

OCT 19 2015  
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Ronald R. Carpenter  
Clerk

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

92386-8

THE BOEING COMPANY,  
Plaintiff,

vs,

PRENTISS B. DAVIS, pro se  
Defendant,

Case No. ~~90168-6, 90208-9~~, \_\_\_\_\_

DRU

TRANSFER FROM WA COURT  
OF APPEALS DIVISION ONE,  
FOR DIRECT REVIEW BY  
WA SUPREME COURT,  
OF WA COURT OF APPEALS  
DIVISION ONE COURT DECISION

DATED: SEPTEMBER 28, 2015

PER DEFENDANT  
NEXT COURT

WA Court of Appeals Division One  
Case No. 73104-1-1

PER DEFENDANT  
NEXT COURT

WA Supreme Court No. 90208-9  
WA Supreme Court No. 90168-6  
Snohomish County Superior  
Court No. 13 2 07139 6

PER DEFENDANT  
ORIGINATING COURT:

In The Superior Court of the State of  
Washington in and for the County of  
Snohomish  
Originating Court  
Case No. 13 2 07139 6

DATED: FEBRUARY 4, 2015

## INTRODUCTION

1. The Defendant, PRENTISS B. DAVIS, pro se, is seeking (1) a second review of The Superior Court of the State of Washington in and for the County of Snohomish Jury Trial decision dated April 10, 2014 and (2) a review of the WA Court of Appeals Division One decision dated September 28, 2015 to be reviewed by the WA Supreme Court discretionary review. Final Judgment of the WA Supreme Court was entered on February 4, 2015 (see Exhibit A). Final Judgment of the WA Court of Appeals Division One was entered on September 28, 2015 (see Exhibit B). The Defendant is seeking a WA Supreme Court discretionary review of the initial August of 2006 Plaintiff, The Boeing Company's (Boeing), "classification" of the Defendant as a Payloads Engineer "Class 1". During the Superior Court proceedings prior to and including this Superior Court Trial, Boeing/Court illegally reclassified the Defendant's "classification" to a Payloads Engineer "Class 2" when hired by Boeing in August of 2006. This illegal reclassification allows Boeing to pay only ~\$16K (for the "Class 2") per the WA Insurance Laws in penalties for the Defendant's severe lower back injury in a Boeing turnstile on February 5, 2007 vs. hundreds of thousands of dollars or more in penalties as a Payloads Engineer (for "Class 1"). This illegal reclassification denies the Defendant of his local, state and federal, U.S. Constitutional Title VII of the Civil Rights Act and Americans for Disabilities Rights to compensation for the permanent mental, physical and economic hardships Boeing has inflicted on the Defendant. The Defendant currently resides at 7684 Estate Avenue, Hudson, OH 44236. Of note, the Defendant still suffers from excruciating lower back pain as a result of the February 5, 2007 Boeing turnstile lower back injury; hence, the Defendant still has serious mobility problems and unable to lay flat on his back and erect himself from a fall without outside assistance since his lower back injury in a Boeing turnstile dated February 5, 2007. The Plaintiff respectfully requests that the U.S. Supreme Court accept the truthful medical facts into the Court records. That fact is that the Plaintiff "FRACTURED" his back in that Boeing turnstile in February of 2007, and that fracture has healed wrong causing "SCOLIOSIS" to develop explaining the continuous chronic back pain from the day the Plaintiff fractured

his back in that Boeing turnstile through today. The Plaintiff's doctor is Dr. Randall Barnes D.O., 1318 Paluxy Rd, Granbury, TX 76048, (817) 573-8805 can verify these facts. Note, cerebral palsy does not fracture back bones/discs.

2. The Defendant requests that The Superior Court's Jury Verdict and Special Verdict Form strike the illegal "Class 2" option from the Boeing classification of the Defendant when the Defendant hired into Boeing in August of 2006. The Defendant respectfully requests that WA Supreme Court allow the following responses to be entered into the Court's records. The Defendant filed an injury claim with The Washington Department of Labor and Industries (Claim #789CN214023/Self-Insured SC95397). The Plaintiff, The Boeing Company, will be designated "Boeing" within this response. The Defendant has returned home with severe aggravated chronic lower back pain, and will not be able to attend WA Supreme Court proceedings.

