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IN THE COURT OF APPEALS

OF THE STATE OF WASHINGTON--DIVISION I

NO. 72631-5-I

ANDRIY SKRINNIK, Petitioner APPELLANT

vs.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, RESPONDENT

PETITION FOR REVIEW TO THE WASHINGTON SUPREME COURT

Andriy Skrinnik
Pro Se
2246 Yew Street Rd.
Bellingham, Wa 98229

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Identity of Petitioner:

Andriy Skrinnik, Pro Se, Appellant at Court of Appeals & Plaintiff in Superior Ct.

Citation to Court of Appeals Decision

Division I No. 72631-5-I Notation Ruling 1/16/15 denying Appellant's motion for extension of time for filing designation of clerk's papers and statement of arrangements AND the 4/28/15 Order Denying Motion to Enlarge Time and Denying Appellant's Motion to Modify the 1/16/15 notation ruling (after Appellant already had filed the Verbatim Report of Proceedings in the lower court, the Clerk's Papers and Appellant's Opening Brief).

Issues Presented for Review

First, did the trial court err in applying the Labor and Industries RCW Laws and Regulations by determining the formula for calculating income of Appellant's disability benefits for injury at work, and did it ignore adequate evidence of contemporaneous, filed, and paid tax returns as evidence of income in 2001 and Q1 of 2002? Did it overlook the law using the previous 12 months of income prior to work disablement in 3/2002, determining 2001 income as the "fairest and most reasonable method" without using the high monthly wage rates of employees engaged in similar occupations allowed per the law?

2. Second, does an appeals court provide Pro Se Appellant constitutional due process of law and provide substantial justice between parties when it does not allow reasonable time for the Appellant to receive the underlying report of proceedings and Clerk's Papers after seeking an extension under the RAPs, and on motion, to modify such rejection and dismissal of the Pro Se appeal, denied even after filing the Verbatim Report Proceedings in the lower court, the Clerk's Papers and the Appellant's Opening Brief, which thoroughly argued and supported an extension?

Statement of the Case

Appellant requests review in this workers' compensation case on appeal from the Board of Industrial Insurance Appeals (BIIA). The sole issue in this case is the calculation of his monthly wages at the time of disablement due to his claim-related medical conditions. The Industrial Insurance Act (IIA) sets forth a statutory procedure for determining an injured worker's wages at the time of injury or disablement and setting the rate of compensation during periods of disablement. *See* RCW 51.08.178. Establishing Appellant's correct monthly wage is vital by setting the rate of disability compensation for the life of his claim. [1] All end notes are in Appendix A. Where, as in this case, the worker is disabled for an extended time period, an incorrect wage order will have disastrous consequences on the economic stability on his or her family, thus, the correct establishment

of wages is critical [2]. At the time of disablement, Appellant was the sole shareholder and employee of a designated Subchapter S Corporation through the Internal Revenue Service ("IRS").[3] He paid himself a fixed salary (his social security wage base); additional profits from the corporation were either capitalized or established as a bonus to him. The Department of Labor & Industries (DLI) issued a "wage order," setting the Appellant's monthly wage, at the time of his disablement, at $968.66 per month. The BIIA reversed the Department's order on the grounds that Appellant's monthly wage could not be reasonably and fairly determined using the evidence of record, and ordered DLI to calculate his wage under RCW 51.08.178(4) (comparison to similarly situated workers). DLI appealed to Whatcom County Superior Court and Appellant cross-appealed. (Appellant appeals from those Findings and Judgment CP 6). The Verbatim Report of Proceedings from an expeditious hearing in the lower court has been provided with no witness testimony and only a few original source documents. Appellant holds that the unrefuted facts of his case demonstrate a fixed monthly wage of $4,000 at the time of disablement, but RCW 51.08.178(3) also directs DLI to average any bonuses paid to the worker over a 12 month period prior to disablement. In this case, the corporate profit distribution to Appellant should be treated as a bonus under RCW 51.08.178 (3) and the average monthly value of his "bonuses"

($3,078.63) added for a total monthly wage of $7,078.63. Appellant argues, where it is the product of one's labor, an S Corporation's profit distribution to its shareholder-employee is a "bonus" in both the common and technical meaning of the term.

