98219-8

No. 78454-4-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

DEPARTMENT OF LABOR & INDUSTIRES,

Appellant,

v.

SHEILA M. LAROSE,

Respondent.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Petitioner is Sheila LaRose, a workers' compensation claimant, respondent at the Court of Appeals, appellant at King County Superior Court, and appellant at the Board of Industrial Insurance Appeals.

II. CITATION TO COURT OF APPEALS' DECISION

Petitioner Sheila LaRose seeks review of the Court of Appeals' published opinion in this case, filed January 27, 2020, 8 Wn. App. 2d 90, 437 P.3d 701. No motion for reconsideration was filed.

III. ISSUES PRESENTED FOR REVIEW

1. Whether RCW 51.08.142, which bars workers' compensation occupational disease "claims based on mental conditions or mental disabilities caused by stress," excludes a public defender's post-traumatic stress disorder caused by stalking, threats, and harassment from a mentally ill assigned felony client when no single incident alone caused the condition?
2. Whether WAC 296-14-300(2)(d) (2015), which excludes occupational disease claims based on "[r]epeated exposure to traumatic events," exceeds the Department of Labor & Industries' rulemaking authority granted by RCW 51.08.142?

IV. STATEMENT OF THE CASE

Sheila LaRose is a public defender. An assigned client stalked and harassed Ms. LaRose and her family, and as a result of this pattern of conduct, carried out over the course of several years, Ms. LaRose was diagnosed with a depressive disorder and post-traumatic stress disorder (PTSD). She filed a claim for workers' compensation benefits on April 4, 2016, for events occurring as late as March 21, 2015. Board Record at 54. Ms. LaRose acknowledges that if this claim were filed as an "injury" rather than an "occupational disease," her claim would be barred by the one year statute of limitations. RCW 51.28.050. But no one incident of stalking or harassment caused her depression and PTSD. As such, Ms. LaRose filed this claim as one for an occupational disease under RCW 51.08.140.

Sheila LaRose's claim was rejected by the Department of Labor & Industries ("Department") on July 22, 2016, at the request of King County, which is a self-insured employer for purposes of workers' compensation coverage. Board Record at 55-57. King County argued, and the Department agreed, that Ms. LaRose's claim should be rejected pursuant to WAC 296-14-300(2)(d) (2015), which states that "[r]epeated exposure to traumatic events . . . is not an industrial injury . . . or an occupational disease."

Ms. LaRose appealed to the Board of Industrial Insurance Appeals

("Board"), where the assigned Industrial Appeals Judge ("IAJ") granted the Department's and King County's motions for summary judgment, issuing a proposed decision and order on March 28, 2017. Board Record at 29-33. Ms. LaRose filed a petition for review by the full Board of the IAJ's proposed decision on April 11, 2017. Id. at 22-24. The Board granted the petition on May 1, 2017, but ultimately affirmed the IAJ's proposed decision, adding references to case law in its conclusions of law. Id. at 15, 3-4. The Board held that it did not have the "authority to rule on the validity of an agency's rule," and upheld the rejection of Ms. LaRose's claim based on the language of WAC 296-14-300(2)(d). Id. at 4, Conclusion of Law 2.

Ms. LaRose appealed to King County Superior Court. CP at 1-2. She moved for summary judgment, largely reiterating and expanding upon the arguments she made in front of the Board. Id. at 3-10. A hearing was held in front of the Honorable James Rogers, who entered an order granting Ms. LaRose's motion on March 16, 2018, and remanded the case to the Board to hold hearings on the issue of whether the events alleged by Ms. LaRose constitute "stress" or "trauma." CP at 48-53. In its order, the superior court, agreed with Ms. LaRose on three main points: 1) challenges to agency rulemaking are not limited to

declaratory actions under the Administrative Procedure Act; 2) the 2015 amendments to WAC 296-14-300 were interpretive rather than legislative; 3) the Department exceeded its rulemaking authority when it excluded occupational disease claims predicated on repeated traumatic events.