3. The Defendant is (1) not aware of the Court's legal definition of "Permanent Partial Disability" as presented to the jury relevant to The Defendant, (2) unaware that this definition was presented to the jury at all, and (3) has been unable to locate the Court's legal definition of "Permanent Partial Disability" associated with the Defendant's "pre-existing level" relative to the Court's "Category in Instruction 14" associated with "Class" 1, 2, or 3. These were unqualified statements from the Court regarding The Defendant directed to the Jury that made it impossible for the Jury to choose Class 1 associated with "Permanent Partial Disability" and The Defendant's "pre-existing level" prior to The Defendant's injury in a Boeing turnstile as recorded on February 5, 2007. The Defendant asked the Court to throw out the Class 2 designation with no success. The Defendant was not evaluated by anyone prior to The Defendant's injury in a Boeing turnstile as recorded on February 5, 2007. The Defendant's "Permanent Partial Disability" and "pre-existing level" were never evaluated and were never established by professionals prior to the Boeing turnstile injury. The Defendant's Civil Rights have illegally been denied to the Defendant. The Court falsely defined the Defendant's physical condition as a disease. The Defendant has been singled out, and has been illegally reclassified by the Court / Boeing / Board of Industrial Insurance's definition of

The Defendant's physical conditions prior to his Boeing turnstile lower back injury dated February 5, 2007. This "reclassification" was used after he was injured in a Boeing turnstile as recorded on February 5, 2007 as an ex post facto rule. Of note, cerebral palsy (CP) victims include those who show no outward CP symptoms, and those who are unaware that they are afflicted with CP. No two CP(s) are the same. Under the Industrial Insurance Act, the Board of Industrial Insurance Appeals has declared that The Defendant has Cerebral Palsy with Spasticity. But the Board of Industrial Insurance Appeals failed to note that The Defendant did not suffer from excruciating lower back pain nor any lower back pain prior to The Defendant's lower back injury in a Boeing turnstile dated February 5, 2007. Cerebral Palsy with Spasticity is not and was not painful to The Defendant. The Defendant's lower back injury is and has been extremely painful through today from damage to The Defendant's lower back and nervous system caused by the injury in the Boeing turnstile dated February 5, 2007.

4. The Court's "Categories of Impairment", lack of prior Evaluation prior to The Defendant's injury in a Boeing Turnstile on February 5, 2007, lack of prior "Objective Clinical Findings", and the Court's Special Verdict Form biased the Jury regarding The Defendant. In August of 2006 the Boeing doctor evidently hired The Defendant into Boeing with a Class 1 rating since she denied The Defendant the right to use Boeing and Global Aeronautical handicapped parking, forced The Defendant to use Boeing and Global Aeronautical turnstiles, and forced The Defendant to walk enormous distances and climb stairs, forced The Defendant to carry Boeing's issued backpack, 17" encrypted computer, and Boeing/FAA materials approximately 35 lb. every working day both from August of 2006 to March of 2007 at Boeing Everett and March of 2007 to July of 2008 on an 18 month temporary Boeing assignment at Global Aeronautical in Charleston, SC. The Defendant requests that the "Class 2" verdict be stricken from the Court's records. The Court's Special Verdict Form Question 6 "What Category in Instruction 14 best describes Mr. Davis' pre-existing level?" is illegal under Federal law (The Americans with Disabilities Act of 1990) and never allowed the Jury to refuse the illegal choice "Class 2". Classification of The Defendant was performed illegally with discrimination toward The Defendant. Dr. Summe has always stated that he was not a professional

regarding cerebral palsy victims. Dr. Summe only agreed that Dr. Braun had more experience with cerebral palsy victims, thus, more suited to fill out an illegal Department of Labor and Industries form that is unproven at classifying cerebral palsy victims. Dr. Summe has always stood by his “Class 1” prior to the Defendant’s turnstile injury, “Class 3” after the Defendant’s turnstile injury. Boeing is guilty of introducing false medical records claiming that the Defendant was seeing chiropractors prior his Boeing turnstile accident.

