

NO. 73744-9-I

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

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JAMES AMPHLETT,

Appellant,

v.

DEPARTMENT OF LABOR AND INDUSTRIES,

Respondent.

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**BRIEF OF RESPONDENT  
DEPARTMENT OF LABOR AND INDUSTRIES**

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ORIGINAL

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## I. INTRODUCTION

James Amphlett has experienced significant depression and persistent anxiety for many years, and he has taken medication for these conditions since 2005. The trial court correctly concluded that his 2010 shoulder injury at work did not cause or aggravate his pre-existing adjustment disorder, with mixed anxiety and depressed mood. Substantial evidence supports the court's finding that, from a mental health perspective, Amphlett reacted to the circumstances of his injury and to his new and continuing life challenges to the same extent after his work injury as before, which supports the trial court's conclusion of no causation or aggravation. This Court should decline Amphlett's request to re-weigh the evidence in his favor.

Amphlett's many life stressors before his 2010 work injury included a contentious divorce, business problems, and financial problems. Stressors after his work injury included a bankruptcy and an allegation that he stole \$84,000 from his daughter's retirement account.

Dr. David Gamrath, who treated Amphlett's mental health condition for many years, testified that Amphlett would have still needed treatment for mental health conditions even if he was not injured at work in 2010. He linked the waxing and waning of Amphlett's mental health condition to Amphlett's own internal biochemical situation. Given this

medical testimony and the voluminous evidence of stressors in Amphlett's life, both before and after the injury, substantial evidence supports the trial court's finding of no causation or aggravation. Amphlett is thus not entitled to judgment as a matter of law. This Court should affirm.

## II. ISSUE

1. Did the trial court abuse its discretion in denying judgment as a matter of law to Amphlett where there was voluminous evidence of stressors in his life before and after his work injury, where a medical witness testified that he would have needed treatment for his anxiety and depression even if he had not injured his shoulder at work, and where a medical witness testified that his mental health symptoms can wax and wane based on his internal biochemical situation?

## III. STATEMENT OF FACTS

### A. **Since 2005, Amphlett Has Suffered From Anxiety and Significant Depression Due to Numerous Life Stressors, Including Divorce and Business and Financial Problems**

For years before Amphlett injured his left shoulder at work in 2010, he experienced anxiety and depression. *See* CP 87, 189-90, 197-98, 295-96. In August 2005, Dr. David Gamrath, his family physician, prescribed the antidepressant Wellbutrin for "mood disorder with significant depression." CP 90, 246, 279. Three months later, he began prescribing Zoloft for anxiety and depression. CP 244, 247-48, 283. In early 2006, he prescribed Seroquel, an anti-psychotic and mood stabilizer used to treat bipolar disorder, anxiety, and depression. CP 170, 248-49, 282.

Dr. Gamrath saw Amphlett about once a month from 2005 through 2010. CP 243-44. Dr. Gamrath believed that Amphlett probably suffered from mood disorder with significant depression during that entire time, and that he required medication to treat his depression. CP 246. Dr. Gamrath also believed that Amphlett suffered from a persistent anxiety condition during that time. CP 243-44, 247-48.

At the administrative hearing in this case, Amphlett agreed that he had been under “an overwhelming amount of stress” between 2005 and 2012, the date of the hearing. CP 134. Numerous stressors in his life contributed to anxiety and depression and his need for psychiatric medication from 2005 onwards. CP 192-93.

In 2006, Amphlett was in marriage counseling. CP 103. In 2007, he reported increasing problems with his marriage that caused him anxiety. *See* CP 113, 283. In May 2008, he was seeing a marriage counselor and was taking 400 milligrams of Seroquel, the highest dose that Dr. Gamrath has ever prescribed to him. CP 250-51, 280. He eventually separated from his wife and teenage daughter, an event that produced anxiety. CP 86, 113, 283. The involvement of a child in the separation contributed to the complexity of his mental health issues. CP 283.

In January 2010, Amphlett filed for divorce. CP 113. His wife moved out in March 2010. CP 115. One month later, he moved in with his parents, an event he found demoralizing. CP 115, 286. He experienced worsening anxiety at that time. CP 115, 286. The divorce involved a legal proceeding, and Amphlett characterized the divorce as “ugly.” CP 113, 141. He believed that the legal proceedings involving the divorce were “an issue” in his need for mental health medications. CP 90-91, 115; *see also* CP 205. He told Dr. Gamrath in June 2010 that he was struggling emotionally with the effect of his divorce. CP 288. He testified that in the weeks leading up to the October 2010 work injury, he was experiencing anxiety and stress related to these legal proceedings. CP 120; *see also* CP 206.