The Department moved for reconsideration, arguing that because Ms. LaRose brought an "as applied" challenge, the Department should be allowed to continue to enforce the terms of WAC 296-14-300(2)(d). CP at 56-57. The Department's motion was denied, and the Department filed a notice of appeal on May 22, 2018. Id. at 61-63.

The case was briefed to Division I and oral argument took place on July 23, 2019. After the superior court issued its written decision, but before the Department filed its motion for reconsideration, the legislature passed a bill creating a presumption in favor of law enforcement officers' and firefighters' post-traumatic stress disorder occupational disease claims. *See* LAWS OF 2018, ch. 264. The bill was signed by Governor Inslee on March 23, 2018, and became effective June 7, 2018. Relevant to this case, the LEOFF PTSD presumption bill amended RCW 51.08.142 in a manner suggesting that these cases would be allowed as an exception to the stress claim bar:

> RCW 51.08.142 and 1988 c 161 s 16 are each amended to read as follows:

> (1) Except as provided in subsection (2) of this section, the department shall adopt a rule pursuant to chapter 34.05 RCW that claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of occupational disease in RCW 51.08.140.
>
> (2) The rule adopted under subsection (1) of this section shall not apply to occupational disease claims resulting from posttraumatic stress disorders of firefighters as defined in RCW 41.26.030(16) (a), (b), (c), and (h) and law enforcement officers as defined in RCW 41.26.030(18) (b), (c), and (e).

LAWS OF 2018, ch. 264, § 2. In its appellate brief and at oral argument, the Department claimed that this 2018 amendment is evidence of the legislature's original intent when it passed RCW 51.08.142 in 1987. *See* Br. of Appellant at 9-10; Transcript of Oral Argument, July 23, 2019; LAWS OF 1987, ch. 161 § 16.

Ultimately, the Court of Appeals issued a published decision reversing the superior court decision on January 27, 2020.

V. ARGUMENT

This Court should grant review because the Industrial Insurance Act protects the health and welfare of millions of Washingtonians who have been, or may be, injured on the job. Thus, the issue presented in this case is one of substantial public interest.

Moreover, the courts of appeals have applied RCW 51.08.142 unevenly and inconclusively. Division I, before this case, managed to avoid the issue presented by this case (the distinction between stress and

trauma) in *Kimzey v. Dep't of Labor & Indus.*, 2015 Wash. App. Lexis 2943 (Nov. 30, 2015). It avoided the issue because the injured worker had not raised that distinction at the administrative level, thus failing to preserve the argument. Division III also touched on the stress claim bar in an action brought by a worker against a school district for being forced to clean up a suicide involving a student. *Rothwell v. Nine Mile Falls Sch. Dist.*, 149 Wn. App. 771, 206 P.3d 347 (2009) (court, in ruling on a CR 12(b)(6) motion, tersely noted that the plaintiff's "claim is specifically excluded from the statutory definition of an "occupational disease."). Notably, on remand the trial court dismissed the action because it determined that the events giving rise to the claim qualified as a single traumatic incident; thus, the school district employer was actually *immune* by virtue of the Industrial Insurance Act. *See Rothwell v. Nine Mile Falls Sch. Dist.*, 173 Wn. App. 812, 295 P.3d 328 (2013). Thus, this Court is presented with the opportunity in this case to clarify once and for all the proper meaning of RCW 51.08.142.

The court of appeals' decision in this case runs contrary to a fundamental rule of statutory construction in workers' compensation cases requiring the law to be liberally construed in favor of the injured worker. This Court has recently reaffirmed that the liberal construction mandate in Title 51 "necessitates that all doubts be resolved in favor of coverage."

Dep't of Labor & Indus. v. Lyons Enters., Inc., 185 Wn. 2d 721, 734, 374 P.3d 1097 (2016). Liberal construction means interpreting exceptions to coverage narrowly, which the Department and the court of appeals did not do in this case.

