SUPREME COURT
OF THE STATE OF WASHINGTON

102619-6
No. 569795-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

CURTIS WRIGHT, PETITIONER

V.

PIERCE COUNTY RISK MANAGEMENT,
TACOMA, WA, RESONDENT

PETITION FOR REVIEW

Curtis Wright, pro-se
501 Nightingale PL
Las Vegas, NV 89107
Phone 253-606-1522
Email: cwright98371@yahoo.com

Self-represented for the Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES:

WASHINGTON STATE STATUTES:

RULES AND REGULATIONS:

OTHER AUTHORITIES:

CURTIS WRIGHT - FILING PRO SE

January 16, 2024 - 6:37 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	56979-5
Appellate Court Case Title:	Curtis Wright, Appellant v Pierce County Risk Management, Respondent
Superior Court Case Number:	22-2-05097-2

The following documents have been uploaded:

- 569795_Other_20240116183207D2613884_5661.pdf
  This File Contains:
  Other - Index
  The Original File Name was SUPREME 1 of3 COURT Request for Review.pdf
- 569795_Petition_for_Review_20240116183207D2613884_9365.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Signed Supreme Court MAIN doc.pdf

A copy of the uploaded files will be sent to:

- JamesS.Johnson@atg.wa.gov
- bmasters@wkmcblaw.com
- kb@wkmcblaw.com
- liolyce@atg.wa.gov
- swallace@wallaceklormann.com

Comments:

Sender Name: Curtis Wright - Email: cwright98371@yahoo.com
Address:
501 Nightingale PL
Las Vegas, NV, 89107
Phone: (253) 606-1522

Note: The Filing Id is 20240116183207D2613884

A. Identity of the Petitioner

The Petitioner is Curtis Wrigth, Appellant in the Court of Appeals.

For lack of a better location to provide this information, I will provide it here:

ACRONYMS FOR THIS BRIEF:

ADA – Americans with Disabilities Act.

BIIA – The Board of Industrial Insurance Appeals

CP – Clerk's papers.

DRS – Washington State Department of Retirement Systems

Exhibits – Appeals Court Exhibits.

FOIA – Freedom of Information Act.

IAJ – Industrial Appeals Judge.

IME – Independent Medical Exam.

L&I – Washington State Department of Labor and Industries.

PTSD – Post-Traumatic Stress Disorder.

Court of Appeals Decision.

The Petitioner seeks review of The Court of Appeals' November 21st, 2023, decision affirming the denial of a new claim for Post-Traumatic Stress Disorder (PTSD) Claim with Washington State Labor and Industries. This Claim stems from a 2018 change in Washington State law and a new Claim caused by The Employer's actions and my employment with The Employer.

B. Issues Presented for Review.

The Court of Appeals decision raises three obvious concerns. One is that Washington State has ignored RCW 58.08.013 – Acting in the Course of Employment. For this RCW, see **CP 38**. I was acting at the discretion of Pierce County and this was in the furtherance of the employer's business.

The second issue is that Washington State has

never correctly applied Washington State's Policy on the Application of the Doctrine of Res Judicata to Department Orders as is noted in the BIIA Significant Decision of *Jorge Perez-Rodrigues*. **See CP 230-241.**

The third issue is Fundamental Fairness and Equitable Concerns. The BIIA IAJ ignored Court Rules and common Court practices. My documentation includes copies of Court transcripts I provided the Appeals Court. These copies of Court transcripts include where I argued that the BIIA Court should not violate Court Rules regarding specific time requirements. (days) that were listed in Court Rules. Ironically The same IAJ dismissed this case (partial reason) because I did not comply with CR 56 because the FORENSIC PSYCHIATRIC REPORT (IME Report) by Dr. Brown did not include sworn statement language. For Dr. Brown's Report, see **CP 181-186.** For a copy of CR 56, **see CP 28 & 29.**

C. Statement of the case.

THIS IS A VERY UNIQUE CLAIM IN THAT THERE IS A 2012 B.I.I.A. COURT ORDER THAT STATES (in the Finding of Facts) THAT I HAVE MULTIPLE EXPOSURE P.T.S.D. In 2012 multiple exposure PTSD was **not** a valid claim. See **CP 136-144** for a copy of this 2012 Court Order.

I worked 26 years for the Pierce County Sheriff's Department (from 1984-2011) with the last eight years as a Sheriff's Detective. I put in a claim for PTSD (Post-Traumatic Stress Disorder) in 2011. In 2012, my Claim for PTSD was denied per a BIIA Court Order (**CP 136-144**).

In 2018, the Washington State Legislature changed the Occupational Disease law and allowed multiple exposure PTSD as a valid claim. In mid-2018, I put in a new claim for PTSD through L&I which was denied so I put in an appeal to The BIIA Court, which was also denied.

Before The BIIA Court denied my appeal for the 2018 Claim, I was re-exposed with a Subpoena regarding The Lakewood Four Officers murdered by Maurice Clemmons. For

a copy of the Subpoena, the envelope for the Subpoena, and a copy of my handwritten notes on the back of the Subpoena, see **CP 163-165**. I not only did a fair amount of work on this case, but I met Officer Tina Griswold about six months prior to her being murdered. This occurred when I was following up on a different case in The City of Lakewood.

Meeting Officer Tina Griswold was memorable. She left an impression on me. She was not only a very nice person, but she was very professional. When I was talking with her, a Lakewood Police Sergeant came up to her and suggested she put in for a School Liaison Officer position with their Department.