Divorce or separation is a stressful event that can cause an adjustment disorder by itself. CP 205. The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) explicitly identifies divorce as a stressor that can cause an adjustment disorder. CP 205-06. Dr. Gamrath testified that he took Amphlett’s unpleasant divorce into consideration when he prescribed medications in the early and middle part of 2010. CP 286; *see also* CP 261-62.

In addition to his marriage, Amphlett’s work life added an additional stressor to his precarious mental health situation. In August

2005, he and his wife started Kimaco, a crane company. CP 107, 110. Amphlett also co-owned Evergreen Crane, which leased a mobile crane (or boom truck) to contractors. CP 118, 136. Amphlett also operated A&P Productions, a T-shirt screen printing business. CP 118-19.

Beginning in 2005, Amphlett told Dr. Gamrath that he was experiencing symptoms of stress, anxiety, and depression related to Kimaco. CP 107-08. Amphlett agreed that these symptoms probably continued until the company dissolved sometime in 2010. CP 108-09. In mid-2007, Amphlett told Dr. Gamrath he was under a lot of stress because of “a nasty battle with the unions.” CP 106, 112. In 2009, he reported anxiety to Dr. Gamrath because of the responsibility he had for the company and its employees. CP 114, 203. The company employed up to 18 people. CP 107. The dissolution of his marriage also caused business problems since he and his wife were involved in the company together. CP 286.

Amphlett’s financial situation was an additional stressor. In May 2006, he told Dr. Gamrath about difficult financial matters. CP 251. In the years before the 2010 injury, Amphlett mentioned that financial matters produced his anxiety symptoms. CP 251. Over the years, he also discussed the loss of his business, bankruptcy, and financial stress relating to divorce and other phenomena with Dr. Gamrath. CP 252. Dr. Gamrath believed

that financial stressors worsened Amphlett's depression and affected his anxiety. CP 252. In July 2010, Amphlett was concerned about the finances of one of his businesses. CP 118, 288. In the six months leading up to the October 2010 work injury, Amphlett was experiencing business problems. CP 91.

Dr. Gamrath recalled "being concerned about" suicidal thoughts that Amphlett had reported. CP 260-61. Dr. Gamrath remembered that he was "specifically concerned about him harming himself." CP 261.

**B. Amphlett Injured His Left Shoulder at Work in 2010, and He Experienced Other Life Stressors After His Work Injury**

In October 2010, while working for Garner Construction, Inc., Amphlett slipped at work and injured his left shoulder. CP 89, 92-93, 169. He filed a workers' compensation claim, which the Department allowed. *See* CP 8, 359. He had two shoulder surgeries under the claim, one in March 2011, and the other in November 2011. CP 94, 98-99. The Department paid time loss benefits to Amphlett when he was unable to work from the injury. *See* CP 6, 96-97, 146-47.

After the claim was allowed, other stressors contributed to Amphlett's anxiety and depression. In November 2010, he filed for bankruptcy. CP 94. In early 2011, Garner Construction asked the Department to investigate Amphlett to determine whether he earned

money renting out his boom truck while collecting time loss benefits. CP 151, 156-57. Amphlett testified that he experienced depression and anxiety as a result of the Department's investigation. CP 127.

In the months after the work injury, Amphlett took reduced dosages of medication. In January 2011, Dr. Gamrath reduced his Seroquel dose from 150 milligrams to 100 milligrams. CP 252-53. In April 2011, Seroquel was the only medication he was taking for his mental health symptoms, and he continued to take 100 milligrams. CP 253.

In December 2011, he was accused of stealing \$84,000 from his daughter's IRA. CP 123, 215, 218. Amphlett testified that all the money was ultimately located where it was supposed to be. CP 140. But the accusation caused strife between him and his daughter. CP 218.

**C. Dr. David Gamrath Testified that Amphlett Would Have Needed Mental Health Treatment Even If the 2010 Work Injury Had Not Occurred**

Dr. Gamrath diagnosed Amphlett with anxiety and depression. CP 242. Anxiety is "a psychiatric process that everyone experiences to some degree" that requires treatment when it becomes disabling. CP 245. Dr. Gamrath did not prescribe medication for Amphlett's anxiety until it had a disabling component in his life. CP 245.