5. The Americans with Disabilities Act (ADA) of 1990, as amended, protects qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, , referral, and other aspects of employment on the basis of disability. The law also requires that covered entities provide qualified applicants and employees with disabilities with reasonable accommodations that do not impose undue hardship. Boeing and the Court have failed to follow this Federal law, and have used “classification” as a central issue to deny The Defendant the right to a fair trial, to the impose undue hardships including mental and physical permanent damage, and enormous economic hardships including loss of his Texas house, denied Workmen’s Comp of approximately \$146K, Right to Work, denied Boeing Health Insurance to The Defendant both as a direct Boeing employee while forcing him to pay his Boeing Health Insurance of \$520/mo. for a year, and have never reimbursed that health insurance money to The Defendant, and issuing The Defendant an “involuntary termination” based on The Defendant physical impairment resulting from the injury in the Boeing turnstile dated February 5, 2007. Boeing has broken many of the ERISA and WA Insurance Laws, and has exceeded the scope of these Laws only to break the federal Civil Rights and ADA Laws in order to avoid paying any and all penalties under the law.

6. ADA Title I requires that employers make reasonable accommodation to the known physical limitations of otherwise qualified individuals with disabilities. Boeing failed to follow this law, and failed to inform the Jury.

7. ADA Title I: Employment requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. Boeing failed to follow this law, and failed to inform the Jury.

8. The Defendant has the right to file a complaint per the "Private Suit Rights" under Title VII of the Civil Rights Act and The Americans with Disabilities Act (ADA). The Defendant received his "Notice of Suit Rights" dated May 5, 2011. The Defendant has been unable to find a lawyer willing to fully litigate this case after using The Yellow pages, internet, EEOC list of lawyers and personal references, Public Defender's Office and The University of WA Department of Law, etc. The Defendant is struggling with a mobility problem and permanent lower back and nerve damage. The Defendant will/has represent himself.

#### DESIGNATION OF CLERK'S PAPERS

9. The Defendant requested that the WA Supreme Court trial court clerk submit to the WA Appeals Court Division One copies of any and all Court documents, records, briefs, motions, responses, etc. submitted by the Defendant/Plaintiff and produced by the Court proceedings during the Snohomish County Superior Case No. 13 2 07139 6 following/including The Boeing Company's Notice of Appeal dated August 28, 2013. These documents should have included the Defendant's (pro se) initial brief dated September 7, 2013 that responded to The Boeing Company's Notice of Appeal dated August 28, 2013 including any and all following Court documents through and including this Appeal to the WA Supreme Court. Hence, the WA Supreme Court should still have any and all of the records of this Case within their possession.

#### ARGUMENT

10. This Case has been in the Courts for years. Prior to working for Boeing, The Defendant was very healthy with a successful career with most Aerospace companies and

many top secret programs. The Defendant now lives with daily massive chronic lower back pain and painful esophagus ulcers, directly the result of The Defendant's lower back injury in a Boeing turnstile and from powerful back pain medication that helped The Defendant to survive each excruciating painful day and sleepless nights. Boeing refused to pay for MRI(s) requested by hospitals/doctors with no reason given. Boeing forced The Defendant to carry extremely heavy Boeing payloads daily in Everett and S. Charleston even though Boeing knew they had injured The Defendant's back in Everett and was still badly injured in SC on an 18 month Boeing assignment. Boeing hid all of the scooter records, lied about the scooter requests, and appears to have withheld The Defendant's medical records from the SC Boeing managers regarding The Defendant's severe lower back injury while on the SC Boeing assignment. At the same time Boeing noted to The Defendant that his Boeing job existed only if he became a certified liaison engineer. Even though every involved doctor regarding this disability claim agreed that The Defendant was injured in that Boeing turnstile (including the Boeing doctor and the SC Boeing Independent Medical Examiner (IME)) prior to ordering The Defendant back to Everett in 2008 (ending the 18 month Boeing SC assignment) after nearly two years of massive chronic lower back, Boeing still two months later canceled The Defendant's Boeing salary and Boeing Health Insurance and his disability claim while still a Boeing employee. Boeing ignored the requests of two of the Defendant's personal doctors, The Defendant's Boeing manager and a 16 year WA police officer/Boeing Security Guard all of whom had personally requested that the Boeing doctor allocate a handicap parking space to The Defendant 2006/2007. Boeing refused them all in Everett and SC. Boeing broke the following federal laws that led to the destruction The Defendant's physical, mental and financial health: (1) ADA Laws by illegally changing The Defendant's entry hiring "Class" status. (2) US Civil Rights by treating him like he was a Terrorist using Boeing IMEs in Everett, WA. (3) The US Constitution by treating the "Word/Lies" of the Companies (Boeing and Mobility Company's Rep on Boeing company grounds) as superior to The Defendant's injury claims (Word). Constitutionally, are companies considered to be "people" with more Rights than "We the People"? Boeing supplied the Courts with false medical records without having to prove those records valid. Boeing inserted false medical records into The Defendant's records claiming lower back pain