Appellant incorporates the facts by reference as displayed in the CP 1 Certified Appeal Board Record ("CABR") [4] and the procedural history in CP 6 Findings 1.7-1.12. The underlying facts of this case are not in serious dispute. Appellant filed two claims for occupational diseases resulting from his employment which were accepted separately in 2009 by DLI for conditions relating to his lower back and bilateral knees.[5] *See* CP 1 CABR at 85-86. The uncontested evidence establishes the Appellant emigrated from the Ukraine in 1990, and worked for various companies before starting his own enterprise in the mid-1990's. CP2 Trans. at 8-11. In 1998 he incorporated the business as Any Construction Work (ACW) and filed as a Small Business Corporation with the Internal Revenue Service. [6] Appellant functioned as sole shareholder, executive officer, and employee of ACW, Inc. *Id.* at 11. He last worked in March of 2002, when his back and knee conditions progressively worsened and prohibited his ability to work. *Id.* at 13. As a result, he was forced to cancel his company's remaining jobs to focus on treating his medical conditions. *Id.*

On October 11, 2010, DLI issued orders for both Appellant's claims, determining his monthly wage as $968.66 at the time of disablement. On December 10, 2010, DLI issued two more orders for both Appellant's claims, adjusting the rate of his disability compensation pursuant to his receipt of Social Security Disability benefits. CP 1 CABR at 2-3. Appellant appealed all four orders and the cases were consolidated by the BIIA. Hearings were held August 23, 2011 in front of Industrial Appeals Judge Mitchell Harada. Appellant represented himself, and he and his wife presented their own testimonies. DLI presented the testimony of its employee, Sherryl Whitcom. *See* CP 2 8/23/2011 Trans. At hearing, a number of Appellant's personal and business tax records were admitted. CP 2 8/23/2011 Trans. at 15, 57; Exs. 1-7.

Appellant testified he paid himself a salary of $12,000 for the first quarter (Q1) of 2002, not working after March 2002. *Id.* at 16-17. In 2001 Appellant paid himself a bonus of $22,566 from his business profits and a bonus of $20,019 in Q1 of 2002. *Id.* at 27-28. Ms. Whitcomb testified the DLI orders on appeal were incorrect. *Id.* at 66. In her estimation, Appellant's annual wage at the time of disablement was $46,566. *Id.* at 67 which she calculated by averaging the income paid to Appellant by ACW, Inc., in 2001 alone. *Id.* at 70-71. Ms. Whitcomb testified she did not con-

sider Appellant's 2002 income because she did not have "proof" that it represented only his first quarter earnings. *Id.* at 81-82. She further testified she could not consider earnings from one quarter because "the statute" required her to average a twelve month period of employment. *Id.* at 84.

In a Proposed Decision & Order, Judge Harada agreed with Ms. Whitcomb's formulation. CP 1 CABR at 88. Appellant, now represented by counsel, filed a petition for review of Judge Harada's PD&O. CP 1 CABR at 59-64. DLI filed a response. *Id.* at 31-48. The BIIA granted the petition for review, and in a final Decision & Order, reversed Judge Harada's PD&O. *Id.* at 2-9. The BIIA determined that Appellant's wages were not "fixed" and remanded the case to DLI. *Id.* at 7. On remand, DLI was instructed to determine the number of hours per day and days per week the Appellant worked, and apply the average hourly wage paid to similarly situated workers to his average work hours to determine his monthly wage. *Id.* The order relating to the offset of Social Security Disability benefits were reversed, and final outcome of the wage order is pending. [7] DLI appealed to Whatcom County Superior Court and Appellant cross-appealed the Findings and Judgment (CP6) to the Court of Appeals,

which never studied the merits of his Pro Se case, nor provided a reasonable extension to hire an experienced L&I attorney.