Dr. Gamrath agreed that Amphlett would still have needed mental health treatment if the October 2010 work injury had not occurred. CP

304-05. In his opinion, Amphlett had an underlying anxiety disorder that could be aggravated with changes in his situation. CP 243. Thus, from 2005 to 2007, he believed that “financial and personal and occupational stressors” aggravated his underlying anxiety condition. CP 243, 252.

In Dr. Gamrath’s view, Amphlett was a person who sometimes had problems dealing with big changes in his life. CP 279. Dr. Gamrath prescribed different medications for him to try to get a balance. CP 279.

Dr. Gamrath believed that Amphlett’s condition would wax and wane based on his own internal biochemical situation:

Q: So he is going to wax and wane, depending on how things are going in his life?

A: Or other things, as well. Maybe not necessarily how things are going but could also be just his own internal biochemical situation.

CP 280. Dr. Gamrath believed that, in the years leading up to fall 2012, Amphlett sometimes coped well and other times coped less well. CP 252.

Dr. Gamrath testified that the shoulder injury at work in 2010 led to “continuing treatment and adjustment in his treatment plan for his emotional injuries.” CP 293. He testified that the 2010 work injury added on to his pre-existing mental health problems. CP 304. He testified that the injury played a part in the mental problems that he saw Amphlett suffering from after the injury. CP 295. He believed that the work injury and the

physical residuals from the two shoulder surgeries were “a part of the cause” for Amphlett’s need for treatment for his mental conditions. CP 303.

**D. Dr. Timothy Cahn Believed That the 2010 Work Injury Was A Cause of the Psychological Treatment He Provided to Amphlett**

In September 2011, Dr. Timothy Cahn, a psychologist, evaluated Amphlett, and he treated Amphlett afterwards through counseling sessions. CP 165, 171-72, 184. Dr. Cahn noted that, at the time of initial evaluation, Amphlett had “severe stressors” from multiple sources, including social, occupational, housing, and economic stressors. CP 173.

At the initial evaluation, Dr. Cahn diagnosed Amphlett with adjustment disorder with mixed anxiety and depressed mood, and he noted that it appeared to be “chronic” at that point. CP 172, 197. This diagnosis should be made under the DSM-IV “when the predominant manifestation is a combination of depression and anxiety.” *See* American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 680 (4th rev. ed. 2000). A chronic adjustment disorder is one that lasts more than 6 months. CP 172.

Dr. Cahn testified that a number of factors could contribute to an adjustment disorder, and that there were “a number of other factors going on in this life that could contribute to some adjustment symptoms.” CP

175. Dr. Cahn agreed that marital, family, and job stressors were reasons Amphlett provided about why he needed medication. CP 193. He also noted that Amphlett was dealing with a bankruptcy, a divorce, and physical impairment from his 2010 work injury and previous injuries. CP 182.

Dr. Cahn testified that the October 2010 injury and the follow-up to that injury played a part in his need for clinical psychological treatment. CP 178. He testified that the October 2010 work injury was a cause of Amphlett's need for psychological treatment. CP 182. He did not know if Amphlett's adjustment disorder pre-existed the work injury, but believed that any pre-existing adjustment disorder was aggravated by the work injury and subsequent events. CP 179-80.

**E. The Department Issued an Order Denying Responsibility for Amphlett's Adjustment Disorder With Mixed Anxiety and Depression**

In January 2012, the Department issued an order denying responsibility for bipolar disorder and adjustment disorder with mixed anxiety and depression. *See* CP 5, 84. In that order, the Department allowed treatment for these conditions on a temporary basis because these conditions were retarding the worker's recovery from the industrial injury. *See* CP 5.

Amphlett appealed the order to the Board of Industrial Insurance Appeals. *See* CP 5. He now agrees that the Department is not responsible for bipolar disorder. App. Br. 4 n.1; *see also* CP 174, 194, 206.

**F. The Board and Superior Court Determined That the Department Order Was Correct**

The Board concluded that the October 2010 work injury did not cause or aggravate Amphlett's pre-existing mental health conditions of bipolar disorder or adjustment disorder with mixed anxiety and depressed mood. CP 8. The Board found that Amphlett "reacted to the circumstances of his injury and claim, and to other continuing and new life stressors, in the same manner and to the same extent after his industrial injury as he did before the industrial injury." CP 8. Its decision noted that, at most, the mental and emotional symptoms that Amphlett experienced after the work injury were "of the same kind and same intensity that he experiences with other stressors." CP 6.