prior to his turnstile injury, used false testimony of a mobility company representative that Boeing maintained on Boeing property and loyal to the Boeing doctor. Boeing used their Everett (IME)s to terrorize The Defendant including putting their hands on him simultaneously, stripping him of his clothes in less than a minute, pulling out their voice recorder and interrogating him like he was a Terrorist in Gitmo. The WA/WY/OH hospitals/doctors appear to have a grapevine that has spread the rumors that Boeing has used their names to falsely admit false medical records with their names and pseudo doctors into this Case, spread negative rumors about doctors; eg., medical licenses were in suspension, etc. These doctors have been reluctant to fill out Boeing's disability forms sent to The Defendant each year, and five months in a row through January of 2015. (4) ERISA is a federal law. Boeing has bypassed this law and denied The Defendant of any and all of his Rights regarding his injury claim under ERISA. During the WA Superior Jury Trial, The Judge never answered the Juror's question of why both The Defendant and Boeing were requesting an Appeal. During the WA Superior Jury Trial, there is no record of why the only Boeing employee juror requested to be excused from the Jury rather than vote for Boeing and/or against The Defendant. The absolute Power of Boeing has corrupted Boeing absolute; hence, existing/prospective lawyers, doctors, Boeing employees and affiliated companies fear going against Boeing regarding this disability injury claim. The WA Supreme Court has transferred this Case to a lower WA Appeals Court with no reason given to hear Boeing's crimes relative to the four federal laws above.

#### PLAINTIFF'S RESPONSE TO WA COURT OF APPEALS DIVISION ONE

11. The Defendant, Prentiss B. Davis, did not object to the jury instructions and the special verdict form at trial per the court trial transcript. As a result, the WA Court of Appeals Division One (Court) ruled that the Defendant "failed to preserve the issues related thereto for appeal"; hence, ruled against the Defendant. That Court noted that the trial court recessed, conferred with the parties, and that the trial court made modifications to both the proposed jury instructions and the special verdict form. This Court did not note that the Defendant (1) objected to those modifications including both the proposed

jury instructions and the special verdict form directly to the Judge and the Plaintiff during that conference, (2) tried to explain his opposition to these modifications directly to the Jury until the Plaintiff objected and the Judge strongly warned the Defendant about going any farther. The Defendant felt threatened by the Judge's admonishment and offered no further comments to the jury. The "modified" transcript no longer shows what the Defendant had said in court allowing the WA Court of Appeals Division One to dismiss the Defendant's appeal claiming that the Defendant "offered none". In the interest of justice, the Defendant respectfully requests that this appeal for review be allowed to proceed. The Defendant has a lower back injury that never had a chance of healing correctly. The deformed healing process of the Defendant's fractured disc was the result of the fracture that occurred in a Boeing turnstile in February of 2007. The Defendant's doctors have determined that the Defendant will live in chronic pain for the rest of his life requiring pain management doctors. The Defendant tried to explain this to the court trial jury starting with the Boeing Everett Independent Medical Examiners and what appeared to be someone else's medical records, the false Boeing medical records that allowed previous courts/hearings claim that the Defendant had healed (impossible), the illegal reclassification of the Defendant to "Class 2", and the lengths that Boeing will go through to avoid disability payments and illegal monetary collections that are bankrupting the Defendant (see Exhibit C). Boeing canceled the Defendant's income, Boeing Health Insurance, and disability claim twice without one negative doctor's review and with the agreement of their own South Carolina Independent Medical Examiner that the Defendant had severely damaged his lower back in a Boeing turnstile. Only after Boeing transferred the Defendant back to Boeing Everett and had their own Everett Independent Medical Examiner use false medical records to try to justify their previous illegal acts against the Defendant that a negative medical review appeared. Today, Boeing has never been punished for their crimes, pays absolutely nothing to the Defendant, and illegally collects unfounded money from the Defendant (see Exhibit C).