Argument

Summary of Considerations Governing Acceptance of Review

A significant question of law under the Constitution of the State of Washington or of the United States is involved:

Constitutional due process of law and the requirement that courts do substantial justice between parties should be reversed and a mandate from the court of appeals to consider the facts and legal argument. Herein, when the court does not allow for a reasonable extension for a Pro Se Appellant to acquire the underlying report of proceedings and Clerk's Papers after requesting an extension under the RAPs, and, on motion to modify such dismissal of his appeal, denies it even after the Appellant filed the Verbatim Report of Proceedings from the lower court, Clerk's Papers and the Appellant's Opening Brief.

The petition involves an issue of substantial public interest that should be determined by the Supreme Court:

Business owners depend on coverage by L&I in case of injury or occupational hazards, thus they do not always receive a W-2 paycheck with standard verification of monthly income, instead are paid monthly, quar-

terly or annually depending on profit minus expenses. Due to this income fluctuation, L&I created a formula for owners to calculate their income. By not using its own standard formula in this case, L&I incorrectly computed wages and benefits, financially devastating Appellant and his family.

I am requesting a review of my wage calculations for time loss compensation benefits. Each judge who reviewed my case remanded to the Dept. of L&I to determine the hourly wage administered to calculate my monthly benefits. The dispute concerns the interpretation of the calendar year of employment. As Claimant, I maintain my employment involves the last three quarters of 2001 and first quarter of 2002, the last year I worked twelve consecutive months.

RCW 51.08.178 (3) states: "If, within the twelve months immediately preceding the injury, the worker has received from the employer at the time of injury a bonus as part of the contract of hire, the average monthly value of such bonus shall be included in determining the worker's monthly wages."

There is no dispute regarding my wage history for 2001 and 2002; this issue on appeal is whether, based on this evidence, the BIIA incorrectly determined what subsection of RCW 5 1.08.178 should be applied and how RCW 51.08.178 subsections should be applied to calculate my wag-

es. As the law requires any 12 successive calendar months, regardless of income fluxuation, the Dept. acknowledged the accuracy of my income in 2001 and 2002 and suggested averaging it.

After working as a sub-contractor, I obtained my general contractor's license, increasing my insurance and bond liability from $300,000 to $1,000,000 to bid on larger commercial jobs (Supporting documents are recorded of the Department of Labor and Industries), creating a varied salary before 2001 through 2002, confirming the fairness of averaging my wages under the law.

The law states in RCW 51.08.178 (3) that if a person is injured, the figures used are to be the 12 months immediately preceding the injury. My 12 month income period should start from April, 2001 through March 31st, 2002, the same period calculated by my tax accountant. Because I received a monthly salary plus bonuses in 2001, my 2002 income should be similarly calculated. Judge Garrett mistakenly calculated a daily wage rate rather than my monthly salary. The law requires the calculation of hourly rates for seasonal part-time employees, an error in her ruling. Refer to the law of seasonal employees, RCW 5 1.08.178 (1)(2) **She erred in stating that there was insufficient information in calculating my income for 2002 based on the daily rates.** See CP 6 Findings of Fact and

Conclusions of Law and Judgment at 3, line 21(1.15). RCW 51.08.178 requires the last four calendar quarters from the date of injury and not the calendar year. Judge Garrett overlooked the previous ruling by Board of Industrial Appeal Judges.

RCW 5 1.08.178 (4) states that where the worker's wage is not fixed or "cannot be reasonably and fairly determined," the Department can use calculations to determine a worker's wage. Ample evidence exists by which Appellant's wage can be "reasonably and fairly determined." L&I's assertion that they could not add these numbers is incomprehensible, while the Department's witness derived a figure of $34,924.50, then asserted it was "precluded" from using it because it would not be "reasonable and fair" to combine quarters from two calendar years. The law requires a 12 month period with no mention whether these months fall within the same calendar year. I have met the law's requirement of 12 consecutive months.

By the Department's own rationale, if I was injured in November of 2001, I would be paid time loss benefits based on my $100,000.00 wages in 2000 because it was the last full calendar year with a tax return. Thus, Appellant's actual earnings have not been "fairly and "reasonably" calculated.