The suspect in the Lakewood Four murders was Maurice Clemmons who had previously been in the Pierce County Jail. After the quadruple murder occurred, I was assigned to listen to suspect Maurice Clemmons jail telephone calls so we could try to track him down and also do follow-up investigation on people he had contact with. I was next assigned to write a Search Warrant for a duplex apartment in South King County

where the suspect had fled to and bled on the living room floor (carpet). I had the Search Warrant reviewed by a Pierce County Superior Court Judge. I executed the Search Warrant. I also assisted in the arrest of one of the suspects who assisted suspect Maurice Clemmons. For a copy of the two reports I wrote in the quadruple homicide, see **CP 147-161**.

NEW P.T.S.D. PROBLIEMS DUE TO RECEIVING THIS SUBPOENA:

About six months after receiving the Subpoena for this quadruple murder case, my wife moved from our bedroom to sleeping on the couch because I had, in varying degrees, hit her from PTSD nightmares. (I used getting a new puppy as a time reference to when these things occurred.) I am very close to my wife, but I can understand she does not want to be hit at night due to my PTSD nightmares (that were much more frequent after this new exposure - receiving the Subpoena). The IME doctor, Dr. Brown, documented this in his IME Report, see **CP 183** (first paragraph, line 10).

When I received the Subpoena on the quadruple homicide, I then requested the IAJ, Judge John R. Ledford, (see **CP 188-194** for this request letter) that he include the new exposure with the 2018 Claim and he refused. I felt my new exposure for the Subpoena was a slightly stronger case (after reading Judge John R. Ledford's decision/denial of my 2018 claim). For a Copy of BIIA Judge Ledfords 2020 Order, see **CP 167-177.**

Because Judge John R. Ledford would not include the Subpoena regarding the quadruple homicide, I put in a new Claim (this Claim) that was declined by L&I as a duplicate claim. The L&I denial of this Claim was upheld by The BIIA Court, Pierce County Superior Court, and The Washington State Appeals Court, so I am appealing to this Court.

I DO NOT NEED THE <u>PRESUMTION</u> PORTION IN THE 2018 CHANGE IN THE OCCUPATIONAL DISEASE LAW:

Both the IAJ and The Appeals Court spent an inordinate amount of time noting I was not eligible for the presumption portion of the 2018 change in the law allowing for multiple exposure PTSD. I do not need Presumption due to **the 2012 BIIA Court Order that states, in the Finding of Facts, that I have multiple exposure PTSD that was caused or worsened by my work as a Sheriff's Detective.** For a copy of the 2012 Court Order, see **CP 136-144.** I do not know why the Courts keep addressing an issue I have already stated does not apply to me.

D. Argument Why This Court Should Grant a Review.

The **three** primary reasons the Appeals Court Decision is in error:

1) Failure to comply with RCW 58.08.103 –Acting in The Course of Employment.
2) Washington State's failure to follow their own policy of the Application of the Doctrine of Res Judicata to Department Orders,

3) Fundamental Fairness and

Equitable concerns (**combined**).

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

FIRST REASON FOR REVIEW:

1) ACTING IN COURSE OF EMPLOYMENT:

This is a new Claim based on a new exposure caused by The Employer and the Claimant's employment with The Employer.

RCW 51.08.013 – Acting in the Course of Employment

For a complete copy of this RCW, see **CP 38.**

Bold print added by Petitioner to show application to this case.

RCW 51.08.013

"Acting in the course of employment."

(1) **"Acting in the course of employment" means the worker acting at his or her employer's direction or**

in the furtherance of his or her employer's business which shall include time spent going to and from work on the jobsite, as defined in RCW **51.32.015** and **51.36.040**, insofar as such time is immediate to the actual time that the worker is engaged in the work process in areas controlled by his or her employer, except parking area. **It is not necessary that at the time an injury is sustained by a worker he or she is doing the work on which his or compensation is based or that the event is within the time limits on which industrial insurance or medical aid premiums or assessments are paid.**

I was definitely acting in my previous employer's **direction** (per a Subpoena received from The Sheriff's Department/The Pierce County Prosecutor's Office). Even if I was not acting in the furtherance of The Employer, **I was surely acting in furtherance of the employer's business.** Further, the last sentence of this RCW **notes how the time of**

injury does <u>not</u> have to be with the time limits on which industrial insurance...are made (paid).

This RCW clearly points out Washington State requires employers to be responsible for injury caused by Employers. The IAJ denial Order points out a 10-year time span (see **CP 95, line 13**) - in support of The Employer's position. **Her Honor, by the writings in her Order is adding time limits to this RCW. This RCW has no time limits. Her Honor is adding something to an RCW that is not there**. Further, Her Honor suggested I did not have treatment/other exposures which is not true. The previous 2018 PTSD Claim does note other re-exposures. The BIIA Court appears to have not included paperwork from my 2018 case. I have been in continuous counseling for PTSD long before I left employment with Pierce County in 2011. See recent 2016-2021 treatment notes from Dr. Dennis Stock as **CP 195-217.** These notes were provided to the IAJ so why Her Honor should have known this. How this AIJ missed all of these important facts is not understandable. These IAJ's decisions in this case, which are

contrary to the facts written, shows gross bias in favor of The Employer.

PIERCE COUNTY FAILED TO DO AN INDEPENDENT MEDICAL EXAM (IME) FOR THIS CLAIM.