There are two types of workers' compensation claims: industrial injuries and occupational diseases. An industrial injury is technically defined as "a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without." RCW 51.08.100. An occupational disease is technically defined as "such disease or infection as arises naturally and proximately out of employment." RCW 51.08.140. In practice, what typically distinguishes an "injury" claim from an "occupational disease" claim is the latter's usually insidious onset. Occupational diseases are often thought of as not being caused by any one specific incident, but rather the cumulative effect of some insult.

More than thirty years ago, faced with what it believed was an impending wave of workplace stress-based occupational disease claims, the Department requested legislation excluding those claims. The Department's fears were in large part based on two appellate decisions. The first was *Dep't of Labor & Indus. v. Kinville*, 35 Wn. App. 80, 664 P.2d 1311 (1983). There an individual filed a claim for emotional and

psychiatric symptoms related to her "employment situation," but the court of appeals rejected the claim because it determined that she was required to prove that her particular condition was "peculiar to" her occupation. This required a showing that the worker's particular employment created a greater risk of developing the disease; what the leading treatise on workers' compensation calls the "positional risk test." *See* 1 LARSON'S WORKERS' COMPENSATION LAW § 5.05. The second case was *Dennis v. Dep't of Labor & Indus.*, 109 Wn. 2d 467, 745 P.2d 1295 (1987), this Court's seminal occupational disease decision. There this Court emphatically rejected the "peculiar to employment" test in favor of a more relaxed "distinctive conditions of employment" standard. *Dennis* rejected a positional risk or greater risk test specifically and, in the Department's view, the stage was thus set for an onslaught of workplace stress claims.

So at the Department's request, the legislature passed RCW 51.08.142 in 1987. LAWS OF 1987, ch. 161 § 16. In its original form, the statute directed the Department to pass a rule that "claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of occupational disease." The Department's 1988 rule did that, and provided an illustrative list of situations that the statute and rule purportedly applied to, including, *inter alia*, changes in employment duties, conflicts with supervisors, perceived or actual threat of loss of a

job, job dissatisfaction, and subjective perceptions of employment conditions. WAC 296-14-300 (1988). None of the illustrative examples from the Department's original rule would be considered causative in the diagnosis of PTSD, whether in the version of the DSM in place in 1988 (DSM-III-R), or the DSM-5.[1]

As the psychiatric community's understanding of PTSD has expanded, the diagnostic criteria for that condition has been refined. Most significantly, when the Diagnostic and Statistical Manual of Mental Disorders (5th Ed. 2013) ("DSM-5") was published, the psychiatric community formally recognized that PTSD could be caused by repeated

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[1] The condition precedent for diagnosis of PTSD is referred to as a "Criterion A" event. This is the case because, since 1980 when PTSD first appeared by name in the DSM-III, the criteria for diagnosis of PTSD were listed in alphabetic format, with A. originally stating as a diagnostic requirement that "The person has experienced an event that is outside the range of usual human experience and that would be markedly distressing to almost anyone." American Psychiatric Association, DIAGNOSTIC & STATISTICAL MANUAL OF MENTAL DISORDERS 309.89 (1980).

In the latest version, the DSM-V, criterion A. is satisfied by

> Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways:
> 1. Directly experiencing the traumatic event(s).
> 2. Witnessing, in person, the event(s) as it occurred to others.
> 3. Learning that the traumatic event(s) occurred to a close family member or close friend . . . .
> 4. Experiencing repeated or extreme exposure to aversive details of the traumatic event(s)

American Psychiatric Association, DIAGNOSTIC & STATISTICAL MANUAL OF MENTAL
DISORDERS 271 (5th Ed. 2013).

"exposure" to traumatic events, including "threatened or actual physical assault." DSM-5 at 274. The Department apparently interpreted this expansion of the diagnostic criteria for PTSD as necessitating rulemaking to clarify that RCW 51.08.142 was actually meant to exclude occupational disease claims.