The RCW 51.05.178. provides (4) "In cases where a wage has not been fixed." It does not empower L&I to devise alternative formulas for calculating disabled workers monthly wages separate from the statute. In fact, subsection (4) limits it to one method, requiring calculations "on the basis of the usual wage paid other employees engaged in like or similar occupations where the wages are fixed." RCW 5 1.08.178 (4) does not authorize the Dept. to average profit and loss of a sole proprietor's business over a twelve-month period to calculate a monthly wage separate from the statute. DLI must compare a similar employee engaged in similar employment and not calculate an hourly or daily wage as used by Judge Garrett. I was a full-time not a seasonal employee. The US Dept. of Labor Bureau & Statistics Occupational Employment Statistics for 11-9021 Construction Managers, defined as coordinating and supervising construction process had an hourly mean wage of $50.04 and an annual mean wage of $104,080 in May 2005 in Washington State. In Q1 2002, I was managing my company and under contract to tile the Bellevue Club pool. [31] The court should take judicial notice of this information, and the Dept. use this number under RCW 51.09.178 (4) when calculating my wages. The lower court erroneously concluded (CP 6 at 1.13) "because [Appllant's] wages could be determined fairly and reasonably" while contrarily ruling in the next finding (CP 6 1.16) that the 2002 income was "insufficient" for a

"fair and reasonable determination of his daily wage rate." Additionally, the court chose not to use industry wage standards (CP6 1.14) when computing my Q1 2002 income because it believed $26,000 was too low and lacked a share of corporate profits. Not following the statutory methods of wage determinant by omitting my higher 2002 Q1 wages, the court hurt me and should rectify this injustice.

A. The Basic Formula of RCW 51.08.178

The IIA employs three formulas for calculating gross monthly wages for injured workers [8] at the time of injury or disablement. RCW 51.08.178 (1) provides for full-time employees; (2) provides "exclusively seasonal" "part-time" or "intermittent" employees; (4) provides a backstop provision when an injured worker's monthly wages cannot be "reasonably and fairly determined." The statute asserts that "[f]or the purposes of [Title 51], the monthly wages a worker received from all employment *at the time of injury* shall be the basis upon which compensation is computed unless otherwise provided specifically in the statute concerned."[9] RCW 51.08.178(1) The term "at the time of injury" for Appellant's claims were accepted by DLI as occupational diseases rather than acute injuries.[10] In the case of occupational diseases, RCW 51.32.180 provides that "the rate of compensation for occupational diseases shall be established as of the

date the disease requires medical treatment or becomes totally or partially disabling, whichever occurs first, and without regard to the date of the contraction of the disease or the date of filing the claim." The default provision of RCW 51.32.178 is sub-section (1), which "must be used unless the Department establishes it does not apply." *Dep't of Labor & Indus. v. Avundes*, 140 Wn. 2d 282, 290, 996 P.2d 593 (2000). No contention or offer of proof by DLI that Appellant was a "part-time, seasonal," or "intermittent" employee, thus the question is whether subsection (1) or (4) applies, and as Appellant was a full-time worker at the time of disablement, (1) applies because his wage was "fixed" and can be "reasonably and fairly determined." Additionally, his profits should be treated as "bonuses" and averaged and added to his fixed monthly wage under subsection (3).

B. DLI Impermissibly and Incorrectly Averaged Appellant's Past Earnings to Come up With a Figure Which Does not Reflect his Earning Capacity at the Time of his Injury

"[T]he monthly wages the worker was receiving from all employment at the time of injury shall be the basis upon which compensation is computed." RCW 51.08.178(1). Under sub-section (1) the only permitted averaging of an injured worker's wages pertains to the number of hours

worked per day, and even then only "[i]n cases where the worker's wages are not fixed by the month." RCW 51.08.178(1). DLI 's argument that Appellant's 2001 income should be averaged to establish his monthly wage while disregarding his 2002 income on grounds that "the Department believed the first quarter earnings of 2002 would be the same as the last three quarters of 2001" Id. at 47. is flawed. See, e.g., CP 1 CABR at 46-47.