I was told by the previous IAJ for this Claim that one needs an IME for a Claim. Pierce County did **not** do an IME for this claim and has no medical evidence to support any statement that this is **not** a new exposure.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

SECOND REASON FOR REVIEW:

Washington State's policy of the Application of the Doctrine of Res Judicata to Department Orders, see **CP 230-241,** that is documented in The Board of Industrial Insurance Appeals Significant Decision case RE: *Jorge C. Perez-Rodrigues*, BIIA Docket No 06 18718. **See CP 230-241.**

The IAJ Judge mis-interpreted what I had clearly written in my pleadings to Her Honor. Her Honor compared my case to the *Jorge C Perez-Rodrigues* case. **See CP 230-241.** The point of my comparison was to point out Washington State's legal requirement to comply with Washington State's Application of the Doctrine of Res Judicata to Department Orders, **CP 230-241.** Judge Leslie Birnbaum Order of denial was based on Her Honor incorrectly comparing my case to the *Jorge C Perez-Rodrigues* case, when I was comparing my case to this **Doctrine**.

The Appeals Court supports The Employer's position on Res Judicata by referring to a case that **does not go into** Washington State's requirement to apply the Application of the Doctrine of Res Judicata to Department Orders, **CP 230-241,** as is detailed in the *Jorge C Perez-Rodrigues* case.

TWO TENETS OF THE APPLICATION OF THIS DOCTRINE HAVE REPEATEDLY BEEN IGNORED BY ALL THESE COURTS:

The first tenent that was ignored by the Courts is **change of circumstances.** The Appeals Court notes there was **NOT a change of circumstance** for Res Judicata to apply. I disagree and this is specifically addressed in the *Jorge C Perez-Rodrigues* case. This is from **CP 232** (lines 13-15). Here is what is written there:

> Change of circumstances can justify modification or setting aside of a judgment that is subject to modification by its own terms or by applicable law when events occur subsequent to the judgment which warrant modification or if justice requires.

My case favors both issues addressed in the correct application of Res Judicata. Not only was the 2018 change in the Occupational Disease law allowing multiple exposure PTSD, but the "justice requires," would also apply. It is more than clear The Washington State Legislature wants injured workers

that have multiple exposure PTSD to be covered for this injury. The above quote from the Significant Decision notes, "or by applicable law." The change in the RCW and receiving the Subpoena were **two changes in the circumstances.** The new Subpoena was a new exposure (per The IME Report) and it also had new symptoms of increased PTSD nightmares where I was hitting my wife due to the more frequent PTSD nightmares.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

SECOND TENENT THAT HAS BEEN IGNORED BY THE COURTS IS THE STATE'S REQUIREMENT TO FOLLOW THE PROPER APPICATIN OF THE RES JUDICATA DOCTRINE:

From this same BIIA Significant Decision of *Jorge C Perez-Rodrigues* case, same page of **CP 232** (lines 25-28) where it describes proper application, it reads:

> Equitable considerations can also be used to justify relief from the res judicata effect of a final Department order.

> Restatement (Second) of Judgments, § 74. This section is limited to situations in which the party seeking to be relieved of the final judgment has exercised due diligence in advancing the claim and discovering a ground for relief.

Washington State has failed to abide by their own Policy of the Application of the Doctrine of Res Judicata to Department Orders. It is only fair and equitable for the Court(s) to acknowledge the change in the law and a valid claim based on the new exposure from the new Subpoena.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

THIRD REASON FOR REVIW – Fundamental Fairness and Equitable Concerns:

This will contain issues with the case currently before The BIIA Court since the same IAJ handled all but two or three hearings in that case.

In my last pleading to The Appeals Court I listed about 10 reasons showing Washington State has not shown Fundamental Fairness and been Equitable concerns regarding treatment of me compared to The Employer, especially The Employer's attorneys. I do not think any of these would have happened if I were an attorney. I will provide an overview of these items to show the Fairness and Equitable concerns. My last pleading to The Appeals Court included Exhibits.

These problems all started after I tried to report Medicare Fraud by The Employer to The L&I Claims Manager. Washington State allows the self-insured to run the workers compensation program and do little, if anything, to address the criminal and unethical behavior of The Employer(s). The Medicare Fraud occurred in my current case before The BIIA Court. I can provide this Court a report on this fraud that was written by an IME doctor. I sent this Fraud information to the L&I investigative unit and know they received it because they sent me a reply email. Months later, I requested any notes or

reports regarding my request and was informed they did not have any. (I can provide proof of the emails to/form L&I investigative unit and also the letter from L&I noting no notes or reports.)

In my previous PTSD case, where the IAJ declined to include this case, he also showed favoritism toward The Employer. The Employer sent the IAJ a Motion to for extension of time via email. The IAJ, during a telephonic Hearing, noted email was not the proper way to submit a Motion, but then the IAJ granted the Motion (stating he would not do this again). This same IAJ noted in his decision denying my 2018 PTSD Claim that because I testified in a civil matter (from a case where I was the Detective), that I had not shown a strong link to this being related to my work. For this IAJ's denial Order, see **CP 167-177.** Why else would I be testifying in a case I investigated where a man in a wheelchair was severely burned? The lack of accountability for IAJs is astounding. How an IAJ can make such a false claim is beyond reasonable, fair, and equitable.

HOW CAN THE I.A.J. BE SO WRONG – MISQUOTING AN R.C.W. THAT THEN MAKES THE EMPLOYER'S CASE:

In Judge Leslie Birnbaum's denial Order, she wrote, on **CP 94, line 26**:

> RCW 51.08.142 requires an evaluation by a Washington State licensed psychiatrist or psychologist.
>
> In a footnote, Judge Leslie Birnbaum cited RCW 51.08.142(2)(b).