Thus, in 2015 the Department promulgated significant amendments to several rules to implement changes in accordance with the DSM-5. Relevant to this case, the Department proposed changes which were ultimately codified at WAC 296-14-300(2)(d). As originally proposed, that subsection of the rule provided that "[r]epeated exposure to aversive details of traumatic events, none of which rises to the level of extreme exposure, is not an industrial injury or an occupational disease." Board Record at 61. Various parties objected to this language on the grounds that it exceeded the Department's authority under RCW 51.08.142. *Id.* at 65-66. Thus, the Department's final rule omitted the language referring to industrial injuries, leaving only the prohibition on occupational disease PTSD claims: "[r]epeated exposure to traumatic events, none of which are a single traumatic event as defined in subsection (2)(b) and (c) of this section, is not an industrial injury or an occupational disease." Thus, although the Department argues that its authority for WAC 296-14-300(2)(d) comes from RCW 51.08.142, the Department's original intent was to exclude *all* claims for PTSD diagnosed in accordance

with the DSM-5's expanded diagnostic criteria. But the statute only grants the Department rulemaking authority vis-à-vis *occupational disease* claims.

Ms. LaRose argued at all levels of these proceedings that the 1987 version of RCW 51.08.142 could not have been intended to exclude occupational claims for PTSD because at the time the diagnostic criteria for that condition did not allow for it to be diagnosed as an occupational disease. In support of this theory, Ms. LaRose presented dictionary definitions, and the text from the DSM-III-R and DSM-5. Brief of Respondent at 12-14; Response to Brief of King County at 3.

Ultimately, the court of appeals in Ms. LaRose's case determined that both Ms. LaRose and the Department offered credible definitions of a key statutory term—a determination which ordinarily would result in a conclusion that the statute is ambiguous. *E.g.*, *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 808, 16 P.3d 583 (2001) ("When statutory language is susceptible to more than one reasonable interpretation, it is considered ambiguous."). But instead of noting an ambiguity, the court of appeals instead determined that the term "stress" as it is used in RCW 51.08.142 is a medical term of art, thus making the Department's statutory construction arguments more persuasive.

The court of appeals' determination that "stress" as it was used in RCW 51.08.142 (1988) is a medical term of art is incorrect. As Ms.

LaRose has shown at every step of the way, the legislature could not have used the term "stress" as a medical term of art vis-à-vis the diagnosis of PTSD in 1987 because the version of the DSM in effect at that time did not recognize a diagnosis of PTSD predicated on "[e]xperiencing repeated or extreme exposure to aversive details of . . . traumatic event(s)." DSM-5 at 271.

Instead, "stress" as used in the 1987 statute connotes a layperson's understanding of garden-variety work stressors. There is nothing in the record to suggest that it was ever intended to be a term of art. Thus, the court of appeals improperly disregarded the plain language, dictionary definition-based arguments as to the plain meaning of RCW 51.08.142. Presented with two credible arguments as to the meaning of the statute, the court of appeals should have found the statutory language ambiguous, as did the trial court, and construed it liberally in keeping with the purpose of the Industrial Insurance Act.

The case relied upon by the court of appeals for the proposition that "stress" is a medical term of art is *Gorre v. City of Tacoma*, 184 Wn. 2d 30, 357 P.3d 625 (2015). In *Gorre*, this Court was asked to determine whether Valley Fever is a "respiratory disease" within the meaning of RCW 51.32.185, the firefighter presumption statute. That statute provides a list of specific medical conditions and applies a rebuttable presumption

that those conditions are occupationally-related in the case of firefighters. In *Gorre*, the Court had the benefit of expert medical testimony in reaching the conclusion that the statute's use of "respiratory disease" implied a technical, rather than lay, meaning.

Here, the court of appeals had nothing concrete on which to base its determination that "stress" is a medical term of art. Although the court of appeals cited Dr. Hunt's declaration as establishing "the interrelationship between 'stress' and 'trauma' in diagnosing PTSD," Dr. Hunt's declaration in actuality supports Ms. LaRose's argument that stress and trauma are medically distinct concepts. *See* Slip Opinion at 24. Dr. Hunt states that

> Stress in and of itself cannot be equated with the type of stressor required to diagnose PTSD. This diagnosis of PTSD is unique in that it requires specific and unique antecedent stressors to be present that directly lead to the symptoms observed. Thus, PTSD as specifically defined . . . does not equate with general "stress."