Amphlett appealed to superior court. *See* CP 320-27, 340-42. After a bench trial, the superior court affirmed the Board, likewise finding that the work injury did not aggravate his pre-existing adjustment disorder because he reacted to the work injury and other life stressors the same before and after the injury:

With respect to Plaintiff's preexisting adjustment disorder with mixed anxiety and depressed mood, the record shows

the Plaintiff reacted to the circumstances of his injury and claim, and to other continuing and new life challenges, in the same manner and to the same extent after his industrial injury as he did before. The industrial injury did not cause or aggravate his adjustment disorder, with mixed anxiety and depressed mood.

CP 341. Amphlett moved for reconsideration, arguing he was entitled to judgment as a matter of law. *See* CP 344-47. The trial court denied his motion. CP 348. He now appeals. CP 349-50.

#### IV. STANDARD OF REVIEW

In an appeal from a superior court's decision in an industrial insurance case, the ordinary civil standard of review applies. RCW 51.52.140; *Raum v. City of Bellevue*, 171 Wn. App. 124, 139, 286 P.3d 695 (2012). This Court reviews the decision of the trial court rather than the Board's decision. *See Rogers v. Dep't of Labor & Indus.*, 151 Wn. App. 174, 179-81, 210 P.3d 355 (2009); RCW 51.52.140.<sup>1</sup> This Court limits its review to examination of the record to see whether substantial evidence supports the findings made after the superior court's de novo review, and whether the court's conclusions of law flow from the findings. *Ruse v. Dep't of Labor & Indus.*, 138 Wn.2d 1, 5, 977 P.2d 570 (1999).

Judgment as a matter of law is not appropriate if, after viewing the evidence in the light most favorable to the nonmoving party and drawing

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<sup>1</sup> The Washington Administrative Procedure Act, RCW 34.05, does not apply to workers' compensation cases under RCW Title 51. RCW 34.05.030(2)(a), (b); *see Rogers*, 151 Wn. App. at 180.

all reasonable inferences, substantial evidence exists to sustain a verdict for the nonmoving party. *Schmidt v. Coogan*, 162 Wn.2d 488, 491, 173 P.3d 273 (2007). When undertaking substantial evidence review, the appellate court does not reweigh the evidence or re-balance the competing testimony presented to the fact-finder. *Fox v. Dep't of Ret. Sys.*, 154 Wn. App. 517, 527, 225 P.3d 1018 (2009); *Harrison Mem'l Hosp. v. Gagnon*, 110 Wn. App. 475, 485, 40 P.3d 1221 (2002). Rather, the appellate court views the evidence and all reasonable inferences from the evidence in the light most favorable to the prevailing party. *Zavala v. Twin City Foods*, 185 Wn. App. 838, 859, 343 P.3d 761 (2015); *Gagnon*, 110 Wn. App. at 485. "Where there is substantial evidence, we will not substitute our judgment for that of the trial court even though we might have resolved a factual dispute differently." *Korst v. McMahon*, 136 Wn. App. 202, 206, 148 P.3d 1081 (2006).<sup>2</sup>

Amphlett's assertion that this Court reviews findings of fact de novo is incorrect. App. Br. 8; *Ruse*, 138 Wn.2d at 5. The normal substantial evidence standard applies. *Ruse*, 138 Wn.2d at 5.

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<sup>2</sup> Amphlett does not assign error to the trial court's ruling denying his motion for reconsideration, in which he argued that the trial court should have granted judgment as a matter of law. See App. Br. 2; CP 344-47. But in his brief, he argues that he is entitled to judgment as a matter of law. App. Br. 7-9, 12-15. He also notes in his assignments of error that the trial court erred as a matter of law. App. Br. 2. Although he references the substantial evidence standard of review, it appears that his argument is that the trial court erred in denying his motion for judgment as a matter of law. App. Br. 7-9. Accordingly, the Department will address this argument. In any event, if the court used the substantial evidence standard of review, the same result would follow.