Here is the actual part of RCW 51.08.142 (2)(b):

> (b) … hired after June 7, 2018, and public safety telecommunicators hired after June 11, 2020, (a) of this subsection only applies if the firefighter or law enforcement officer or public safety telecommunicators, **as a condition of employment**, …. (bold print added by me).

This IAJ completely mis-quotes an RCW and in doing so, provides Her Honor false reason for dismissal of this valid Claim.

FURTHER, WASHINGTON STATE L&I POLICY THAT I CAN SEE A DOCTOR NEAR ME:

Online I found this L&I Policy:

Pursuant to Department of Labor & Industries Policy 13.05 (effective January 1, 2021), The IME examination must be scheduled "at a time and place reasonably convenient to the worker." Reasonably convenient means "a Location where the resident with the workers' community (county) would normally travel for similar care.

My IME by Dr. Gregory P Brown, that I provided (works near where I live in Las Vegas, NV). The IME was done on January 23rd, 2021 (within this L&I policy's date requirements). See Dr. Brown's FORENSIC PHYSITRIC REPORT, **CP 181-186**.

I did have Dr. Brown do a Declaration (**CP 23**) and I provided that with my Appeal to The BIIA three-person Board, but The BIIA Board upheld the IAJ's Order which has numerous other errors.

THE I.A.J. FORGOT TO SCHEDULE THE EMPLOYER'S HEARING FOR SUMMARY JUDGEMENT:

The Employer, Pierce County, wrote a letter to The BIIA Court, for the case currently before The BIIA Court, that the IAJ (Judge Leslie Birnbaum) forgot to schedule their request for Summary Judgement. For a copy of this letter, see **CP 254**.

This mistake is documented in Litigation Orders, see **Appeals Court Exhibit #5.** These litigation orders show how the Summary Judgement Hearing was added at a later date (after The Employer wrote the IAJ about this problem).

TWICE THE I.A.J. FORGOT TO ALLWO ME TO REPSOND:

During a Telephonic Hearing on November 15th, 2021, IAJ Leslie Birnbaum noted I would be granted a short response after The Employer spoke and I was not granted this. **Appeals Court Exhibit #6** is a copy of the Transcript that documents this.

See **Appeals Court Exhibit #7**: which is a Transcript from a Telephonic Hearing on February 27th, 2023, where IAJ Leslie Birnbaum heard from everyone regarding an Employer objection, but forgot to allow me to respond in any way. These are two examples of how this IAJ acted like I was not even present for the Court proceedings.

THE I.A.J. REFERED TO ME AS Mr. CURTIS:

My name is Curtis Wright. See **Appeals Court Exhibit #8** which is a Transcript from a Telephonic Hearing on November 15th, 2021 where Judge Leslie Birnbaum refers to me as, "Mr. Curtis."

I.A.J. LIKELY INTOXICATD DURING A TELEPHONIC HEARING:

Judge Leslie Birnbaum sounded intoxicated on the Telephonic Hearing on February 10th, 2022. **Appeals Court Exhibit #10** is the first page of the Transcript where Judge Leslie Birnbaum dropped the two letters from the claim number for this case. I had never heard anyone do this prior to this happening, and I have been dealing with L&I as well as the BIIA Court for about six years. The Judge also slurred her words and twice, later in the Hearing, I could not even understand what she was saying.

WASHINGTON STATE HAS REFUSED TO RELEASE THE AUDIO TAPE OF WHEN IT SOUNDED LIKE THIS I.A.J. WAS INTOXICATED:

I requested the audio tape from Washington State of the Telephonic Hearing from February 10th, 2022. I Subpoenaed the audio tape from the company that contracts with The BIIA Court. This company that does the Court Reporting has, as far

as I can see per the FOIA documents I received from The BIIA Court, had the contact for this service for about 20 years. This company seems to have a very cozy relationship with The BIIA Court. I sent the Court Reporter two (identical) Subpoena's, and she did not comply with my Subpoena. I found out through an emailed I obtained from a FOIA requests that The BIIA Court Court Report that she felt threatened after receiving my Subpoena, so The BIIA Court put an 'S' code on my file with The BIIA Court. This appears to be a code for me being a security concern. Why didn't The BIIA Court require the Court Reporter to comply with my Subpoena?

I wrote this Court Reporter a polite cover letter for the Subpoena, noting I would make arrangements, at her convenience, and pay her so someone could copy the audio recording for my Subpoena (suggesting the Geek Squad from Best Buy).

The BIIA Court is refusing to release the audio tape that would show this IAJ sounded intoxicated. In one Significant Decision from the BIIA Court regarding subpoenas to obtain

BIIA audio tapes, The BIIA Court notes a Subpoena for an audio tape (for that case) was denied and suggests that if the Washington State Bar issues a Subpoena, it would be honored. Why is Washington State showing favoritism from one Subpoena to another Subpoena?

This same IAJ in my current case that is with The BIIA Court violated CR 56 in the current case by not allowing me the proper number of days to review item(s) from The Employer. For a copy of CR 56, **see CP 28 & 29.**

I provided The Appeals Court with copies of transcripts from The BIIA Court to prove this. This IAJ did this TWICE in my current case with The BIIA (CR 56 – The Employer's Summary Judgement Motion and also during Trial when I was only allowed about 26 hours to review evidence form The Employer when The Employer had this evidence for over two and a half years).

I provided The Appeals Court with both of these transcripts (as proof). Both of these transcripts include dialogue in the transcript where I request the IAJ for time

allowed by the Court Rules.

