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**SUPREME COURT**  
**STATE OF WASHINGTON**  
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Jun 20, 2016, 3:54 pm  
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No. 93191-7

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**THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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STERLING O. HAYDEN,  
Petitioner,

v.

THE BOEING COMPANY,  
Respondent.

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**THE BOEING COMPANY'S ANSWER TO STERLING HAYDEN'S  
PETITION FOR REVIEW TO THE SUPREME COURT**

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Kathryn I. Eims, WSBA #17426  
Jonathan James, WSBA #38285  
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**ORIGINAL**

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## **I. IDENTITY OF RESPONDENT**

The Respondent in this matter is The Boeing Company (“Boeing”), a self-insured employer.

## **II. DECISION OF THE COURT OF APPEALS**

In its April 25, 2016 opinion No. 73344-3-I, Division One of the Court of Appeals reversed the decision of the King County Superior Court and affirmed the final decision of the Board of Industrial Insurance Appeals.<sup>1</sup> A copy of the Court of Appeals opinion is attached to Hayden’s Petition for Review.

## **III. COUNTERSTATEMENT OF ISSUE**

1. Did the Court of Appeals correctly determine that substantial evidence did not support the superior court’s findings and that those findings in turn did not support the trial court’s conclusions of law?

## **IV. COUNTERSTATEMENT OF THE CASE**

For purposes of this Answer, Respondent Boeing adopts as its Statement of the Case the facts contained in the decision of the Court of Appeals, *Hayden v. Boeing Co.*, 2016 WL 1627831 (April 25, 2016).

## **V. ARGUMENT FOR DENIAL OF REVIEW**

Hayden has shown no basis for discretionary review in this matter. Under RAP 13.4(b) a petition for discretionary review will be accepted by

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<sup>1</sup> The Court of Appeals’ decision is unpublished but can be found on Westlaw at *Hayden v. Boeing Co.*, 2016 WL 1627831 (April 25, 2016).

this Court only if: (1) the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; (2) the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; (3) a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

None of those requirements have been met here. First, Hayden's Petition does not reference which standard of RAP 13.4(b) warrants review by this Court. In fact, Hayden's Petition does not mention RAP 13.4 at all.

Second, Hayden has failed to establish through his argument that any of the standards for granting review have been met. Rather, Hayden's primary contention is that the Court of Appeals was too stringent in applying the standard of review in this case. However, in looking at the Court of Appeals decision, it is apparent that the Court of Appeals carefully considered and applied the proper standard of review, as the Court provided a very detailed and thorough explanation of how the superior court's findings did not support its conclusions of law.

As will be outlined below, Hayden has failed to meet any of the requirements of RAP 13.4. Accordingly, this Court should decline to accept review.

**A. There Is No Question of Law Under The Constitution**

Nowhere in his Petition does Hayden argue that there is a question of law under the Constitution to be determined by this Court, nor is there even any implication that such a question is presented here. The issues raised by Hayden are solely governed by Title 51 RCW, the Industrial Insurance Act, and have no constitutional implications warranting review under RAP 13.4(b)(3).

**B. The Court of Appeals Decision Does Not Conflict With a Decision of the Supreme Court or Another Decision of The Court of Appeals**

RAP 13.4(b)(1) and (2) provide for Supreme Court review if the Court of Appeals decision is in conflict with a Supreme Court decision or a decision by another division of the Court of Appeals.

There is no such conflict here, as Hayden's disagreement with the Court of Appeals has to do with the specific facts of his case, not the Court's application of the law. To be clear, Hayden does not contend that the Court of Appeals applied the wrong standard of review or misinterpreted the law. Rather, it is his contention that the Court of

Appeals applied the “substantial evidence” standard too stringently. Petition at 13.

The substantial evidence standard of review requires the reviewing court, in this case the Court of Appeals, to review the record to determine whether substantial evidence supports the superior court’s findings and whether the superior court’s conclusions flow from those findings. *Ruse v. Dep’t of Labor & Indus.*, 138 Wn.2d 1, 5-6, 977 P.2d 570 (1999) (quoting *Young v. Dep’t of Labor & Indus.*, 81 Wn. App. 123, 128, 913 P.2d 402 (1996)).

In this case, the Court of Appeals identified several critical findings made by the trial court which were not supported by the record, and which therefore did not support the trial court’s conclusions of law. *Hayden v. Boeing Co.*, No. 73344-3-I at 3-4 (April 25, 2016).