First, DLI disregards the statutory mandate that an injured worker's wages "at the time of injury" formulate time-loss compensation under the IIA. "[T]he purpose of time-loss compensation is to reimburse workers for their lost earning capacity." *Malang v. Dep't of Labor & Indus.*, 139 Wn. App. 677, 691, 162 P.3d 450 (2007) (citing *Cockle v. Dep't of Labor & Indus.*, 142 Wn. 2d 801, 16 P.3d 583 (2001)). Second, DLI's argument that Appellant *demonstrated* earnings in the first quarter of 2002 should be disregarded in favor of an *extrapolation* into 2002 of what he made *on average* in 2001. Not only is DLI's argument flawed, it erringly ignored the averaging a full-time worker's wages rule. The Dept.'s position is that "it is unreasonable to calculate a worker's wages based on a cobbling together of various tax records, particularly given the complete lack of any documentation that would substantiate the assertion that the business was

not operated during anything other than the first quarter of 2002." CP 1 CABR at 45. Conversely, DLI uses Appellant's tax records to determine what it asserts is his monthly wage. *Id.* at 46; *see also* CP 2 8/23/2011 Trans. at 68-72. In one instance the Dept. declares tax records an unreliable source, but next, bases its decision on those same records. [12]

Ample documentation substantiates the Appellant's unrebutted testimony that he did not work after March 2002. *See* CP 2 8/23/2011 Trans. at 10-11; 13 16-17; 27-28; 39. Appellant submitted his quarterly tax records showing he did business in Q1 2002 only, validating his testimony. See CP 2 Ex. 4-7. Though offering no contradictory evidence, DLI asserts no evidence was presented for Appellant's March 2002 work history. The lower court also erred in disregarding Appellant's tax records for Q1 2002. Finding 1.16 in CP6.

C. Appellant 's Monthly Wage at the Time his Condition Became Disabling was "Fixed" Within the Meaning of RCW 51.32.178(1)

Having established per RCW 51.08.178 that 3/2002 is the time frame for calculating Appellant's monthly wages, it is necessary to emphasize his wage was fixed at that time. The default method, sub-section

(1) provides for the monthly calculation of wages unless it is not "fixed by the month." Examination of Appellant's tax records and business structure documents, show his monthly wage as $4,000 in March 2002, and ACW, Inc., a Small Business Corporation as designated by the Internal Revenue Code. Appellant was owner, sole employee, and sole shareholder of ACW, Inc. CP 2 8/23/2011 Trans. at 11-12. He paid himself a wage, and any leftover profits. Distinction between wages and distributions in this context is that payroll taxes (FICA & FUTA) must be paid on wages, but not on distributions.

An owner-operator, the Appellant must pay himself a *reasonable* salary, and may not re-classify his wages as "distributions" in order to avoid federal payroll taxes. [15] Moreover, "the characterization of funds disbursed by an S corporation to its employees or shareholders turns on an analysis of whether the payments at issue were made as remuneration for services performed." *David E. Watson, P.C. v. United States*, 668 F.3d 1008, 1018 (8th Cir. 2012) (internal quotations omitted). Here, Appellant paid himself wages for compensation of services to the company. In 2000 and 2001, he paid himself a yearly salary of $24,000. *See* CP 2 Exs. 1 & 2.[16] No argument disputes this "reasonable" salary in accordance with the tax laws. As Appellant testified, ACW, Inc., showed growth with gross

revenue increasing from $83,326 in 1999 to $107,956 in 2001, and $73,542 in the first quarter of 2002. CP 2 8/23/2011 Trans. at 44. In late 2001 Appellant increased the company's bond from $300,000 to $1,000,000 transcript in order to bid on larger state and public works projects. *Id.* at 45.

Given the requirement that Appellant pay himself a "reasonable" wage, it follows his wage would increase to commensurate with the company's growing revenue. No record exists that Appellant worked beyond March 2002, his tax records show a $12,000 salary for Q1 2002; [17] RCW 51.08.178(1). It bears repeating that RCW 51.08.178 "should be construed liberally in a way that is most likely to reflect a worker's lost earning capacity, with doubts resolved in favor of the worker." *Avundes*, 95 Wn. App. at 271. Furthermore, bonuses earned by Appellant's company should also factor into the monthly equation.