Board Record at 135. Dr. Hunt further notes that "the inclusion of language regarding the exclusion of 'repeated exposure to traumatic events' [in WAC 296-14-300(2)(d) is] consistent with the diagnostic criteria in the DSM-5 [sic]." Id. Thus, Dr. Hunt agrees that the diagnosis of PTSD requires something more than general stress.

Ms. LaRose asserts that there is no evidence in the record to support the argument that RCW 51.08.142 (1987) was ever intended to exclude "stress" as a distinctly medical concept. Instead, all contemporaneous evidence—the 1988 rulemaking file, the DSM-III-R, and contemporary dictionaries—point to the conclusion that the original version of the statute was simply targeted at ordinary workplace stressors—not actions or events capable of causing PTSD.

The Department argued, and the court of appeals agreed, that the 2018 amendments to RCW 51.08.142 evinced a legislative acquiescence to the Department's interpretation of the statute and promulgation of WAC 296-14-300(2)(d). Slip Opinion at 25-26. But the legislature is not "bound by an administrative interpretation of its own statute if the legislature fails to react in a timely manner. The legislative function cannot be usurped by an administrative body based upon claimed 'acquiescence.'" *Jepson v. Dep't of Labor & Indus.*, 89 Wn. 2d 394, 400, 573 P.2d 10 (1977). In other words, the Department's evolving interpretation of RCW 51.08.142 does not change the original legislative intent; if the Department wants to exclude occupational disease claims predicated on repeated exposure to traumatic events, its remedy lies with the legislature.

It follows that, because the legislature did not to exclude claims for PTSD based on the DSM-5 criteria, the Department's rule grafting that

criteria onto the stress-based claim exclusion rule exceeded its legislative authority. *See* RCW 34.05.570(2)(c); *see also Wash. Rest. Ass'n v. Wash. State Liquor Control Bd.*, 200 Wn. App. 119, 401 P.3d 428 (2017)

VI. CONCLUSION

In summary, the evidence shows that the legislature's intent in 1988 was not to exclude PTSD—it was to exclude claims based on ordinary workplace stress. Ms. LaRose and her family were stalked, harassed, and threatened by a deranged felon. Just because Ms. LaRose's condition came about from the cumulative result of these events, rather than any single incident, does not mean that her claim should not be allowed. This is not the type of claim that the legislature intended to preempt in 1987. The trial court got it right—this Court should reverse the court of appeals and affirm the trial court.

Respectfully submitted this 26th day of February, 2020.

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APPENDIX

No. 78454-4-I

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Division I
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SHEILA M. LAROSE, Respondent, v. THE DEPARTMENT OF LABOR AND INDUSTRIES, Appellant, KING COUNTY, Defendant.	)	No. 78454-4-I DIVISION ONE PUBLISHED OPINION FILED: January 27, 2020

SCHINDLER, J.P.T.* — The right to workers' compensation is statutory. Workers are entitled to disability benefits under the Industrial Insurance Act (IIA), Title 51 RCW, for industrial injuries and occupational diseases. Stress-related mental conditions or mental disabilities that result from a single and sudden traumatic event are compensable as an industrial injury.[1] By contrast, the legislature expressly directed the Department of Labor and Industries (Department) to adopt a rule to exclude "claims based on mental conditions or mental disabilities caused by stress" from coverage as "an occupational disease."[2] Former WAC 296-14-300(1) (1988) excludes claims for mental conditions or mental disabilities caused by stress from coverage as an

[1] See RCW 51.08.100.