## CONCLUSION

12. The Defendant is trying to halt further injustice by Boeing toward the Defendant. (A) The Defendant respectfully requests that The WA Supreme Court strike the “Class 2” noted above from the day the Defendant hired into Boeing in August of 2006 until the Defendant’s injury in a Boeing turnstile on February 5, 2007 through Boeing’s “Involuntary Termination” of the Defendant and from all of Court records in this Case. (B) The Defendant respectfully requests that The WA Supreme Court enforce any and all of the local, state and federal, U.S. Constitutional Title VII of the Civil Rights Act and Americans for Disabilities Rights that have been denied to the Defendant by Boeing, the Insurance Laws and possibly the Courts. (C) The Defendant swears to this Court that he never told his personal Doctor (Dr. Paul Gibbons) about the Boeing allocated scooter: hence, the medical paper in evidence signed by Dr. Gibbons requesting a scooter for the Defendant after he hired into Boeing in August of 2006 is/was falsified medical record(s) entered into the Court records by Boeing. (D) The Defendant was in good health prior to the Boeing turnstile accident dated February 5, 2007. Boeing is the criminal in this Case. The Defendant respectfully requests that Boeing be punished to the fullest extent of the Laws for entering false medical records regarding the Defendant. (E) The Defendant requests that the Court enter the “Class 1” regarding the Defendant when he hired into Boeing in August of 2006, and that the Court enter the “Class 3” regarding the Defendant when he was “involuntarily terminated” from Boeing in November of 2010, and that the Court enter the “Class 3” regarding the Defendant through today because the Defendant has been unable to reverse the severe lower back damage to his lower back resulting from the Boeing turnstile injury dated February 5, 2007. Boeing caused irreparable damage to the Defendant’s lower back by denying the Defendant access to handicapped parking, denying medical assistance, denying payment of Cleveland Clinic doctors’ requests for upper back MRI(s) payment approval, forcing him to carry excessive weight for approximately two years over excessive distances through multiple turnstiles even though Boeing was aware that they had caused severe damage to the Defendant’s lower back injury within an Everett turnstile, denied the Defendant income, denied Boeing health care insurance, denied the Defendant’s disability after approximately eight weeks of workmen’s comp even though up to that time the Boeing’s South Carolina Independent Medical Examiner and two of the Defendant’s neurologists (all of the neurologist up to

that time) all agreed that the Defendant had severely injured his lower back in a Boeing turnstile, recorded and noted to the Boeing doctor and the Department of Labor and Industries immediately after the February 5, 2007 accident. These serious crimes committed by Boeing are punishable by law and were performed outside the scope of the federal laws including ERISA noted above including the Employee Retirement Income Security Act, a federal law. The Defendant respectfully requests that Boeing be fully punished, the maximum that the law permits. The Defendant requests that Boeing provide the Defendant with a retirement income respective of his last Boeing job description or an equal amount of money over the Defendant's lifetime.

Under penalties of perjury, I declare that the facts presented above which are set out in the accompany statement of facts and other attached statements, are to the best of my knowledge and belief, are true, correct and complete.

Wherefore, Defendant prays that this Court determine that Boeing has physically, mentally and financially severely injured (in all probability permanently injured) the Defendant, and has shown a total disregard for the state and federal laws that has led to Defendant's injuries noted above in the Defendant's Injury Claim, determine that Boeing owes the Defendant substantial compensation for Boeing inflicted hardships and "permanent" disabilities, a retirement income, and grant that such other and further relief to the Defendant, Prentiss B. Davis, as the Court deems appropriate. Defendant prays that this Court will reject the Superior Court Jury's verdict regarding the "Class 2" in any manner, shape or form, and overturn the WA Court of Appeal Division One's ruling, and review this Case.