The IAJ stated repeated continuances as the reason Her Honor's reason which was violated the Court Rules (for this transcript see **Revised Appeals Exhibit #3)**. CR 56 has a provision in it that notes a Judge can request a Declaration, if it was not provided. For a copy of CR56**, see CP 28 & 29** This was not allowed in this case. I could see why a Judge could make such a ruling if the Petitioner had not done much as to prove a case, but in this case, I provided an IME by a doctor and, I believe was102 pages of documents provided to The BIIA Court. This was not a case that was just thrown together in a vain attempt to argue my Appeal.

MOST CONCERNING ABOUT C.R. VIOLATIONS:

The most concerning part of this same IAJ violating time allowed for me to review documentation from The Employer is that this same Judge was aware of ADA allowances for my PTSD through The BIIA Court. Her Honor has even noted this on the record and made some allowances such avoiding long Court days (prior to these issue with the CRs).

THE I.A.J. APPARNETLY CANNOT DO HER ASSIGNED TASKS WITHOUT ANOTHER JUDGE CHEKING HER WORK:

Through emails I obtained via FOIA, I found the IAJ that handled this case was having her cases reviewed (by a supervising Judge). This included this case and at least one other case this IAJ was working. This was at a time when this IAJ had six and half to seven years' experience as an IAJ Judge. Why would a Judge with his much experience need a supervising Judge reviewing her work? I will provide this documentation if requested.

THE I.A.J. FOR THIS CASE, JUDGE LESLIE BIRNBAUM, NO LONGER WORKING FOR THE B.I.I.A. COURT:

I found out from a new Judge that had to sit in for the Hearing for April 26th., 2023 that Judge Leslie Birnbaum was no longer working as a Judge. We were told a new Judge would be hearing the last two or three Hearings for

the case currently still before The BIIA Court. Per a FOIA request, BIIA records emailed me that Judge Leslie Birnbaum's **employment dates were:**

Agency Hire Date: 09/09/2015

Separation Eff Date: 04/01/2023

THE I.A.J.'s ACTIONS DID PERMANENT DAMAGE TO THE COURT'S RECORD IN THS COURT CASE:

This IAJ heard all but two or three hearings for this case because she had resigned before this case was decided. The problem is that there were so many issues with this IAJ's mistakes it had a huge outcome for what I could provide in the record for this case, due to Her Honor failing to comply with the two Court Rules where she had shorted me on time.

One Hearing was a Summary Judgement Hearing for The Employer and the other was during the Trial for The Employer. This Trail CR was really concerning since it involved video Evidence where I was surveilled. I have nothing to hide. The

video shows me limping in various degrees and always using a shopping cart when shopping (shopping cart syndrome per my IME doctor). It also shows me eating off the hood of my vehicle (when I traveled) because I do not like to sit down since this hurts my back. I was not allowed the time, per CR, to review this video (that The Employer had for about two and half years). The Employer sent video that neither The BIIA Court, nor I could open. The Judge noted this was no one's fault and violated the Court Rule that allows me proper time to review evidence. I was allowed only about 24-26 hours when several days it required per the CR. For this transcript, see Appeals Exhibit #4. Also, why wouldn't the AAG for this case request this IAJ to abide the time set in these Court Rules? I have never seen anything like this be allowed in Court in my entire life. I may seek counsel to deal with these issues. I had back surgery in May and went to the ER about 11 times so I lack time to address this with two Court cases ongoing.

THE EMPLOYER SEEMS TO THINK THIS IS ALL A

Filed
Washington State
Court of Appeals
Division Two

November 21, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CURTIS WRIGHT, Appellant, v. PIERCE COUNTY RISK MANAGEMENT, Respondent.	No. 56979-5-II UNPUBLISHED OPINION

VELJACIC, J. — Curtis Wright appeals the dismissal of his claim under the Industrial Insurance Act (IIA) for an occupational disease—Post Traumatic Stress Disorder (PTSD)—arising from his work as a detective with the Pierce County Sheriff's Office. He argues that the superior court erred when it failed to apply the first responder occupational disease presumption to his 2021 claim following the 2018 and 2019 amendments to RCW 51.08.142 and RCW 51.32.185 of the IIA. He also argues that the superior court failed to interpret and accurately apply the doctrine of res judicata when granting Pierce County's summary judgment motion. Because the superior court properly denied his claim, we affirm.

FACTS

I. BACKGROUND

Wright retired from the sheriff's office after serving as a correctional officer, deputy, and detective from 1984 to 2011. In 2002, Wright was assigned to the homicide team and officer-involved shooting squad as a detective. A couple of years later, he began showing signs of coping difficulties, and his supervisors recommended he seek counseling. In early 2010, Dr. Ann Alpern

diagnosed Wright with PTSD generated from work-related traumatic incidents since 2003. Wright retired the following year—2011.

II. 2011 INITIAL CLAIM[1]

In September 2011, Wright filed his first workers' compensation claim with the Department of Labor & Industries (Department). The Department assigned it claim number SE-64111. In his claim, Wright noted he developed an occupational disease—PTSD—due to traumatic experiences during the job with the sheriff's office.

Five months later, in 2012, the Department rejected Wright's claim. He appealed to the Board of Industrial Insurance (Board). The County filed a motion for summary judgment.