## V. ARGUMENT

### A. **Amphlett Is Not Entitled to Judgment as a Matter of Law Because Substantial Evidence Supports the Finding That He Reacted to the Circumstances of His Work Injury in the Same Manner and to the Same Extent Before and After The Injury**

Viewing the facts in the light most favorable to the Department, as this Court must, a reasonable fact-finder could have found that Amphlett's shoulder injury did not cause or aggravate his long-standing and persistent adjustment disorder with mixed anxiety and depressed mood. Amphlett had been treated with medication for serious depression and anxiety for over five years before his work injury. The superior court considered voluminous testimony from Amphlett, Dr. Cahn, and Dr. Gamrath about the many stressors that pervaded his life both before the injury—including marital problems that led to a contentious divorce as well as business and financial problems—and after the injury, from bankruptcy to a theft allegation. Dr. David Gamrath believed that Amphlett would have needed mental health treatment even if the work injury had never occurred, and he attributed the waxing and waning of Amphlett's mental health conditions to Amphlett's own internal biochemical situation. From this evidence, it was reasonable for the trial court to conclude that the work injury did not cause or aggravate his underlying adjustment disorder.

For a condition or disability to be compensable under the Industrial Insurance Act, the industrial injury must be a proximate cause of the condition or disability. See *Wendt v. Dep't of Labor & Indus.*, 18 Wn. App. 674, 684, 571 P.2d 229 (1977). Proximate cause is determined by application of the “but for” test. *City of Bremerton v. Shreeve*, 55 Wn. App. 334, 340, 777 P.2d 568 (1989). A “proximate cause” is one “without which” the condition or disability complained of would not have occurred. *Wendt*, 18 Wn. App. at 684; 6A *Washington Practice: Washington Pattern Jury Instructions: Civil* 155.06, at 141 (6th ed. 2012). For purposes of coverage, it is sufficient to sustain an injury that aggravates a pre-existing infirmity, including a pre-existing mental health condition. *Longview Fibre Co. v. Weimer*, 95 Wn.2d 583, 589, 628 P.2d 456 (1981); *Jacobson v. Dep't of Labor & Indus.*, 37 Wn.2d 444, 447-48, 224 P.2d 338 (1950).

Substantial evidence supports the trial court’s finding that Amphlett reacted to the circumstances of his work injury, and to other continuing and new life challenges, in the same manner and to the same extent before and after his work injury with regard to his pre-existing adjustment disorder with mixed anxiety and depressed mood. With regard to the pre-existing nature of Amphlett’s adjustment disorder, Dr. Gamrath testified that Amphlett had a mood disorder with significant depression and a persistent underlying anxiety condition from 2005 through 2010. CP

243-44, 246, 247. He prescribed medication, including anti-psychotic medications, antidepressants, and mood stabilizers, to treat these conditions. CP 90, 244-48, 279-80, 282-84. Dr. Cahn diagnosed Amphlett with the type of adjustment disorder in the DSM-IV that involved mixed anxiety and depressed mood. CP 172, 197. Substantial evidence therefore exists that Amphlett's adjustment disorder pre-existed his 2010 work injury.

Further, substantial evidence exists that, with his pre-existing adjustment disorder, Amphlett reacted to the circumstances of his injury and to other continuing and new life challenges the same both before and after the injury. The record is replete with numerous stressors that Amphlett experienced in his life and the effect that these stressors had on his underlying anxiety and depression conditions. He agreed that he had been under overwhelming stress for the seven years since 2005, and he described several events during those years that worsened his anxiety. CP 134. These included separating from his wife, moving in with his parents, dealing with legal proceedings for an "ugly" divorce, handling financial stress, and having responsibility for employees at the company he operated with his wife. CP 90-91, 106, 108, 112-14, 120, 141, 205-06, 251-52.

Medical testimony supported that Amphlett reacted to these challenges and stressors the same before and after the injury. Dr. Gamrath testified about what amounted to a pattern both before and after the work injury of when a stressor worsened Amphlett's symptoms, sometimes requiring an adjustment in medication. Thus, in the period before the work injury, he explained that the increased dose of 400 milligrams of Seroquel in May 2008 was due to "increasing problems with low energy, depression, and seeing a marriage counselor." CP 250. He testified that financial stressors over the years from divorce, loss of business, bankruptcy and other matters worsened Amphlett's anxiety and depression. CP 251-52. He testified that Amphlett had "worsening anxiety" when he moved back in with his parents in April 2010, which he found demoralizing, and Dr. Amphlett concluded that it was probably not a good idea to lessen his medication at that time. CP 286-87. Dr. Gamrath again noted "[w]orsening anxiety" in August 2010, just two months before the injury. CP 309. In short, based on life events, the severity of Amphlett's mental health symptoms varied in intensity depending on his reaction to the event.