Determining Appellant's "average monthly value of such bonus" RCW 51.08.178(3) can be computed by[18] taking $22,566, 2001 (CP 2 Ex 2.) and $20,019, Q1 2002 profit distributions, complying with RCW 51.08.178(3) using monthly average bonuses received "within the twelve months immediately preceding the injury," dividing the 2001 profit distributions by 12 against Q1 2002 bonus equaling $1,880.50. Adding nine

months' worth of average bonuses to the Q1 2002 bonuses, equals the 12 months preceding Appellant's disablement for a total bonus of $36,943.50. The average monthly bonuses of $3,078.63, added to his base monthly wage of $4,000, equals a gross monthly wage of $7,078.63 under RCW 51.08.178. This figure fairly and accurately reflects his lost wage-earning capacity at the time of disablement, and is grounded in fact and law.

Conclusion

Therefore, Appellant requests the court remand this case for new trial and other relief just and equitable. The BIIA order on appeal should be reversed and this claim remanded to the lower court and Department of L&I with instructions to correctly calculate Appellant's gross monthly wages at the time of injury at $7,078, and revise its order offsetting Social Security benefits in light of the corrected wage order and award petitioner attorney's fees and costs under equity, the civil rules and civil procedure statues, and under the L&I laws and Regulations awarding fees. The court should remand this matter for a new trial and award petitioner attorney's fees and costs.

Dated this 23rd day of May, 2015

Andriy Skrinnik, Pro Se
Appellant

Appendix

[1] *See, e.g.*, Marley v. Dep't of Labor & Indus., 125 Wn. 2d 533, 886 P.2d 189 (1994) (Unappealed orders of the Department of Labor & Industries are *res judicata* for the life of the worker's claim, even if facially and obviously incorrect, so long as the Department acted within its subject matter jurisdiction).

[2] Bearing in mind, of course, that the Industrial Insurance Act "shall be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment." RCW 51.12.010.

[3] 26 U.S.C. § 1361 *et seq.*

[4] The CP 1 Certified Appeal Board Record is the sole source of evidence in appeals from orders of the BIIA. *See* RCW 51.52.110 & .115.

[5] Appellant admitted that he did not elect workers' compensation coverage for himself as a sole proprietor. *See* CP 2 8/23/2011 Trans. at 12. Though the record here does not clearly state as much, Appellant 's claim was allowed pursuant to Fankhauser v. Dep't of Labor & Indus., 121 Wn. 2d 304, 307, 849 P.2d 1209 (1993) (last injurious exposure rule does not bar occupational disease claims where last occupational exposure occurred during non-covered employment so long as some exposure occurred during covered employment).

[6] Technically and colloquially referred to as an "S corporation," and explained in greater detail below.

[7] Presumably neither party contests the fact that the offset order should be reversed and remanded in light of his newly calculated wage order.

[8] For purposes of the IIA, "wages" is defined quite broadly. *See* WAC 296-14-522: The term "wages" is defined as:

> (1) The gross cash wages paid by the employer for services performed. "Cash wages" means payment in cash, by check, by electronic transfer or by other means made directly to the worker before any mandatory deductions required by state or federal law. Tips are also considered wages but only to the extent they are reported to the employer for federal income tax purposes.
>
> (2) Bonuses paid by the employer of record as part of the employment contract in the twelve months immediately preceding the injury or date of disease manifestation.
>
> (3) The reasonable value of board, housing, fuel and other consideration of like nature received from the employer at the time of injury or on the date of disease manifestation that are part of the contract of hire.

[9] Once the wage is determined under RCW 51.08.178, the injured worker's compensation for any period of temporary or permanent disability is paid pursuant to the schedule found at RCW 51.32.060. Generally speaking, an injured worker without a spouse or children is entitled to sixty percent of his gross monthly wages per RCW 51.08.178 during any period of temporary or permanent total disability as it is defined in the IIA. The payments for temporary total disability are referred to as "time-loss" payments.

[10] *See* RCW 51.08.140; *cf.* RCW 51.08.100.

[11] *See* CP 2 8/23/2011 Trans. at 13. Notably, DLI conceded at the BIIA that Appellant 's wages should be calculated with reference to his last employment through ACW, Inc. *Id.* at 8.