In September 2012, an industrial appeals judge (IAJ) issued a proposed decision and order (PDO) granting the County's motion for summary judgment. Though the IAJ found Wright to have PTSD caused or aggravated by his employment with the sheriff's office, it affirmed the denial

[1] Wright filed a total of at least four claims with the Department as far as we can determine from the record provided to this court. Below is a table of the claims collaterally related to this appeal- those at issue appear in bold:

Date	Claim # Assigned	Result
September 2011	**SE-64111**	**Rejected- PTSD not recognized as an occupational disease under statute/WACs at the time**
June 2018	SK-34955	Denied- invalid and consolidated as a duplicate of SE-64111
Later in 2018	Not in record	Wright refiled claim instead of appealing the Board's decision regarding his June 2018 claim
January 2020/March 2021	**SM-13528**	**Denied- res judicata applied and deemed duplicate of SE-64111**

of his claim on the basis that PTSD was excluded as an occupational disease within the meaning of former RCW 51.08.142 (1988) and former WAC 296-14-300 (1988), in effect at the time.

The following month, the Board entered an order adopting the PDO. Wright did not appeal this order.

III. AMENDMENT TO INDUSTRIAL INSURANCE ACT

In 2018, the legislature amended the IIA, specifying what classified as a legally recognized occupational disease and expressly excluding PTSD. Former RCW 51.08.142 (2018).

The amendments to the IAA included changes to chapter 32 "Compensation." A new subsection was added, establishing a "prima facie presumption that [PTSD] is an occupational disease" for firefighters and law enforcement officers. Former RCW 51.32.185(1)(b) (2018). However, the presumption only applies to "an applicable member following termination of service for a period of three calendar months for each year of requisite service *but may not extend more than sixty months following the last date of employment*." Former RCW 51.32.0185(2) (emphasis added).

IV. 2018 CLAIM

Wright filed a new appeal in June of 2018. The claim was assigned case number SK-34955. In April 2019, the Department issued an order determining SK-34955 (June 2018) was invalid and a duplicate of SE-64111 (September 2011). Consequently, claim SK-34955 (June 2018) was consolidated with SE-64111 (September 2011) and denied.

Wright appealed to the BIIA. The County filed a motion for summary judgment. An IAJ affirmed the Department's 2018 order denying Wright's new claim SK-34955 (June 2018) as a duplicate of SE-64111 (September 2011) via PDO. Notably, the PDO stated Wright's claims were prohibited from being relitigated under res judicata as the parties involved in the present appeal

were the same, the claims involved the same matter and raised the same cause of action, which was resolved in a final and binding order in 2012 (pertaining to the 2011 claim). Lastly, it stated that the amendments to the IIA did not apply retroactively to Wright's claim. Wright filed a petition for review with the full Board.

In May 2020, the Board adopted the IAJ's PDO and granted the County's motion, affirming that SK-34955 (June 2018) was a duplicate of SE-64111 (September 2011). Wright did not appeal the Board's decision, instead he refiled yet another claim.[2] The final disposition of this claim is unknown, as it is not apparent from the record before us.

V. 2020/2021 CLAIM

In Early 2020, Wright received a subpoena from the Pierce County Prosecuting Attorney's Office.[3] Consequently, he filed a new claim with the Department, asserting another incident of PTSD. The Department assigned it claim number SM-13528.

In March 2021, the Department denied Wright's SM-13528 (January 2020) claim as a duplicate of SE-64111 (September 2011) and consolidated the two. Wright appealed. The County filed a motion for summary judgment asserting res judicata applied.

The AIJ held a telephonic motion hearing on October 13. The sole issue addressed was "[w]hether the Department correctly determined that the injury or occupational disease/condition was a duplicate of the injury or occupational disease/condition covered by Claim SE-64111 [(September 2011)]." Clerk's Papers (CP) at 514. The court further noted that all parties "agreed that the motion for summary judgment was going to be determinative in this case." CP at 515.

[2] The record provided to this court does not reference or give a claim number for this claim.

[3] The subpoena was cancelled by the prosecutor's office shortly after it was issued.

Wright argued that he was re-exposed when he received the subpoena, supported by Dr. Gregory Brown's report.[4] The County responded, arguing that the issue was not whether Wright had evidence showing he suffered from PTSD but whether his claim was a duplicate of SE-64111 (September 2011). The County also argued that the amendment to the IIA Wright relied on "specifically delineate[d] that it applies only to former employees up to 60 months or five years post-employment," and Wright was last employed 10 years prior. CP at 530. And because it was a duplicate claim, res judicata applied as it dealt with the "same set of facts, the same circumstances, [and] the same parties. For all intents and purposes, this [was] a duplicate claim for what Mr. Wright filed in 2018." CP at 532-33.

In early 2022, an IAJ issued a PDO affirming the Department's order of March 2021 regarding SM-13528 (January 2020/March 2021). The PDO addressed substantive issues, including res judicata. Notably, the IAJ found SM-13528 (January 2020/March 2021) to be a duplicate of SE-64111 (September 2011) rendering it precluded by res judicata.

Additionally, in its findings of fact, the IAJ noted that "Mr. Wright did not suffer a new exposure or an additional exposure in the course of his employment with Pierce County that would cause or worsen the condition of PTSD since his retirement from employment with Pierce County [in] 2011." CP at 174. Wright appealed. The Board denied his appeal and adopted the IAJ's PDO affirming the Department's March order determining that Wright's claim SM-13528 (January 2020/March 2021) was a duplicate of the final and binding decision in SE-64111 (September 2011). Wright appeals this denial of his fourth claim filing.

[4] Relatedly, Wright claims that, for purposes of establishing that he suffers from PTSD, he could utilize expert opinions from evaluating experts near his residence in Nevada. This is immaterial because, as we discuss below, his current claim is a duplicate of a claim that was previously denied. An evaluation of his condition does not change this crucial fact.

