal Amount of Judgment:	- 0 -
4. Interest to Date of Judgment:	- 0 -
5. Attorney Fees:	\$200.00
6. Costs:	\$0
7. Other Recovery Amounts:	\$0
8. Principal Judgment Amount shall bear interest at 0% per annum.	
9. Attorney Fees, Costs and Other Recovery Amounts shall bear Interest at 12% per annum.	
10. Attorneys for Judgment Creditor:	James M. Hawk, AAG
11. Attorney for Judgment Debtor:	Ann Pearl Owen

JUDGMENT

EXHIBIT A<sub>1</sub>

ATTORNEY GENERAL OF WASHINGTON  
LABOR & INDUSTRIES DIVISION  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3183

JUDGMENT

This matter was tried by the Court without a jury on September 29, 2006, the Honorable Douglass North presiding. The Plaintiff, Emira Resulovic, <sup>did not appear</sup> appeared through her attorney of record, Ann Pearl Owen. <sup>having filed her opposition in writing D.A.M.</sup> The Defendant, the Department of Labor and Industries of the State of Washington, appeared through its attorney of record, James M. Hawk, Assistant Attorney General.

The Court reviewed the Certified Appeal Board Record, considered the pleadings filed in the appeal from a Decision and Order of the Board of Industrial Insurance Appeals, and heard the oral argument of the parties' counsel. The Court at this time also makes and enters Findings of Fact and Conclusions of Law that are attached. The Court enters its judgment in favor of the Department, and therefore affirms the decision of the Board that dismisses Claimant's appeals below. The Court's revisions to the Decision and Order are explicitly identified in the Findings of Fact and Conclusions of Law entered herewith.

Consistent with its Findings of Fact and Conclusions of Law, the Court enters final judgment in this matter as follows:

1. The February 6, 2006 Decision and Order of the Board of Industrial Insurance Appeals, which dismissed Claimant's appeals from Department orders dated February 20, 2004, and April 2, 2001, is affirmed. Based upon the untimely filing of the appeals, the Board did not have jurisdiction over the subject matter of the separate appeals.

2. Plaintiff is not entitled to any equitable relief from the consequences of her failure to timely appeal from her receipt of the Department orders dated February 20, 2004, and April 2, 2001.

3. Plaintiff is not entitled to any relief based upon any due process or equal protection rights and protections that Plaintiff possesses under the Washington State or United States Constitutions. Plaintiff was not entitled to receive any Department order written in any

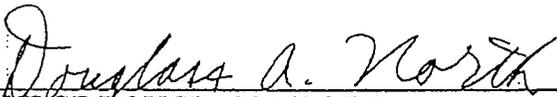
1 language other than English under application of any Federal Executive Order or Federal  
2 statute.

3 4. Plaintiff was not entitled under Title 51 RCW, the Industrial Insurance Act, or other  
4 Washington statute to any additional interpreter services than those provided by the Board of  
5 Industrial Insurance Appeals, which are evident in the Certified Appeal Board Record.  
6 Plaintiff is not entitled to any compensation from the Defendant-Department for any interpreter  
7 services expenses she may have incurred in relation to any aspect of her claim or appeals.

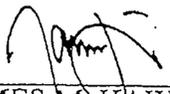
8 5. The Defendant is awarded, and the Plaintiff is ordered to pay, a statutory attorney  
9 fee of \$200.00.

10 6. The Defendant is awarded interest from the date of entry of this judgment as  
11 provided by RCW 4.56.110.

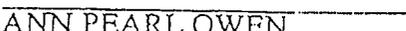
12  
13 DATED this 5th day of February, 2007.

14  
15   
16 JUDGE DOUGLASS NORTH

17 Presented by:  
18 ROB MCKENNA  
19 Attorney General

20   
21 JAMES M. HAWK  
22 Assistant Attorney General  
23 WSBA No. 19287

24 Copy received, approved as to form;  
25 Notice of presentation waived

26   
ANN PEARL OWEN  
Attorney for Plaintiff  
WSBA No. 9033

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

EMIRA RESULOVIC,

Plaintiff,

v.