Dated: October 12, 2015

Respectfully submitted,



Prentiss B. Davis  
7684 Estate Avenue  
Hudson, OH 44236  
(817) 823-5356

**CERTIFICATE OF SERVICE**

**SNOHOMISH COUNTY SUPERIOR CASE NO. 13 2 07139 6  
WA SUPREME COURT NO. 90168-6, 90208-9  
COURT OF APPEALS DIVISION ONE NO. 73104-1-I**

I certify that a copy of Prentiss B. Davis vs. The Boeing Company and any attachments were served, either in person, or by mail on the persons listed below:

<b>Copies to:</b>	<b>Court of Appeals Division One</b>	<b>Clerk of the Court</b>
	<b>Clerk of the Court</b>	<b>Snohomish Co. Superior Court</b>
	<b>600 University St.</b>	<b>3000 Rockefeller Avenue</b>
	<b>One Union Square</b>	<b>M/S 502</b>
	<b>Seattle, WA 98101-1176</b>	<b>Everett, WA 98201</b>

<b>Copies to:</b>	<b>Director</b>	<b>Boeing Company</b>
	<b>Department of Labor and Industries</b>	<b>Jackie Pierce</b>
	<b>P. O. Box 44001</b>	<b>P. O. Box 3707 MS 5F-08</b>
	<b>Olympia, WA 98504-4510</b>	<b>Seattle, WA 98124-2207</b>

**Copies to:** J. Scott Timmons, Executive Secretary  
Board of Industrial Appeals  
2430 Chandler Ct., SW, MS F1-13  
P. O. Box 42401  
Olympia, WA 98504-2401

Gary E. Keehn, Atty  
Keehn Kunkler, PLLC  
810 Third Avenue #730  
Seattle, WA 98104

**Copies to:** Office of the Attorney General/Tumwater  
Docket Manager  
P. O. Box 40121  
Olympia, WA 98504-0121

**Original to:** Ronald R. Carpenter  
Supreme Court Clerk  
Temple of Justice  
P. O. Box 40929  
Olympia, WA 98504-0929

WA Supreme Court Clerk  
P. O. Box 40929  
Olympia, WA 98501-2314  
(415 12<sup>th</sup> Ave SW)

**EXHIBIT A**

Filed *E*  
Washington State Supreme Court

FEB - 4 2015 *kyh*

Ronald R. Carpenter  
Clerk

THE SUPREME COURT OF WASHINGTON

THE BOEING COMPANY,	)	
	)	NO. 90168-6
Respondent,	)	(consol. w/90208-9)
	)	
v.	)	<b>ORDER</b>
	)	
PRENTISS DAVIS,	)	Snohomish County Superior Court
	)	No. 13-2-07139-6
Petitioner.	)	
_____	)	

Department II of the Court, composed of Associate Chief Justice Johnson and Justices Owens, Stephens, González and Yu, considered this matter at its February 3, 2015, Motion Calendar, and unanimously agreed that the following order be entered.

IT IS ORDERED:

That this case is transferred to Division One of the Court of Appeals.

DATED at Olympia, Washington this 4<sup>th</sup> day of February, 2015.

For the Court

*Johnson*  
ASSOCIATE CHIEF JUSTICE

705/28

**EXHIBIT B**

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

THE BOEING COMPANY,	)		
	)	DIVISION ONE	
Respondent,	)	No. 73104-1-1	
	)	UNPUBLISHED OPINION	
v.	)		
PRENTISS B. DAVIS,	)	FILED: September 28, 2015	
	)		
Appellant.	)		

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
2015 SEP 28 AM 11:20

DWYER, J. — While in the employ of The Boeing Company, Prentiss Davis sustained a workplace injury. A claim for industrial insurance benefits arising from this injury was allowed for some time but, thereafter, the Department of Labor and Industries issued an order denying further benefits and closing Davis’s claim. Davis appealed this order, first to the Board of Industrial Insurance Appeals, which determined that Davis had a permanent partial disability that was proximately caused by the industrial injury, and then to the superior court, which affirmed the Board’s decision. Davis again appeals, taking issue with numerous aspects of the proceedings below. We affirm.

