

FILED
SUPREME COURT
STATE OF WASHINGTON
9/27/2023 11:26 AM
BY ERIN L. LENNON
CLERK

NO. 102215-8

SUPREME COURT OF THE STATE OF WASHINGTON

ASLI M. ALI,

Petitioner,

v.

WASHINGTON STATE DEPARTMENT OF LABOR &
INDUSTRIES,

Respondent.

ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

William F. Henry
Assistant Attorney General
WSBA No. 45148
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 621-2225

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. ISSUE..... 1

III. STATEMENT OF FACTS 2

A. After Closing Ali’s Injury Claim in September 2009, the Department Re-Opened it in March 2018 due to a Procedural Error, and then Re-Closed the Claim in June 2019 Based on Credible Medical Evidence..... 2

B. Ali Appealed the Department’s Orders to the Board, Which Weighed the Parties’ Competing Evidence and Affirmed..... 5

C. The Superior Court Affirmed the Board’s Decision After Reviewing the Certified Appeal Board Record 9

D. The Court of Appeals Affirmed the Superior Court, Rejecting Ali’s Claims of Bias and Bad Faith 11

IV. ARGUMENT 12

V. CONCLUSION 16

TABLE OF AUTHORITIES

Cases

<i>Ali v. Dep't of Lab. & Indus.</i> , No. 83747-8-I, 2023 WL 3944059 (Wash. Ct. App. June 12, 2023)	passim
<i>Knowles v. Dep't of Lab. & Indus.</i> , 28 Wn.2d 970, 184 P.2d 591 (1947).....	9
<i>Marley v. Dep't of Lab. & Indus.</i> , 125 Wn.2d 533, 886 P.2d 189 (1994).....	3

Statutes

RCW 51.32.160(1)(d)	3
RCW 51.36.070	4
RCW 51.52.115	10, 15

Rules

RAP 2.5(a).....	13
-----------------	----

I. INTRODUCTION

Asli Ali's petition does not merit this Court's review.

With no citation to the record, she asserts the Department of Labor & Industries destroyed her medical records and changed her diagnoses in an effort to deny her benefits. There is, of course, nothing to suggest such conduct, and the Court should reject Ali's unfounded allegations, which she raises for the first time in her Petition for Review. Because substantial evidence supports the superior court's findings that Ali's industrial injury did not cause or aggravate her contended conditions and that she was able to perform gainful employment, the Court of Appeals properly affirmed the court's decision.

Ali raises no issue of substantial public interest, and this Court should deny her Petition for Review.

II. ISSUE

Is the superior court's decision supported by substantial evidence when three independent medical examiners (including a neurologist, orthopedic surgeon, and a psychiatrist) each testified that Ali's claim-related conditions did not require further treatment, that she was able to work, and that she had no permanent disability?

III. STATEMENT OF FACTS

A. After Closing Ali's Injury Claim in September 2009, the Department Re-Opened it in March 2018 due to a Procedural Error, and then Re-Closed the Claim in June 2019 Based on Credible Medical Evidence

Ali sustained the industrial injury at issue more than 17 years ago. CP 1722. On October 21, 2005, while working for Hertz Corp., she inadvertently backed a rental car into a wall. CP 1722–23. She was only 32 years old, and her injury was minor and not life-threatening. *See* CP 1856, 1904–05. She was not admitted to the hospital following this incident. CP 1785.

The Department allowed Ali's claim for the injury, CP 1722, and awarded her workers' compensation benefits. *See* CP 1384. The accepted conditions under the claim were cervical and lumbar sprains/strains, an abdominal wall contusion (bruise), and depression. CP 1384, 1847, 1980. The Department

denied responsibility for fibromyalgia,¹ and then closed Ali's claim on September 30, 2009. CP 1275, 1384–85.

Starting in February 2010, Ali filed a series of applications to have her claim reopened—the first of which the Department failed to address within its 90-day statutory deadline. *See* CP 1274–75, 1385–87; *see generally* RCW 51.32.160(1)(d). Due to this procedural error, the Board of Industrial Insurance Appeals determined (in prior litigation) that Ali's re-opening application was “deemed granted,” and in March 2018, the Department reopened Ali's claim. CP 1388. The claim's effective reopening date was February 5, 2010. *Id.*

Shortly after the Department reopened Ali's claim, her conditions were evaluated in two independent medical

¹ The Department initially denied responsibility for fibromyalgia on May 30, 2008. CP 1384. Ali protested that order and asked for reconsideration, and the Department affirmed its decision by a July 28, 2008 order. *Id.* Ali did not protest or appeal the latter order, so it became final and binding. *See id.*; *see also id.* at 1274, 1304; *Marley v. Dep't of Lab. & Indus.*, 125 Wn.2d 533, 886 P.2d 189 (1994).

examinations. CP 1842, 1898, 1974; *see generally* RCW 51.36.070. In the first, she saw Dr. Rodney Johnson (a neurologist) and Dr. Duane Hopp (an orthopedic surgeon). CP 1842, 1974. In the second, she saw Dr. Jeralyn Jones (a psychiatrist). CP 1898.