DEPARTMENT OF LABOR AND  
INDUSTRIES,

Defendant.

NO. 06-2-07059-3 SEA

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This matter came on regularly before the Honorable Douglass North in open court on September 29, 2006. The Plaintiff, Emira Resulovic, *did not appear D.A.N.* appeared through her counsel, Ann Pearl Owen, *having filed her opposition in writing D.A.N.* the Defendant, Department of Labor and Industries (Department), appeared through its counsel, Rob McKenna, Attorney General, per James M. Hawk, Assistant Attorney General. The Court, having reviewed the records and files herein, including the Certified Appeal Board Record and briefs submitted by counsel, and having heard argument of counsel, therefore, being fully informed, makes the following:

FINDINGS OF FACT

1. Hearings were held at the Board of Industrial Insurance Appeals (Board) on August 17, 2005, and September 7, 2005, in Seattle. An interpreter was present on both dates to translate for Claimant, who was present.
2. Thereafter an Industrial Appeals Judge issued a Proposed Decision and Order on December 1, 2005. Claimant filed with the Board a timely Petition for Review from the Proposed Decision and Order. By Order dated January 3, 2006, the Board granted Claimant's Petition for Review. On February 6, 2006, the Board, per its Chairperson

and Member Dickinson, having made "a careful review of the entire record," issued a Decision and Order with Findings of Fact and Conclusions of Law, as required. Plaintiff then timely appealed the Board's February 6, 2006 order to this Court (RCW 51.52.110). In the Decision and Order, the Board expressly declined to consider the "questions of constitutional law" raised by Claimant (Certified Appeal Board Record at page 3).

3. The Board's Finding of Fact Nos. 1, 2, 3, 5, and 6 are correct and should be affirmed. The Court adopts those findings.

4. The Board's Finding of Fact 4 is affirmed and adopted with the last sentence stricken. The Court finds, then, that

**Emira Resulovic did not seek translation of the February 20, 2004 Department order from English to Bosnian/Serbo-Croatian. Emira Resulovic did not seek translation of the April 2, 2001 Department order from English to Bosnian/Serbo-Croatian.**

5. Plaintiff was not provided interpreter services by the Department or compensated or reimbursed by the Department for any interpreter services she may have received at any time related to her considering whether to file the appeals at issue, or for any events subsequent to her filing the appeals. The Board, under its rules and procedures, made arrangements for an appropriate interpreter to be present to assist Plaintiff with translation during the complete hearing proceedings on August 17 and September 7, 2005.

Based upon the foregoing Findings of Fact, the Court now makes the following

### CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties to, and the subject matter of, this appeal. This Court does have jurisdiction to consider all of Plaintiff's legal arguments, including those constitutional law arguments that were not considered by the Board.

2. Plaintiff is not entitled to any equitable relief from the consequences of her failure to timely appeal from her receipt of the Department orders dated February 20, 2004, and April 2, 2001.

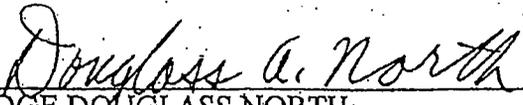
3. This Court adopts as its Conclusions of Law, the Conclusions of Law Nos. 1, 2, 3, and 4 of the Decision and Order of the Board of Industrial Insurance Appeals, dated February 6, 2006.

4. Plaintiff received appropriate interpreter services to effectuate the purposes of Title 51 RCW; the interpreter services received by Plaintiff were in compliance with applicable laws.

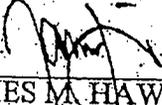
5. Plaintiff suffered no deprivation of any due process or equal protection right or guarantee under the State or United States Constitutions during any event or proceeding below, as presented in the Board certified record.

6. The Board's decision to dismiss Claimant's appeals (Conclusion of Law No. 5) is correct and should be affirmed.

DATED this 5th day of February 2007.