ANALYSIS

Wright contends that the trial court erred when granting the County's motion for summary judgment and dismissing his claim, SM-13528 (January 2020/March 2021), as a duplicate of his original 2011 claim, SE-64111 (September 2011), under the doctrine of res judicata.[5]

The County counters that res judicata precludes revisiting the denied claim, SE-64111 (September 2011), of which Wright's current claim, SM-13528 (January 2020/March 2021), is a duplicate.

I. SUMMARY JUDGMENT

We review summary judgment orders de novo. *Cornwell v. Microsoft Corp*., 192 Wn.2d 403, 410, 430 P.3d 229 (2018). Summary judgment is appropriate where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." CR 56(c). "A genuine issue is one upon which reasonable people may disagree; a material fact is one controlling the litigation's outcome." *Youker v. Douglas County*, 178 Wn. App. 793, 796, 327 P.3d 1243 (2014). "The moving party bears the burden of showing that there is no genuine issue of material fact. If this burden is satisfied, the nonmoving party must present evidence demonstrating material fact. Summary judgment is appropriate if the nonmoving party fails to do so." *Walston v. Boeing Co.,* 181 Wn.2d 391, 395-96, 334 P.3d 519 (2014) (internal citations omitted). Thus, in an appellate review of a grant of summary judgment, we review only the record and those matters which have been presented to the superior court for its consideration before entry

[5] Wright also argues several fairness and equitable claims including potential fraud, bias, and notice. However, because an issue not raised in a summary judgment proceeding below should not be considered on appellate review, we do not reach the merits of his arguments. *Haueter v. Cowles Pub. Co.*, 61 Wn. App. 572, 590, 811 P.2d 231 (1991).

of judgment. *Lewis v. Bell*, 45 Wn. App. 192, 197, 724 P.2d 425 (1986); *Tapper v. Emp. Sec. Dep't*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993).

A pro se party is bound by the same rules as a represented party. *Westberg v. All-Purpose Structures Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997) ("[P]ro se litigants are bound by the same rules of procedure and substantive law as attorneys.").

II. INDUSTRIAL INSURANCE ACT (IIA)

A. Legal Principles

The IIA provides the exclusive remedy for those injured during the course of their employment. *Wash. Ins. Guar. Assn'n v. Dep't of Lab. & Indus.*, 122 Wn.2d 527, 530, 859 P.2d 592 (1993); RCW 51.04.010. "'On an appeal under the [IIA], Title 51 RCW, our review is limited to the superior court's decision, not the Board's decision.'" *Christiansen v. Dep't of Lab. & Indus.*, 26 Wn. App. 2d 560, 566, 527 P.3d 1176 (2023) (quoting *Masco Corp. v. Suarez*, 7 Wn. App. 2d 342, 346, 433 P.3d 824 (2019)).

As noted previously, the IIA expressly excludes PTSD as a legally recognized occupational disease and did at the time of Wright's employment with Pierce County. Former RCW 51.08.142 (2018); RCW 51.08.142 (2020). Nevertheless, the legislature's 2018 amendment to chapter 51.32 included subsection .185(1)(b), which stated that for law enforcement officers, "there shall exist a prima facie assumption that [PTSD] is an occupational disease under RCW 51.08.140." Former RCW 51.32.185(1)(b). But the presumption "shall be extended to an applicable member following termination of service for a period of three calendar months for each year of requisite service, *but may not extend more than sixty months following the last date of employment*." Former RCW 51.32.0185(2) (emphasis added).

III. RES JUDICATA

Wright argues that the trial court erred in its interpretation and application of res judicata. The County responds that res judicata applies because Wright's 2021 (SM-13528) claim arose from the same workplace exposures underlying previous claims, involves the same parties, and a final and binding decision on the merits was entered in 2011 (SE-64111), when Wright initially filed. The County also argues that the decision and order stated PTSD was not recognized as an occupational disease for which an individual could receive benefits under the IIA at the time, and that all subsequent decisions concluded that each of his other claims were duplicates of the 2011 (SE-64111) claim. It further argues that even if we were to disagree, the 2018 amendment to the IIA expressly outlines a 60-month timeframe from when an individual can receive benefits and Wright failed to meet it. We agree with the County that res judicata bars Wright's claim.

A. Legal Principles

We review an application of res judicata de novo. *Lynn v. Dep't of Lab. & Indus.*, 130 Wn. App. 829, 837, 125 P.3d 202 (2005). Res judicata "applies when a plaintiff's claim against a party has been dismissed by final judgment in one action and the plaintiff asserts the same claim against the same party in a subsequent action." *Shandola v. Henry*, 198 Wn. App. 889, 902, 396 P.3d 395 (2017) (emphasis omitted).

To establish res judicata, the proponent must establish the following: that the "'subsequent claim involves the same (1) subject matter, (2) cause of action, (3) persons and parties, and (4) quality of persons for or against the claim made.'" *Penner v. Cent. Puget Sound Reg'l Transit Auth.*, 25 Wn. App. 2d 914, 924, 525 P.3d 1010 (quoting *Harley H. Hoppe & Assoc. v. King County*, 162 Wn. App. 40, 51, 255 P.3d 819 (2011)), *review denied*, 1 Wn.3d 1026 (2023).

In other words, res judicata applies when a previous claim for which there was a final judgment on the merits and the current claim are so similar that the current claim could have been litigated in the former action. *Storti v. Univ. of Wash.*, 181 Wn.2d 28, 40, 330 P.3d 159 (2014). Summary judgment is a final judgment on the merits. *DeYoung v. Cenex Ltd.*, 100 Wn. App. 885, 892, 1 P.3d 587 (2000).