The Department issued multiple orders based on the examiners' findings and conclusions. In five segregation orders, the Department denied responsibility for left and right shoulder sprains/strains (CP 1519–21, 1700–06), right carpal tunnel syndrome (CP 1523, 1696–98), and cervical disc disorder at the C4-C5 and C5-C6 levels (CP 1525–27, 1689–94). In four time-loss orders, the Department denied time-loss compensation benefits from February 5, 2010 through June 3, 2019. CP 1415, 1686–88; CP 1529, 1682–84; CP 1531, 1679–81; CP 1436, 1505–06. The Department re-closed Ali's claim effective June 19, 2019, without an award for permanent disability. CP 1438, 1502–03.

B. Ali Appealed the Department's Orders to the Board, Which Weighed the Parties' Competing Evidence and Affirmed

Ali challenged the Department's orders at the Board. CP 1415, 1434, 1436–38, 1519–31. During the Board proceedings, she did not offer any documents, medical records, or other exhibits into evidence. CP 1341, 1709, 1737, 1775, 1836, 1894, 1968. Instead, her case-in-chief consisted solely of witness testimony, including that of Dr. Chang Shin and Dr. John Yuen, two of her treating physicians. CP 1730; *see also id.* at 1721–30, 1735–61, 1773–1819.

Dr. Shin testified that Ali suffered from fibromyalgia, cervical disc disease, bilateral shoulder sprains/strains, “posttraumatic stress disorder” (PTSD), and a “mild degree” of right carpal tunnel syndrome, but he was unable to explain why any of these conditions were claim-related. *See* CP 1745–47, 1748–52. Dr. Yuen diagnosed fibromyalgia, degenerative disc disease, and depression (CP 1791, 1809), and testified that, due to some combination of those three conditions, Ali could not

return to work. *See* CP 1804–07, 1809–10. Neither he nor Dr. Shin were familiar with Ali’s extensive medical records, and they each relied heavily on Ali’s subjective pain complaints. CP 1753–54, 1758, 1784–85, 1788–89, 1795, 1799–1800, 1801–02. Dr. Yuen admitted that he could only “more or less tell you what she told me.” CP 1784.

In response, the Department called Drs. Johnson, Hopp, and Jones. CP 1834–1874, 1890, 1892–1948, 1966–2002.

Unlike Ali’s witnesses, these physicians had detailed knowledge of her medical records. *See* CP 1842–44, 1847–49, 1899–1901, 1911, 1974–77. They also reached their conclusions after conducting thorough in-person interviews and examinations. CP 1844–46, 1905–06, 1978–80. And upon completing their record reviews and examinations, they testified that Ali’s claim-related conditions needed no further treatment (CP 1858, 1916, 1984–85), that she was not temporarily totally disabled (CP 1857–58, 1912–15, 1918, 1983–84, 1986–87, 1997), that she was able to return to work (CP 1858, 1914–15,

1918, 1986–87, 1997), and that she had no compensable permanent impairment related to her claim. CP 1917, 1985–86.

Regarding Ali’s contended conditions, all three examiners agreed that Ali’s contended “fibromyalgia” was not related to her claim, with Dr. Hopp explaining that there is “no scientific association of fibromyalgia being caused by trauma.” CP 1856, 1917, 1983, 1994–97, 2000–01. Drs. Johnson and Hopp testified that Ali did not exhibit bilateral shoulder sprains/strains, and that, in any event, those conditions would not be consistent with her mechanism of injury. CP 1851–52, 1867, 1981. Dr. Johnson saw “very minimal” evidence of the alleged carpal tunnel condition, explaining that there was “no biologic mechanism for carpal tunnel to have occurred as a result of this injury.” CP 1852–53; *see also id.* at 1853–54, 1868–70. Dr. Johnson noted that Ali’s cervical MRI findings were “quite common and do not represent an injury finding.” CP 1854–55; *see also* CP 1982–83.

Finally, Dr. Jones refuted Dr. Shin's PTSD diagnosis. CP 1909–11. Not only did Ali fail to meet the diagnostic criteria for that condition, neither the psychiatric record nor Dr. Jones' examination supported such a diagnosis. *Id.*

After the hearing, the industrial appeals judge (IAJ) considered the evidence and, in a lengthy Proposed Decision and Order, affirmed the Department orders. CP 1303–41. Ali petitioned the Board for review and, like the IAJ, the Board rejected her arguments and affirmed the Department's orders. CP 1270–83.