  
\_\_\_\_\_  
JUDGE DOUGLASS NORTH

Presented by:  
ROB MCKENNA  
Attorney General

  
\_\_\_\_\_  
JAMES M. HAWK  
Assistant Attorney General  
WSBA No. 19287

Copy received, approved as to form;  
Notice of presentation waived

\_\_\_\_\_  
ANN PEARL OWEN  
Attorney for Plaintiff  
WSBA No. 9033

# APPENDIX B

## Board order

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON

1 IN RE: EMIRA RESULOVIC ) DOCKET NOS. 05 10573 & 05 10574  
2 )  
3 CLAIM NO. X-304647 ) DECISION AND ORDER

4 APPEARANCES:

5 Claimant, Emira Resulovic, by  
6 Law Office of Ann Pearl Owen, P.S., per  
7 Ann Pearl Owen

8 Employer, Celebrate Express, Inc.,  
9 None

10 Department of Labor and Industries, by  
11 The Office of the Attorney General, per  
12 James M. Hawk, Assistant

13 The claimant, Emira Resulovic, filed two appeals with the Board of Industrial Insurance  
14 Appeals on January 19, 2005, from orders of the Department of Labor and Industries dated  
15 February 20, 2004 and April 2, 2001.

16 **Docket No. 05 10573:** In the order dated February 20, 2004, the Department closed the  
17 claim with an award for permanent partial disability equal to Category 5, permanent dorso-lumbar  
18 and/or lumbosacral impairments. The claimant's appeal from the Department order of February 20,  
19 2004, is **DISMISSED**.

20 **Docket No. 05 10574:** In the order dated April 2, 2001, the Department established the  
21 claimant's rate of time loss compensation benefits. The claimant's appeal from the Department  
22 order of April 2, 2001, is **DISMISSED**.

23 **DECISION**

24 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
25 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order  
26 issued on December 1, 2005, in which the industrial appeals judge dismissed the orders of the  
27 Department dated February 20, 2004 and April 2, 2001.

28 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
29 no prejudicial error was committed. The rulings are affirmed.

30 It is undisputed that Emira Resulovic's two appeals were not filed with the Board within  
31 60 days of her physical receipt of the appealed orders. We reject her contention that the work  
32

1 "communicated", as used in RCW 51.52.060, requires that she receive information contained in  
2 Department orders in her native language, Bosnian/Serbo-Croatian. The word 'communicated'  
3 contained in RCW 51.52.060 requires only that a copy of the order be received by the worker.  
4 Since appellant's notice of appeal was not filed within 60 days of the receipt of the closing order,  
5 the notice of appeal was not timely. *Rodriguez v. Department of Labor & Indus.*, 85 Wn.2d 949,  
6 953 (1975).

7 Ms. Resulovic has proven that she is limited in her ability to read and understand English. In  
8 her Petition for Review, she contends that this language barrier resulted in a lack of procedural due  
9 process and civil rights violations that entitle her to seek relief at the Board. We cannot reach these  
10 issues because questions of constitutional law are outside of this Board's jurisdiction, even where  
11 the issues arise in a workers' compensation context. *In re James Gersema*, BIIA Dec., 01 20636  
12 (2003).

13 We agree with our industrial appeals judge's conclusion that Ms. Resulovic's appeals are not  
14 within our subject matter jurisdiction because they were not timely filed. We further agree that there  
15 exists no equitable basis for hearing and deciding these appeals. We have granted review solely to  
16 address several unresolved evidentiary issues involving Exhibit Nos. 1, 4 and 7.

17 Exhibit No. 1 is the Department's First Request for Admissions, including "Responses and  
18 Objection Thereto" by Ms. Resulovic. Included in the exhibit are a series of documents that the  
19 Department alleges were filled in, written, and/or signed by Ms. Resulovic. The exhibit was offered  
20 by claimant's attorney during the August 17, 2005 hearing. The Department objected to the  
21 inclusion of the Request for Admissions document in the exhibit. The judge admitted the entire  
22 exhibit, including the Request for Admissions and Responses and Objection Thereto, for the stated  
23 purpose of clarifying the attachments.