Substantial evidence supports that this pattern continued after the work injury as well, in support of the trial court's finding. For example, the accusation of theft caused strife between Amphlett and his daughter.

CP 217-18. Amphlett's bankruptcy caused him anxiety. *See* CP 94, 251-52. Taken as a whole, and viewed in the light most favorable to the Department, substantial evidence supports the trial court's finding that Amphlett reacted to his work injury in the same manner as he did to other life challenges before and after the injury.

**B. Substantial Medical Evidence Supported the Trial Court's Finding That the Work Injury Did Not Cause or Aggravate Amphlett's Adjustment Disorder**

The trial court also had medical evidence before it that, in the months following the October 2010 work injury, Amphlett did not need as much medication as he had in the past. Amphlett began taking Seroquel in 2006, and was prescribed a high of 400 milligrams per day in May 2008, but by the date of his injury he was taking 150 milligrams per day. CP 248-51, 282, 290. Dr. Gamrath had reduced his dosage to 150 milligrams from 300 milligrams in August 2010, and although he considered reducing it further that month, he recommended that Amphlett continue at 150 milligrams until he had further resolution of his divorce and financial situation, and that he take that dosage through the holidays and winter due "to the seasonal effect changes." CP 288-90.

Despite the intervening work injury, in January 2011 Dr. Gamrath reduced Amphlett's Seroquel dosage from 150 milligrams to 100 milligrams per day. CP 253. Three months later, 100 milligrams of

Seroquel continued to be the only medication that Amphlett took for his mental health symptoms. CP 253. In May 2011, Dr. Gamrath increased the dosage to 200 milligrams to help him sleep, function better, get out, and do things around the house. CP 256-57. That Dr. Gamrath prescribed a reduced dosage of medication in the months following the work injury supports the trial court's finding that the work injury did not cause or aggravate Amphlett's adjustment disorder.

Dr. Gamrath provided additional testimony that supported the trial court's finding. He believed that Amphlett had problems dealing with big changes in life, that sometimes he was able to cope well but that sometimes he could not, and that he could experience waxing and waning due to his "own internal biochemical situation." CP 252, 279-80. And Dr. Gamrath agreed that Amphlett would have continued to need mental health treatment even if the October 2010 work injury had not occurred. CP 304-05.

For an injury to aggravate a pre-existing condition, it must affect the condition and make it worse. All of this medical testimony supports the trial court's finding that Amphlett reacted to stressors the same before and after the injury, which in turn supports the conclusion of no aggravation. If, as the trial court believed, Amphlett reacted to life stressors no differently before the injury than he did afterwards, it follows

that the 2010 work injury to his shoulder did not aggravate his underlying adjustment disorder. The trial court reasonably concluded that Amphlett's long-standing anxiety and depression conditions, included as part of his adjustment order diagnosis, did not worsen as a result of his work injury.

**C. The Trial Court Appropriately Weighed the Credibility of the Testimony**

The trial court had substantial evidence before it to support the challenged finding which, in turn, supported the conclusion of no causation or aggravation. The court did not substitute its own beliefs for the medical opinions of both experts, contrary to Amphlett's arguments. App. Br. 2, 16. Dr. Gamrath linked the waxing and waning of Amphlett's condition to his "own internal biochemical situation," a reason entirely unrelated to his work injury. CP 280. He also believed that Amphlett would need mental health treatment if the injury had not occurred. CP 304-05. This medical evidence supports a finding of no aggravation. Although the court could have found that the work injury caused an aggravation of the adjustment disorder, it did not, and this Court will not disturb that determination on appeal by re-weighing the evidence.

That Dr. Gamrath also agreed at other points in his testimony that the work injury was a "part" of Amphlett's need for psychological treatment and that it "added on to" his pre-existing mental health problems

does not entitle Amphlett to judgment as a matter of law. *See* CP 295, 303-04; App. Br. 4-5. Absent a complete retraction of his or her opinion, a doctor may have inconsistencies in his or her testimony, which goes to the weight of the evidence, not the sufficiency. *Venezelos v. Dep't of Labor & Indus.*, 67 Wn.2d 71, 73, 406 P.2d 603 (1965).