The Board found that "Ms. Ali's reports of symptoms have no physiological basis," explaining that it was "not convinced that Ms. Ali has fibromyalgia." CP 1275–76. The Board noted Drs. Shin and Yuen's overreliance "on Ms. Ali's reports of symptoms," and their familiarity "with few, if any, medical records other than their own." CP 1275, 1277. Thus, the Board found their testimony unpersuasive. *See* CP 1277.

The Board found that the evidence failed to establish that Ali had any of her five contended conditions, that no causal relationship existed between them and her injury, and that none of those conditions “arose or became symptomatic because of her industrial injury after the Department closed her claim in September 2009.” CP 1277; *see also* CP 1275 n.1 (citing *Knowles v. Dep’t of Lab. & Indus.*, 28 Wn.2d 970, 184 P.2d 591 (1947)). Ali did not otherwise show that her accepted conditions warranted the relief she sought, so the Board affirmed the Department’s orders. CP 1277–82.

C. The Superior Court Affirmed the Board’s Decision After Reviewing the Certified Appeal Board Record

Ali appealed the Board’s decision to superior court. CP 1, 1203–04. There, she appeared pro se and filed hundreds of pages of unauthenticated hearsay medical records and other documents—none of which she had offered at the Board. CP 45–291, 417–581, 585–994, 1111–1202.

In her briefing, she complained that the Board did not give her treating physicians’ testimony enough weight, and she

asserted for the first time that the independent medical examinations were “sham[s].” CP 5–6, 8, 37, 1016. She also alleged for the first time that the physicians themselves were “biased.” CP 8, 37.

At the de novo bench trial that followed, the superior court reminded Ali that its role was limited. It explained that “[t]he Board’s decision to deny you benefits is prima facie correct,” and that Ali bore the burden to show, “more probably than not, the decision of the Board was wrong . . . based on the evidence [the Board] had.” RP 8; *see generally* RCW 51.52.115. The court declined to review Ali’s newly-produced medical records, and it held that she failed to demonstrate that a preponderance of the evidence showed the Board’s decision was wrong. RP 5, 20, 21; CP 1209–15.

The superior court affirmed the Board’s decision and adopted the Board’s findings of fact and conclusions of law as its own. RP 21; CP 1211–15. The superior court found that

“[a]ny adverse credibility findings by the Board against Ms. Ali’s treating physicians . . . were warranted[.]” CP 1210.

D. The Court of Appeals Affirmed the Superior Court, Rejecting Ali’s Claims of Bias and Bad Faith

Ali appealed the superior court’s decision to the Court of Appeals. CP 1205. There, she claimed that both the independent medical examiners and the Board acted in bad faith, contending that they overlooked documented evidence. *See Ali v. Dep’t of Lab. & Indus.*, No. 83747-8-I, 2023 WL 3944059, at *4 (Wash. Ct. App. June 12, 2023) (unpublished). She further asserted that the Board should have given greater weight to testimony of her treating physicians. *Id.*

The Court of Appeals rejected Ali’s bad faith claims, explaining that the independent medical examiners reached their opinions and conclusions “after interviewing and examining Ali and thoroughly reviewing her available medical records.” *Id.* The court noted that a party must produce sufficient evidence demonstrating actual or potential bias, and that Ali had not met this burden. *Id.*

With regard to the weight of the evidence, the court explained that, “[u]nlike Ali’s treating physicians, who relied largely on her subjective reporting, the IME physicians reached their conclusions after reviewing the entirety of Ali’s available medical records in addition to conducting in-person interviews and examinations.” *Ali*, 2023 WL 3944059, at *4.

The Court of Appeals held that “substantial evidence supports the superior court’s findings that Ali’s industrial injury did not cause or aggravate her contended conditions and that she was able to perform gainful employment during the periods she sought additional time-loss compensation.” *Id.* at *3. Accordingly it affirmed the superior court’s decision. *Id.* at *4.

Ali petitions for review.

IV. ARGUMENT

This Court should deny Ali’s Petition for Review. She raises only three contentions, none of which has merit or involves an issue of substantial public interest. She contends: (1) that the Department destroyed her medical records; (2) that

it changed her injury diagnoses from “severe to mild to deny my benefit rights”; and (3) that the Department “admitted” to “irregularities and manipulation” in her case. Pet. 1–2.