24 A substitute hearing judge presided over the hearing of September 7, 2005. During this  
25 hearing, the Department extensively questioned Ms. Resulovic about documents contained in  
26 Exhibit No. 4, which consists of nearly all of the documents included in Exhibit No. 1. The  
27 Department offered Exhibit No. 4 into evidence. Ms. Resulovic's attorney objected to both the  
28 exhibit and the testimony as cumulative.

29 The Department also offered into evidence Exhibit No. 7, a document allegedly written  
30 and/or signed by Ms. Resulovic. Because Ms. Resulovic had testified that she did not recognize  
31 the signature or any of the handwriting on Exhibit No. 7, her attorney objected on the grounds of  
32 lack of foundation.

1 At the time of the September 7, 2005 hearing, the August 17, 2005 transcript was not yet in  
2 the file, and the record did not indicate which exhibits were previously admitted. For that reason,  
3 the judge presiding over the hearing properly deferred these evidentiary rulings to the assigned  
4 hearing judge. He made a record of the outstanding evidentiary issues and indicated that the  
5 assigned judge would review the transcript and further address the issues in her Proposed Decision  
6 and Order. Because she did not do so, we now rule on the admission of Exhibit Nos. 1, 4, and 7.

7 We agree with Ms. Resulovic that the admission of both Exhibit Nos. 1 and 4 would be  
8 cumulative. But we agree with the Department that the admission of Exhibit No. 1, which includes  
9 the Request for Admissions and Responses, adds confusion to the record. We find it most clear  
10 and probative to admit Exhibit No. 4; because the documents contained therein are put in context  
11 by the Assistant Attorney General's examination of Ms. Resulovic. Exhibit No. 1 is hereby rejected.  
12 In addition, Exhibit No. 7 is rejected due to lack of foundation.

13 After consideration of the Proposed Decision and Order, Ms. Resulovic's Petition for Review  
14 filed thereto, the Department's Response to Claimant's Petition for Review, the Claimant's  
15 Response to the Department's Response, and a careful review of the entire record before us, we  
16 make the following:

#### 17 FINDINGS OF FACT

- 18 1. On February 7, 2000, the Department received an application for  
19 benefits in which the claimant, Emira Resulovic, alleged that she  
20 sustained an industrial injury on November 23, 1999, while in the course  
21 of her employment with Celebrate Express, Inc. On April 2, 2001, the  
22 Department entered an order in which it set the claimant's rate of time  
23 loss compensation. On February 20, 2004, the Department closed the  
24 claim with a permanent partial disability award for Category 5 permanent  
25 dorso-lumbar and/or lumbosacral impairments. On January 19, 2005,  
the Board received the claimant's appeals from the orders of  
February 20, 2004 and April 2, 2001. These appeals were assigned  
Docket Nos. 05 10573 and 05 10574, respectively.
- 26 2. The orders of February 20, 2004 and April 2, 2001, were directed to  
27 Ms. Resulovic at her last known address as shown by the records of the  
28 Department. Each order contained black-faced ten-point type on the  
29 same side as the decision advising Ms. Resulovic of the Department's  
30 decision. Each order was timely communicated to Ms. Resulovic by  
U.S. mail in due course and in the English language, only.
- 31 3. At all relevant times, Bosnian/Serbo-Croatian was the only language in  
32 which either Ms. Resulovic or her husband was literate.  
Bosnian/Serbo-Croatian was the only language spoken in their home.

1 4 Emira Resulovic did not seek translation of the February 20, 2004  
2 Department order from English to Bosnian/Serbo-Croatian.  
3 Emira Resulovic did not seek translation of the April 2, 2001 Department  
4 order from English to Bosnian/Serbo-Croatian. ~~She did not file an~~  
5 ~~appeal within sixty days~~ after of the time her doctor told her that his bills  
6 had not been paid and that she had to appeal any Department order she  
7 thought was incorrect.

8 5. Ms. Resulovic did not file a protest or appeal within sixty days of the  
9 communication of the February 20, 2004 Department order nor did she  
10 file a protest or appeal within sixty days of the communication of the  
11 April 2, 2001 order.