As the ultimate fact-finder, the trial court was entitled to weigh Dr. Gamrath's testimony and the other evidence in the record and conclude that Amphlett's post-injury symptoms were part of the normal waxing and waning process of Amphlett's long-standing mental health condition that Dr. Gamrath described rather than an aggravation of the pre-existing adjustment disorder. Thus, it was reasonable for the Department to allow mental health treatment on a temporary basis but not to accept this as a permanent condition on the claim.

Amphlett's arguments in this vein also disregard the principle that, it is the fact-finder, not the medical expert, that must determine the ultimate issue in a case. A medical expert is certainly free to express an opinion on the ultimate issue. ER 704; *see also Sacred Heart Med. Ctr. v. Dep't of Labor & Indus.*, 92 Wn.2d 631, 636, 600 P.2d 1015 (1979). But, as our Supreme Court has explained, medical causation can be inferred from all the evidence in a case, including the medical testimony:

Of course, such causation is usually shown by the eliciting of medical opinions upon the particular issue, but we do not read our cases as requiring in every case and under any and all circumstances the production of a medical opinion upon the ultimate issue. It is sufficient if the medical testimony shows the causal connection. If, from the medical testimony given and the facts and circumstances proven by other evidence, a reasonable person can infer that the causal connection exists, we know of no principle which would forbid the drawing of that inference.

*Sacred Heart Med. Ctr.*, 92 Wn.2d at 636-37. In this case, a reasonable person could infer the absence of a causal connection between Amphlett's long-standing mental health problems and his work injury when considering all the evidence and reasonable inferences discussed above.

Because there was not "only one reasonable view of the evidence" in this case on the issue of causation when considering the facts and all reasonable inferences in the Department's favor, judgment as a matter of law is not appropriate, as it was in *Harris v. Drake*, 116 Wn. App. 261, 289, 65 P.3d 350 (2003); see App Br. 8, 13. Moreover, *Harris* is factually distinguishable. For a competing inference on causation in that case, the defendant had to demonstrate that the plaintiff's shoulder condition not only pre-existed the car accident, but was also symptomatic. *Harris*, 116 Wn. App. at 288-89. But, even the most favorable inferences in *Harris* supported only that the shoulder condition was pre-existing. *Id.* That contrasts sharply with this case, in which there was extensive testimony

about the symptomatic nature of Amphlett's anxiety and depression up until his October 2010 work injury.

Nor is this a case like *Longview Fibre Co. v. Weimer*, 95 Wn.2d 583, 628 P.2d 456 (1981), as Amphlett suggests. App. Br. 14. In *Weimer*, the only medical evidence was that the worker injured his low back when he bent over to pick something up. 95 Wn.2d at 589. And the primary issue in that case was not causation, but whether an injury from a normal bodily movement at work (bending over) was covered under the Industrial Insurance Act, or whether the worker had to prove, as the trial court instructed, that the injury resulted from "bodily movement required by unusual routine such as an unusual or awkward position in performing one's duties." *Id.* at 585, 587-88. Because the Act covers injuries from normal bodily movements at work, the instruction was error, and the worker entitled to judgment as a matter of law since there was no contrary medical evidence on causation. *Id.* at 589.

Here, unlike *Weimer*, there was medical evidence from which a reasonable fact-finder could infer that the work injury did not aggravate or cause Amphlett's adjustment disorder. This included detailed testimony about Amphlett's long-standing struggle with anxiety and depression, Dr. Gamrath's medical opinion linking the waxing and waning of Amphlett's symptoms to a non-work cause (his "internal biochemical situation"), the

reduction in Seroquel dosage after the injury, and Dr. Gamrath's testimony about Amphlett's need for mental health treatment even if the work injury had not occurred. *Weimer* is thus inapposite.

Because there was evidence in this case from which a reasonable fact-finder could have found no causation or aggravation of Amphlett's adjustment disorder, this case is also entirely different from the three cases that Amphlett cites in which a new trial was granted on damages because the jury's award of general damages (i.e. pain and suffering) to the defendant was inadequate based on an uncontested record. App. Br. 15-16 (citing *Palmer v. Jensen*, 132 Wn.2d 193, 201, 937 P.2d 597 (1997); *Ide v. Stoltenow*, 47 Wn.2d 847, 851, 289 P.2d 1007 (1955); see also *Washburn v. City of Federal Way*, 169 Wn. App. 588, 617, 283 P.3d 567, 582 (2012), *aff'd on other grounds*, 178 Wn.2d 732, 310 P.3d 1275 (2013)). In short, none of the cases that Amphlett cites stands for the proposition that a trial court can grant judgment as a matter of law by disregarding some portions of the testimony and accepting other portions of the testimony. That is an impermissible re-weighing of the evidence. Where, as here, substantial evidence exists, judgment as a matter of law is not appropriate.