B. Res Judicata Applied to Wright's Latest Workers' Compensation Claim.

Here, Wright's 2021 (SM-13528) claim meets all elements of res judicata. First, it is undisputed that the claims involve the same subject matter: PTSD stemming from his work with the sheriff's office from 2004 until his retirement in 2011. Second, it is also undisputed that Wright's 2021 (SM-13528) claim involves the same cause of action—a claim filed for workers' compensation rooted in Wright's alleged PTSD. Finally, there does not appear to be a dispute regarding the concurrence of identity or quality between the parties in both the original 2011 (SE-64111) claim and the 2021 (SM-13528) claim—Wright and Pierce County. Thus, there is no genuine issue of material fact as to any of these elements and the superior court properly applied the doctrine of res judicata. The trial court did not err.

Additionally, because former RCW 51.32.185(2) is clear in that Wright had 60 months or five years from "*the last date of employment*"—August 2011, and he did not appeal the order and did not refile until 2018—seven years after his last date of employment—he failed to meet the prerequisites for coverage under the new statute in any event.

Because res judicata bars Wright's claim in the case before us, we do not reach the other arguments presented by the County or Wright.

IV. ATTORNEY FEES

Lastly, Wright requests attorney fees. Because he did not prevail, he is not entitled to attorney fees. We deny his request.

CONCLUSION

The trial court properly granted the County's motion for summary judgment and dismissed Wright's claims for workers' compensation based on res judicata. Wright is not entitled to attorney fees. We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Veljačić, J.

We concur:

Cruser, A.C.J.

Price, J.

BIG JOKE:

In my 2018 claim under this case, The Employer hired an IME doctor who referred to my current PTSD doctor (Dr. Dennis Stock) as, "Dr. Stork," and in part of that doctor's IME Report referred to my doctor as a "Physician's Assistant," instead of a Doctor. The Employer's Law Firm is obviously comfortable doing this knowing Washington State will do nothing. Washington State has done nothing about Medicare Fraud, why would the State do anything about simply making fun of an injured worker's doctor? These items listed all show an extreme bias against injured workers.

On one occasion, the Lead Attorney, Mr. Wallace, sent me 1,200-1,500 pages of unwanted/**not** requested documents for Disclosure. This was not a mistake. Mr. Wallace sent a two-page letter noting he would not provide me the documents requested since I could get them from other sources. After I told Washington State and Pierce County it looked like Mr. Wallace billed them for un-needed work (per FOIA information from Pierce County), Mr. Wallace wrote a letter to me that all FOIA requests for Pierce County needed to go

through his office. **When have you ever heard of the person involved in the fraud being the one in charge of releasing documents to show if he was involved or not?** The Employer's Law Firm has so much confidence they can lie, they provide false information to L&I, commit Medicare Fraud, and they make fun of my PTSD doctor, knowing full well Washington State will do nothing.

I know from a FOIA request, from 2010-2020, Mr. Wallace's Law Firm was paid over $2.1 million from Pierce County. I have made numerous FOIA requests regarding the billing of 1,200 to 1,500 pages and new totals for the amount paid to Mr. Wallace Law Firm. I am sure Mr. Wallace's Law Firm has been paid at least $3 to $4 million dollars from Pierce County, just one client. I have repeatedly sent FOIA request to Pierce County for new totals Mr. Wallace and his other attorneys have been paid by Pierce County. Pierce County has repeatedly sent me the same paperwork. Pierce County has not sent me information that I requested. Washington State should not allow such unprofessional, disrespectful, and illegal

behavior to be rewarded, all at cost of Pierce County taxpayers. I request that this Court not allow this not only unlawful but unprofessional and unethical behavior to continue.

E. Conclusion:

This Court should accept review to address the legal issues outlined above.

SERVICE OF PAPERWORK:

This "Request for Review," will be served to the following:

Per an email from The Supreme Court, if uploading to Their website, this is considered service. I will also follow-up with and email (with the documents(s) attached to Mr. Bishop (Piece County's representative) and AG James S. Johnson (including their secretaries).

Word count: 4956 (Maximum word count is 5,000).

I DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAW OF THE STATE OF WASHINGTON

THAT THE FOREGOING IS TRUE AND CORRECT.

Dated January 18th, 2024.

Respectfully submitted,

Curtis Wright, Pro se

CURTIS WRIGHT - FILING PRO SE

January 16, 2024 - 6:37 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	56979-5
Appellate Court Case Title:	Curtis Wright, Appellant v Pierce County Risk Management, Respondent
Superior Court Case Number:	22-2-05097-2

The following documents have been uploaded:

- 569795_Other_20240116183207D2613884_5661.pdf
  This File Contains:
  Other - Index
  The Original File Name was SUPREME 1 of3 COURT Request for Review.pdf
- 569795_Petition_for_Review_20240116183207D2613884_9365.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Signed Supreme Court MAIN doc.pdf

A copy of the uploaded files will be sent to:

- JamesS.Johnson@atg.wa.gov
- bmasters@wkmcblaw.com
- kb@wkmcblaw.com
- liolyce@atg.wa.gov
- swallace@wallaceklormann.com

Comments:

Sender Name: Curtis Wright - Email: cwright98371@yahoo.com
Address:
501 Nightingale PL
Las Vegas, NV, 89107
Phone: (253) 606-1522

Note: The Filing Id is 20240116183207D2613884