12 6. The claimant did not exercise diligence in perfecting and prosecuting her  
13 claim for compensation.

#### 14 CONCLUSIONS OF LAW

15 1. The Board has jurisdiction over the parties to these appeals.

16 2. Ms. Resulovic's appeals in Docket Nos. 05 10573 and 05 10574, were  
17 not timely filed pursuant to RCW 51.52.060.

18 3. There exists no basis for equitable relief at the Board from these  
19 untimely filings.

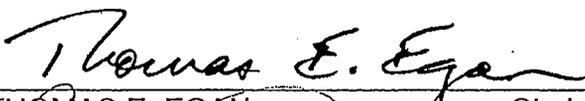
20 4. The Board does not have jurisdiction over the subject matter of these  
21 appeals.

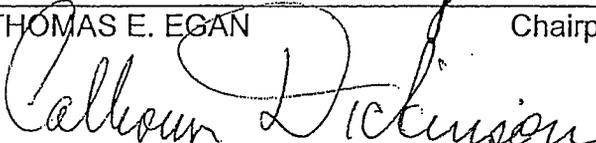
22 5. The appeals in Docket Nos. 05 10573 and 05 10574, are dismissed.

23 It is so **ORDERED**.

24 Dated this 6th day of February, 2006.

25 BOARD OF INDUSTRIAL INSURANCE APPEALS

26   
27 THOMAS E. EGAN Chairperson

28   
29 CALHOUN DICKINSON Member  
30

## APPENDIX C

Department wage and closing orders

STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES  
DIVISION OF INDUSTRIAL INSURANCE  
PO BOX 44291  
OLYMPIA, WA 98504-4291

MAILING DATE 04/02/2001  
CLAIM NUMBER X304647  
INJURY DATE 11/23/1999  
CLAIMANT RESULOVIC  
EMIRA  
EMPLOYER BIRTHDAY EXPRES  
UBI NUMBER 601 553 086  
ACCOUNT ID 871, 733-00  
RISK CLASS 6407  
SERVICE LOC Seattle

EMIRA RESULOVIC  
3434 S 144TH ST APT 324  
SEATTLE WA 98168-4063

NOTICE OF DECISION

The worker's time-loss compensation rate is \$778.67 per month. The worker's total compensation rate includes all cost-of-living increases the department has allowed since the date of injury.

The worker's total time-loss compensation rates (above) were calculated by taking into account the following:

Earnings based on: \$8.25 per hour, 10 hours per day, 3 days per week.

Worker's total gross wages: at the time of injury were set at \$1072.50 per month.

Worker's employment pattern: regularly employed.

Worker's Martial Status: married with 1 dependents.

Supervisor of Industrial Insurance  
By Linda J. Canton  
Claims Manager  
(360) 902-4346

-----  
	YOUR LEGAL RIGHTS IF YOU DISAGREE WITH THIS ORDER: THIS ORDER	
	BECOMES FINAL 60 DAYS FROM THE DATE IT IS COMMUNICATED TO YOU	
	UNLESS YOU DO ONE OF THE FOLLOWING. YOU CAN EITHER FILE A	
	WRITTEN REQUEST FOR RECONSIDERATION WITH THE DEPARTMENT OR FILE	
	A WRITTEN APPEAL WITH THE BOARD OF INDUSTRIAL INSURANCE APPEALS.	
	IF YOU FILE FOR RECONSIDERATION, YOU SHOULD INCLUDE THE REASONS	
	YOU BELIEVE THIS DECISION IS WRONG AND SEND IT TO: DEPARTMENT OF	
	LABOR AND INDUSTRIES, PO BOX 44291, OLYMPIA, WA 98504-4291.	
	WE WILL REVIEW YOUR REQUEST AND ISSUE A NEW ORDER. IF YOU FILE	
	AN APPEAL, SEND IT TO: BOARD OF INDUSTRIAL INSURANCE APPEALS,	
	PO BOX 42401, OLYMPIA WA 98504-2401.	
-----