Although Amphlett takes issue with some language in the trial court's memorandum opinion, on appeal this Court reviews the factual findings for substantial evidence, not the memorandum opinion. See App.

Br. 6, 9. That is because appeal is taken from the judgment prepared under CR 54, not the memorandum opinion. *Dep't of Labor & Indus. v. City of Kennewick*, 99 Wn.2d 225, 228-31, 661 P.2d 133 (1983). The issue in this case is whether substantial evidence supports the challenged finding which, as explained above, it does. Though Amphlett produced evidence to support his case, the trial court was not persuaded by it by a preponderance of the evidence, and substantial evidence supports its findings.

Although Amphlett cites the doctrine of liberal construction, that doctrine has no application here because there is no ambiguous statute to construe in this case. *See App. Br. 7*. Liberal construction applies only to the construction of ambiguous statutes. *See Harris v. Dep't of Labor & Indus.*, 120 Wn.2d 461, 474, 843 P.2d 1056 (1993). Liberal construction “does not apply to questions of fact but to matters concerning the construction of the statute.” *Ehman v. Dep't of Labor & Indus.*, 33 Wn.2d 584, 595, 206 P.2d 787 (1949); *Hastings v. Dep't of Labor & Indus.*, 24 Wn.2d 1, 13, 163 P.2d 142 (1945). Here, the only issue is whether substantial evidence supports the Board’s findings and liberal construction does not apply to that question.

**D. Amphlett Is Not Entitled to Attorney Fees**

This Court should reject Amphlett's request for attorney fees. *See* App. Br. 16-17. Fees are awarded against the Department only if the worker requesting fees prevails in the action and if the accident fund or medical aid fund is affected by the litigation. RCW 51.52.130; *Pearson v. Dep't of Labor & Indus.*, 164 Wn. App. 426, 445, 262 P.3d 837 (2011). To support his claim of attorney fees, Amphlett refers to the first sentence of RCW 51.52.130(1). App. Br. 17. However, that sentence addresses only the fixing of attorney fees. It is the fourth sentence of RCW 51.52.130(1) that addresses when attorney fees are payable. The fourth sentence makes clear that an award of fees requires both that the worker prevail in the action and that the accident fund or medical aid fund be affected. RCW 51.52.130(1); *Pearson*, 164 Wn. App. at 445. Because Amphlett should not prevail in this appeal, he is not entitled to attorney fees.

**VI. CONCLUSION**

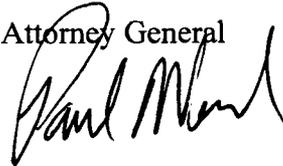
Amphlett has suffered from serious depression and persistent anxiety for years both before the injury and after the injury, reacting in the same way to significant life stressors, including divorce, business problems, financial difficulties, and the industrial injury. Because he reacted in the same way, a fact-finder could reasonably reject his argument

that the injury caused or aggravated his industrial injury. The trial court correctly denied his request for judgment as a matter of law.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of December, 2015.

ROBERT W. FERGUSON

Attorney General

A handwritten signature in black ink, appearing to read "Paul Weideman", written over the typed name.

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

JAMES D. AMPLETT,

Appellant,

v.

DEPARTMENT OF LABOR &  
INDUSTRIES,

Respondent.

CERTIFICATE OF  
SERVICE

DATED at Seattle, Washington:

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

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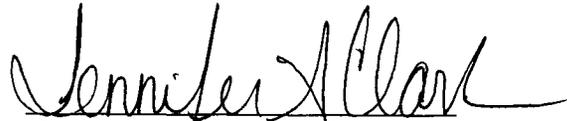
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STATE OF WASHINGTON

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DATED this 7<sup>th</sup> day of December, 2015.

A handwritten signature in black ink, appearing to read "Jennifer A. Clark". The signature is fluid and cursive, with a long horizontal stroke at the end.

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