Tellingly, however, in his Petition to this Court Hayden does not address those findings of fact which the Court of Appeals felt were not supported by the record, nor does he contend that those issues were not critical findings supporting the trial court’s conclusions. Instead, Hayden seems to suggest that the Court of Appeals should have just ignored those findings (or lack of evidentiary support for those findings), despite the fact that they were central to the determination made by the superior court.

In the end, the Court of Appeals applied the proper standard of review in this matter and found, with careful deliberation and in great detail, that substantial evidence did not support the critical findings of fact made by the trial court. Hayden's disagreement with the Court of Appeals does not establish a basis for review by the Supreme Court, as a mere difference of opinion about the relevant facts in a case does not create a conflict with another appellate case. As such, the requirements of RAP 13.4(b)(1) and (2) have not been met in this case and review should be denied.

**C. There Is No Issue of Substantial Public Interest**

Finally, Hayden has raised no issue of substantial public interest to justify review under RAP 13.4(b)(4). The Court of Appeals decision in this matter involved a determination based upon factual circumstances unique to Hayden's workers' compensation claim and did not involve issues impacting the public at large. Further, the Court of Appeals decision was unpublished. Thus, there will be no impact on the public from this decision.

**VI. CONCLUSION**

Hayden has neither identified nor established any of the requirements for granting discretionary review under RAP 13.4(b). There is no conflict with a decision from this Court or from the Court of Appeals

nor is there a constitutional question or issue of substantial public interest.

Hayden's Petition should be denied.

Respectfully submitted this 20<sup>th</sup> day of June, 2016.

EIMS GRAHAM, P.S.



KATHRYN I. EIMS, WSBA #17426  
JONATHAN JAMES, WSBA #38285  
Attorneys for Respondent Boeing

Brandon McGraw, under penalty of perjury under the laws of the State of Washington, declares:

1. I am a paralegal at Eims Graham, P.S., attorneys of record for Respondent The Boeing Company in the above-captioned action.

2. On the date last shown below, I caused, by first class United States mail, The Boeing Company's Answer to Sterling Hayden's Petition for Review to the Supreme Court to be served upon the following:

Patrick C. Cook, WSBA #28478  
Attorneys for Petitioner Sterling O. Hayden  
Walthew, Thompson, Kindred, Costello & Winemiller, P.S.  
3000 First Avenue, Seattle, WA  
PO Box 34645, Seattle, WA 98124-1645

Anastasia Sandstrom, AAG  
Office of the Attorney General  
MS TB-14  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104

DATED this 20<sup>th</sup> day of June, 2016, at Seattle, Washington.

EIMS GRAHAM, P.S.

By: 

Brandon McGraw, Paralegal

June 20, 2016

Sent via E-filing: [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

Clerk of the Court  
Washington State Supreme Court  
Temple of Justice  
PO Box 40929  
Olympia, WA 98504-0929

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RE: *Sterling O. Hayden v. The Boeing Company*  
Supreme Court No. 93191-7  
Employer: The Boeing Company  
Claimant: Sterling Hayden  
Claim No.: SF03221 (2001972347)

Dear Clerk of the Court:

Attached for filing is The Boeing Company's Answer to Sterling Hayden's Petition for Review to the Supreme Court. By this email, please accept the attached as the original of these documents. Copies are served as below noted.

Thank you for your time and attention in this matter. Please do not hesitate to contact our office if you have any questions.

With Kind Regards,

EIMS GRAHAM, P.S.



Brandon McGraw  
Paralegal

Attachments

c: Patrick Cook, Atty for Petitioner, via email: [PCook@walthew.com](mailto:PCook@walthew.com) (w/attachments)  
Anastasia Sandstrom, via email: [anas@atg.wa.gov](mailto:anas@atg.wa.gov) (w/attachments)  
Leann Hollett, Sedgwick CMS (w/attachments)



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## OFFICE RECEPTIONIST, CLERK

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**From:** OFFICE RECEPTIONIST, CLERK  
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**Subject:** RE: 93191-7 - Hayden v. Boeing

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Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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**Subject:** 93191-7 - Hayden v. Boeing

Good afternoon,

Attached hereto, please find The Boeing Company's Answer to Sterling Hayden's Petition for Review to the Supreme Court. I am copying all parties on this email and have mailed copies to their attention as well.

Thank you for your time. Please do not hesitate to contact our office if you have any questions regarding this matter.

With Kind Regards,

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