[12] *See* CP 1 CABR at 12 ("Since Appellant provided the Department with his 1120S tax forms, actual business records, it is more fair and reasonable for the Department to rely on his records when calculating his 'wages' . . . .").

[13] DLI's apparent position on this point is that Appellant "chose to go into business for himself, and to take the risks associated with that path." CP 1 CABR at 42. It is not clear what the risks of Appellant 's business ventures have to do with the calculation of his wages at the time he was rendered incapable of working, as the IIA clearly and unambiguously states that his earnings at the time of his injury provide the basis for payment of workers' compensation benefits.

[14] The use of the term "corporation" in this section of the Code is non-technical, as in fact an LLC may also elect to be treated as a Small Business Corporation pursuant to Subchapter S. *See* Rev. Rul. 88-76, 1988-2 C.B. 360.

[15] *See, e.g.*, Rev Rul. 74-44, 1974-1 C.B. 287 (where shareholder is also employee, IRS requires a "reasonable" salary be paid, and reserves the right to treat income designated as distributions or dividends as "wages" subject to FICA and FUTA taxes).

[16] Particularly see line 7 of the 2000 1120S form. The exhibits in the CP 1 CABR are labelled A, B, and C, but the BIIA in CP 2 labeled the same documents 1, 2, 3, etc.

[17] Unless, of course, one takes as dim a view of our profession as Judge Posner: "Innumerable are the lawyers who explain that they picked law over a technical field because they have a 'math block.'" *Jackson v. Pollion*, No. 12-2682 (7th Cir. Oct. 28, 2013).

[18] See http://www.bls.gov/oes/2005/may/oes119021.htm : US Dept of Labor

Bureau of labor Statistics:

Occupational Employment and Wages, May 2005

11-9021 Construction Managers

State	Employment	Hourly mean wage	Annual mean wage	Percent of State employment
Washington	2,770	$50.04	$104,080	0.104%

Plan, direct, coordinate, or budget, usually through subordinate supervisory personnel, activities concerned with the construction and maintenance of structures, facilities, and systems. Participate in the conceptual development of a construction project and oversee its organization, scheduling, and implementation. Include specialized construction fields, such as carpentry or plumbing. Include general superintendents, project managers, and constructors who manage, coordinate, and supervise the construction process.

APPENDIX A

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

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January 16, 2015

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CASE #: 72631-5-I
Andriy Skrinnik, Appellant v. Department of Labor & Industries, Respondent

Counsel:

The following notation ruling by Richard D. Johnson, Court Administrator/Clerk of the Court was entered on January 16, 2015, regarding Appellant's Motion for Extension of Time until April 20, 2015:

> A two month extension of time to file the designation of clerk's papers and statement of arrangements was previously granted. At that time, the Court indicated that the case would be dismissed if the documents were not filed by January 16, 2015. The appellant moves for an additional three month extension. The motion is denied. In accordance with the December 5, 2014 ruling, the appeal is dismissed.

In the event counsel wishes to object, RAP 17.7 provides for review of a ruling of the Clerk. Please note that a "motion to modify the ruling must be served . . . and filed in the appellate court not later than 30 days after the ruling is filed."

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

lls

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

ANDRIY SKRINNIK, Appellant, v. WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES, Respondent.	)	No. 72631-5-I ORDER DENYING MOTION TO ENLARGE TIME AND DENYING MOTION TO MODIFY

Appellant Andriy Skrinnik has filed a motion to enlarge the time to file a motion to modify and a motion to modify the court administrator/clerk's January 16, 2015 ruling dismissing the appeal. The Washington State Department of Labor and Industries has filed an answer, and Skrinnik has filed a reply. We have considered the motions under RAP 18.8(a) and RAP 17.7 and have determined that both motions should be denied.

Now, therefore, it is hereby

ORDERED that the motion to enlarge time to file the motion to modify is denied and, it is further

ORDERED that the motion to modify is denied and the appeal remains dismissed.

Done this 28th day of April 2015.

Spearman, C.J.

Dwyer, J.

Appelwick, J.