I

Davis sustained an industrial injury on February 5, 2007 during the course of his employment with The Boeing Company. A claim for industrial insurance benefits was allowed and benefits paid pursuant to the Industrial Insurance Act (IIA), Title 51 RCW. On October 12, 2011, the Department of Labor and Industries issued an order which stated: time loss compensation benefits are

No. 73104-1-1/2

ended as paid through August 1, 2011; treatment is no longer necessary and there is no permanent partial disability; the self-insured Boeing will not pay for medical services or treatment after the date of closure; the self-insured Boeing is not responsible for Cerebral Palsy with spasticity, multi-level lumbar degenerative disk disease, and severe crush injury to the left arm, wrist, and hand; and the claim is closed.

Davis filed an appeal from the Department order with the Board of Industrial Insurance Appeals. The case proceeded to an administrative hearing. On May 28, 2013, the industrial appeals judge issued a proposed decision and order (PD&O) which reversed the October 12, 2011 Department order. The PD&O stated that: Davis's low back condition was fixed and stable as of October 12, 2011 and he was not entitled to further treatment; Davis was not a temporary totally disabled worker from August 2, 2011 through October 12, 2011; Davis was not a permanently totally disabled worker as of October 12, 2011; Davis had a permanent partial disability proximately caused by the industrial injury of February 5, 2007; Davis was entitled to a permanent partial disability award equal to Category 3, less a preexisting level equal to Category 2, as described under WAC 296-20-280.

Davis filed a petition for review from the PD&O taking the position that the PD&O should be reversed.<sup>1</sup> Specifically, Davis's attorney argued that the industrial injury prevented Davis from performing reasonably continuous gainful employment from August 2, 2011 through October 12, 2011, and that, as of October 12, 2011, Davis was totally permanently disabled.

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<sup>1</sup> Boeing also filed a petition for review from the PD&O.

No. 73104-1-I/3

A decision and order was issued by the Board on July 29, 2013, which stated that the PD&O was supported by the preponderance of evidence and was correct as a matter of law. Davis filed an appeal from the Board's order in the Snohomish County Superior Court.<sup>2</sup>

A trial was held April 1-3, 2014. Davis appeared pro se. A jury was impaneled and sworn and evidence in the form of the certified appeal board record was read to the jury. Thereafter, the trial court instructed the jury, arguments of counsel and Davis were presented, and the jury retired to consider its verdict. The jury returned a verdict affirming the Board's decision.

A judgment and order based on the jury verdict was entered on April 10, 2014. Davis petitioned for discretionary review of the trial court's order in the Washington Supreme Court. The case was transferred to this court by an order dated February 4, 2015.

## II

Davis makes numerous contentions on appeal, most of which concern issues outside of the scope of the actions and judgment of the superior court.<sup>3</sup>

The IIA provides an exclusive remedy for injured workers. Original jurisdiction over matters arising under the IIA resides with the Department. RCW 51.04.010; Lenk v. Dep't of Labor & Indus., 3 Wn. App. 977, 982, 478 P.2d 761 (1970). The Board and the superior court serve a "purely appellate function." Kingery v. Dep't of Labor & Indus., 132 Wn.2d 162, 171, 937 P.2d 565 (1997);

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<sup>2</sup> Boeing also filed an appeal from this decision.

<sup>3</sup> These issues include whether there has been a violation of local, state, or federal law or the U. S. Constitution; whether Davis was forced to perform certain activities as a result of his job; whether Davis was denied income or benefits; and whether Davis has been subjected to employment discrimination.

No. 73104-1-1/4

RCW 51.52.060, .115. "The Board's appellate authority is strictly limited to reviewing the specific Department action." Kingery, 132 Wn.2d at 171.

Thereafter, "[t]he superior court reviews the Board action on the [same] record."

Kingery, 132 Wn.2d at 171. "[I]f a question is not passed upon by the

Department, it cannot be reviewed by either the Board or the superior court."

Kingery, 132 Wn.2d at 172 (citing Lenk, 3 Wn. App. at 982). Similarly, our review

is limited to the actions and judgment of the superior court. See RCW 51.52.140

("Appeal shall lie from the judgment of the superior court as in other civil cases.");

RAP 2.5.