The record does not support these assertions. With regard to the alleged destruction of Ali’s medical records, the basis of this claim is unclear. She made no similar claim at the superior court or the Court of Appeals, and the Court should decline to review the newly raised issue. *See* RAP 2.5(a). In any event, the record belies Ali’s contention. The independent medical examiners who examined Ali reviewed numerous medical records in reaching their conclusions. *See* CP 1842–44, 1847–50, 1899–1901, 1911–12, 1974–77. As the Court of Appeals explained, “[u]nlike Ali’s treating physicians, who relied largely on her subjective reporting, the IME physicians reached their conclusions after reviewing the entirety of Ali’s available medical records in addition to conducting in-person interviews and examinations.” *Ali*, 2023 WL 3944059, at *4. Nothing

suggests the Department destroyed Ali's records, and her argument provides no basis for this Court's review.

There is likewise no evidence that the Department changed Ali's injury diagnoses from "severe to mild" in order to reject her benefits. *See* Pet. 2. Again, Ali did not raise this claim before the superior court or the Court of Appeals. Nor does her allegation find any support in the record. In issuing its orders, the Department properly relied on the findings and conclusions of the independent medical examiners who examined Ali. As the Court of Appeals correctly concluded, the testimony of these physicians supported the superior court's findings that Ali's industrial injury "did not cause or aggravate her contended conditions and that she was able to perform gainful employment during the periods she sought additional time-loss compensation." *Ali*, 2023 WL 3944059, at *3. Ali points to no evidence suggesting that the Department based its claim decisions on improper considerations, and her unsupported allegation does not warrant this Court's review.

Finally, Ali’s contention that the Department “admitted” to irregularities and manipulation in her claim lacks merit. *See* Pet. 2. She cites to page 26 of the Department’s response brief at the Court of Appeals for this proposition. *Id.* But there, in discussing the general rule that an appellate court must review only evidence at the Board, the Department merely noted the existence of a narrow exception for “cases of alleged irregularities in procedure before the Board, not shown in said record.” Br. of Resp’t (Corrected) at 26 n.9, *Ali*, No. 83747-8-I, 2023 WL 3944059 (quoting RCW 51.52.115). And as the Department explained, “Ali does not argue that this exception applies.” Br. of Resp’t (Corrected), *supra*, at 26 n.9. This is hardly an admission of irregularities or manipulation in Ali’s claim, and it again provides no basis for review.

Because Ali fails to raise any issue of substantial public interest, this Court should deny her Petition for Review.

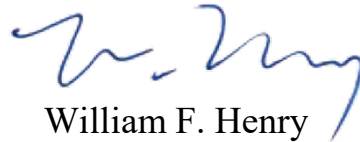
V. CONCLUSION

For the foregoing reasons, the Court should deny Ali's Petition for Review.

This document contains 2,902 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 27th day of September, 2023.

ROBERT W. FERGUSON
Attorney General



William F. Henry
Assistant Attorney General
WSBA No. 45148
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 621-2225

No. 102215-8

**SUPREME COURT OF THE
STATE OF WASHINGTON**

ASLI M. ALI,

Appellant,

v.

WASHINGTON STATE
DEPARTMENT OF LABOR &
INDUSTRIES,

Respondent.

CERTIFICATE OF
SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served the Washington State Department of Labor & Industries' Answer to Petition for Review and this Certificate of Service in the below described manner:

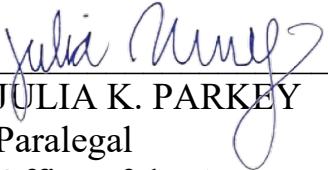
E-Filing via Washington State Appellate Courts Portal:

Erin L. Lennon
Supreme Court Clerk
Supreme Court of the State of Washington

E-Mail via Washington State Appellate Courts Portal:

Asli M. Ali
1508 Kirkland Avenue A
Renton, WA 98056
xabwo1974@gmail.com

DATED this 27th day of September, 2023.



JULIA K. PARKEY
Paralegal
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-6067

WASHINGTON ST. ATTORNEY GENERAL - LABOR & INDUSTRIES DIVISION - SEATTLE

September 27, 2023 - 11:26 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 102,215-8
Appellate Court Case Title: Asli M. Ali v. Department of Labor and Industries

The following documents have been uploaded:

- 1022158_Answer_Reply_20230927112431SC421014_2294.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was 230927_Ali_DeptAnswer.pdf

A copy of the uploaded files will be sent to:

- anastasia.sandstrom@atg.wa.gov
- lniseaeservice@atg.wa.gov
- xabwo1974@gmail.com

Comments:

Sender Name: Julia Parkey - Email: julia.parkey@atg.wa.gov

Filing on Behalf of: William Henry - Email: williamf.henry@atg.wa.gov (Alternate Email:)

Address:
800 Fifth Avenue, Ste. 2000
Seattle, WA, 98104
Phone: (206) 464-7740

Note: The Filing Id is 20230927112431SC421014