STATE OF WASHINGTON  
DEPARTMENT OF LABOR AND INDUSTRIES  
DIVISION OF INDUSTRIAL INSURANCE  
PO BOX 44291  
OLYMPIA, WA 98504-4291

MAILING DATE 04/02/2001  
CLAIM NUMBER X304647  
INJURY DATE 11/23/1999  
CLAIMANT RESULOVIC  
EMIRA  
EMPLOYER BIRTHDAY EXPRESS  
UBI NUMBER 601 553 086  
ACCOUNT ID 871, 733-00  
RISK CLASS 6407  
SERVICE LOC Seattle

MAILED TO: CLAIMANT - EMIRA RESULOVIC  
3434 S 144TH ST APT 324, SEATTLE WA 98168-4063  
EMPLOYER - BIRTHDAY EXPRESS INC  
11220 N 120TH BLDG, KIRKLAND WA 98033  
PROVIDER - LEVITZ INESA MD  
137 SW 154TH ST, BURIEEN WA 98166-2315

-----  
	YOUR LEGAL RIGHTS IF YOU DISAGREE WITH THIS ORDER: THIS ORDER	
	BECOMES FINAL 60 DAYS FROM THE DATE IT IS COMMUNICATED TO YOU	
	UNLESS YOU DO ONE OF THE FOLLOWING. YOU CAN EITHER FILE A	
	WRITTEN REQUEST FOR RECONSIDERATION WITH THE DEPARTMENT OR FILE	
	A WRITTEN APPEAL WITH THE BOARD OF INDUSTRIAL INSURANCE APPEALS.	
	IF YOU FILE FOR RECONSIDERATION, YOU SHOULD INCLUDE THE REASONS	
	YOU BELIEVE THIS DECISION IS WRONG AND SEND IT TO: DEPARTMENT OF	
	LABOR AND INDUSTRIES, PO BOX 44291, OLYMPIA, WA 98504-4291.	
	WE WILL REVIEW YOUR REQUEST AND ISSUE A NEW ORDER. IF YOU FILE	
	AN APPEAL, SEND IT TO: BOARD OF INDUSTRIAL INSURANCE APPEALS,	
	PO BOX 42401, OLYMPIA WA 98504-2401.	
-----

EMPL: BIRTHDAY EXPRESS INC  
11220 120TH AVE NE  
KIRKLAND WA 98033

State of Washington  
Department of Labor and Industries  
Division of Industrial Insurance  
Olympia, WA 98504-4291

PROV: SCHIFF STAN R MD  
STE 380  
10330 MERIDIAN AVE N  
SEATTLE WA 98133-9463

Claim Number : X304647  
Work Position ID: UN10  
Mailing Date : 02/20/04  
Injury Date : 11/23/99  
Service Location: SEATTLE  
UBI # : 601-553-086  
Account ID : 871,733-00  
Risk Class : 6407

CLMT: EMIRA RESULOVIC  
3434 S 144TH ST APT 210  
SEATTLE WA 98168-4062

### PAYMENT ORDER

THE CLAIMANT'S PERMANENT PARTIAL DISABILITY AWARD IS FOR:

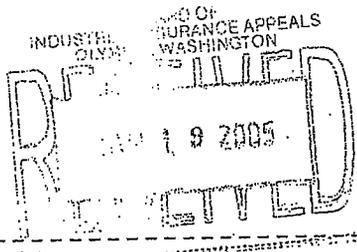
CATEGORY 5 PERMANENT DORSO-LUMBAR AND/OR LUMBOSACRAL IMPAIRMENTS.

THE CLAIMANT'S TOTAL AWARD FOR PERMANENT PARTIAL DISABILITY IS  
\$ 34316.49

TOTAL BENEFITS IN THE AMOUNT OF	\$ 34316.49
LESS DEDUCTIONS:	
BALANCE OF UNPAID PPD	\$ 26100.99-
NET ENTITLEMENT	\$ 8215.50

THIS CLAIM IS CLOSED.