Herein, the Department was limited to determining what workers' compensation benefits Davis was entitled to under the IIA. Accordingly, each level of appellate review was equivalently limited. Therefore, to the extent that Davis's arguments on appeal pertain to facts or issues outside of that scope, they fail.

To the extent that Davis's contentions fall within the permissible scope of our review, they concern the jury instructions and the special verdict form.

Jury instructions cannot be challenged for the first time on appeal. Simpson Timber Co. v. Wentworth, 96 Wn. App. 731, 740, 981 P.2d 878 (1999); accord Couch v. Mine Safety Appliances Co., 107 Wn.2d 232, 244-45, 728 P.2d 585 (1986). The same rule applies to special verdict forms. Raum v. City of Bellevue, 171 Wn. App. 124, 144-45, 286 P.3d 695 (2012).

Herein, copies of the trial court's proposed instructions and special verdict form were distributed to both sides on the second day of trial. The trial court

No. 73104-1-1/5

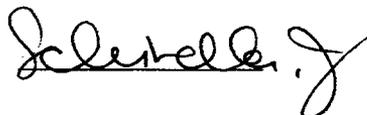
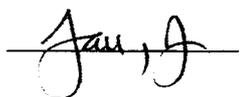
instructed the parties to "scrutinize all the instructions carefully." The trial court then recessed in order to give the parties time to carefully review the documents. After the recess, the trial court invited comments. Davis responded at length with comments.

After conferring with the parties, the trial court made modifications to both the proposed jury instructions and the special verdict form. The updated documents were distributed to the parties the following day. The trial court then invited "general comments" regarding the updated proposed jury instructions and special verdict form. Davis offered none. Thereafter, the trial court called for any "formal exceptions" to the proposed documents, and Davis stated that he "accept[ed] it as it is."

Because Davis did not object to either the jury instructions or the special verdict form at trial, he failed to preserve the issues related thereto for appeal. This determination necessarily ends our inquiry.

Affirmed.

We concur:



**EXHIBIT C**



P.O. Box 14559  
Lexington, KY 40512-4559

Phone: (800) 882-5968  
Fax: (888) 329-4093

September 4, 2015

PRENTISS DAVIS  
7684 ESTATE AVENUE  
HUDSON OH - 44236

Group Control No: 0720390  
Employer: The Boeing Company  
Employee: MR. PRENTISS DAVIS  
Disability Claim Case No: 1885699

Dear Prentiss B Davis:

**SECOND REQUEST**

Aetna Life Insurance Company (Aetna) is sending this letter to you with regret that previous efforts to obtain payment have been unsuccessful. On 06/12/2015, we sent a letter requesting you to remit your overpayment of \$7,189.77. We have not yet received your payment.

You received a lump sum Workers Compensation settlement effective 08/26/2013. Per your LTD plan, Aetna will offset \$339.14 per month for the period of time starting 08/26/2013 through the end of benefit. Aetna now has the right to recover of that amount from the date of the award. Your claim was not offset from 08/26/2013 through to 05/31/2015; therefore an overpayment has occurred on your claim for this date range.

**TOTAL GROSS/NET OVERPAYMENT IS: \$7,189.77 from 08/26/2013 through to 05/31/2015.**

While Aetna understands employee may inadvertently or unknowingly become overpaid under the disability benefit plan, repayment to the plan is still required.

You may select one of the following repayment options. Please do NOT send cash:

- A. Access your overpayment online to make a payment using your American Express, Discover, MasterCard or Visa DEBIT Card. Log into the Workability® Absence Management System Portal at <https://www.aetnadisability.com>
- B. Call our toll free number at 1-888-760-1970 to make payment by telephone
- C. Please use the enclosed envelope to send a check or money order payable to Aetna in the amount of \$7,189.77, to be received no later than 09/19/2015 to:

Aetna Life Insurance Company  
P.O. Box 14559  
Lexington, KY 40512-4559

**\*\*Please write your claim number in the memo section of your check or money order\*\***

Please note, failure to respond may result in our taking further action including possible referral of this matter to a collection agency for handling.

Should you have any questions, please call (800) 882-5968.

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