THE WORKER'S INITIAL CASH AWARD IS: \$ 8215.50  
THE BALANCE OF PERMANENT PARTIAL DISABILITY OF \$ 26100.99 TO BE PAID  
AT THE RATE OF \$ 829.59 PER MONTH, PLUS 8% INTEREST PER ANNUM ON THE  
UNPAID BALANCE. SEE ACCOMPANYING SCHEDULE OF PAYMENTS.



Name : JANET GRIGSBY  
Title: CLAIMS MANAGER  
Phone: 360-902-4533

YOUR LEGAL RIGHTS IF YOU DISAGREE WITH THIS ORDER:  
THIS ORDER BECOMES FINAL 60 DAYS FROM THE DATE IT IS COMMUNICATED TO  
YOU UNLESS YOU DO ONE OF THE FOLLOWING. YOU CAN EITHER FILE A WRITTEN  
REQUEST FOR RECONSIDERATION WITH THE DEPARTMENT OR FILE A WRITTEN  
APPEAL WITH THE BOARD OF INDUSTRIAL INSURANCE APPEALS. IF YOU FILE FOR  
RECONSIDERATION, YOU SHOULD INCLUDE THE REASONS YOU BELIEVE THIS  
DECISION IS WRONG AND SEND IT TO: DEPARTMENT OF LABOR AND INDUSTRIES,  
PO BOX 44291, OLYMPIA, WA 98504-4291. WE WILL REVIEW YOUR REQUEST AND  
ISSUE A NEW ORDER. IF YOU FILE AN APPEAL, SEND IT TO: BOARD OF  
INDUSTRIAL INSURANCE APPEALS, PO BOX 42401, OLYMPIA, WA. 98504-2401.

# APPENDIX D

## Management Update



# Management Update

Insurance Services: Claims Administration and Self-Insurance

## Interpreter and Translation Services to Workers

Effective Date  
08/13/2007  
REVISED 08/17/07

Topic  
Interpreter and  
Translation Services  
To Workers

Issuing Authority  
Sandy Dziedzic  
Cheri Ward  
Jean Vanek

The department or self-insured employer (SIE) (including the SIE third party administrator) will provide an interpreter to communicate with an unrepresented worker who has limited English-speaking proficiency or similarly limiting sensory impairment.

*NOTE:* Where a worker with limited English proficiency is represented by an attorney, the department or SIE may communicate through the attorney in English. It is the responsibility of the attorney representative to communicate with his or her client worker. If the represented worker with limited English proficiency contacts the department or SIE by phone or in person without counsel, an interpreter is authorized for the oral communications. The department or SIE is not required to provide interpreters for communications in relation to any proceedings at the BIIA or Court.

When the worker requests interpreter services, the department or SIE may verify whether the worker needs assistance in translation. Workers can report limited English proficiency status on the Report of Accident, SIF2 form, or by notifying the department or SIE by phone or letter.

Limited English proficiency is defined as limited ability or inability to speak, read, or write English well enough to understand and communicate effectively. This includes most people whose primary language is not English. Services should also be provided to workers similarly impacted by hearing, sight, or speech limitations.

Interpreters are authorized when a limited English proficiency worker needs to communicate with the department or SIE, attend medical and vocational appointments, and at independent medical examinations (IME). Authorized interpreters must be provided by the department or SIE for IMEs.

Interpreter services also include written translation of necessary correspondence to and from the unrepresented limited English proficiency worker. Copies of both the original and translated versions of the document should be maintained in the claim file.

**Resources**

**AT&T Language Line Instructions**

[http://ohr.inside.lni.wa.gov/webhome/resource\\_docs/InterpreterService.htm](http://ohr.inside.lni.wa.gov/webhome/resource_docs/InterpreterService.htm)

**Online Reference System (OLRS)**

<http://olrs.apps-inside.lni.wa.gov/>

Claims Training Bulletin: Translation Process

Management Memo: Spanish Translations

Training Handout: Services for the Hearing & Speech Impaired

WAC 296-20-2025

Contact Claims Training if you have any questions.

*NOTE: This is an interim policy change. This issue has been referred to the policy committee to be included in upcoming revisions.*