[2] Former RCW 51.08.142 (1988).

occupational disease. However, former WAC 296-14-300(2) states that a claim for stress resulting from a single exposure to a traumatic event shall be treated as an industrial injury. The Department amended WAC 296-14-300(2) in 2015 to add subsections (b), (c), and (d).[3] Subsection (2)(b) provides examples of what constitutes a "single traumatic event"; (2)(c) describes the ways the single traumatic event must occur; and (2)(d) clarifies that "[r]epeated exposure to traumatic events, none of which are a single traumatic event," is not an industrial injury or an occupational disease, but a single traumatic event "that occurs within a series of exposures will be adjudicated as an industrial injury." WAC 296-14-300. Sheila LaRose filed a workers' compensation occupational disease claim for post-traumatic stress disorder (PTSD) and major depressive disorder. LaRose stipulated her mental conditions were not the result of a single traumatic event but rather, the result of the cumulative effect from repeated traumatic events. The Board of Industrial Appeals (Board) affirmed denial of her occupational disease claim for workers' compensation benefits. The superior court reversed on the grounds that the Department exceeded its statutory authority by adopting WAC 296-14-300(2)(d) precluding "[r]epeated exposure to traumatic events" as an occupational disease. The Department appeals. We hold the Department did not exceed its statutory authority. The 2015 amendment of WAC 296-14-300(2)(d) is consistent with the IIA and the express legislative directive to exclude claims for a mental condition or mental disability caused by stress from coverage as an occupational disease. We reverse the superior court order and the award of attorney fees. We affirm the decision of the Board to deny the occupational disease claim for PTSD and major depressive disorder.

[3] Wash. St. Reg. (WSR) 15-19-139 (Oct. 23, 2015).

Workers' Compensation

The legislature enacted the Industrial Insurance Act (IIA), Title 51 RCW, in 1911 to create a new system of worker compensation benefits. LAWS OF 1911, ch. 74. The legislature abolished civil actions and made the IIA the exclusive remedy for workplace injuries. RCW 51.04.010; Dennis v. Dep't of Labor & Indus., 109 Wn.2d 467, 469-70, 745 P.2d 1295 (1987); Dep't of Labor & Indus. v. Lyons Enters., Inc., 185 Wn.2d 721, 733, 374 P.3d 1097 (2016).[4] The stated intent of the IIA is to provide "sure and certain relief" for injured workers "regardless of questions of fault and to the exclusion of every other remedy." RCW 51.04.010.

When enacted in 1911, there was "no coverage for disability resulting from occupational disease; only injuries sustained performing certain extrahazardous work." Dennis, 109 Wn.2d at 472. The IIA defined an industrial "injury" as "an injury resulting from some fortuitous event as distinguished from the contraction of disease." LAWS OF 1911, ch. 74, § 3. In 1927, the legislature adopted the present definition of industrial injury. LAWS OF 1927, ch. 310, § 2. The IIA defines an industrial "injury" as "a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom." RCW 51.08.100. A worker must file an industrial injury claim within one year after the date of injury. RCW 51.28.050.

In 1937, the legislature expanded coverage under the IIA for certain diseases. LAWS OF 1937, ch. 212, § 1; Dennis, 109 Wn.2d at 472-73. In 1941, the legislature

[4] The statutory bar to sue an employer is subject to two exceptions. Under RCW 51.24.020, an employee may sue the employer for deliberately injuring the employee. Under RCW 51.24.030, an employee may sue a third party for personal injury damages.

eliminated the list of enumerated diseases and enacted the present definition of "occupational disease." Dennis, 109 Wn.2d at 473 (citing LAWS OF 1941, ch. 235, § 1). The IIA defines "occupational disease" as "such disease or infection as arises naturally and proximately out of employment." RCW 51.08.140. A worker "who suffers disability from an occupational disease in the course of employment . . . shall receive the same compensation benefits" and medical care as would be paid to an injured worker under the IIA. RCW 51.32.180. A worker must file an occupational disease claim within two years following receipt of a physician diagnosis. RCW 51.28.055.

Exclusion of Occupational Disease Claims for Mental Conditions Caused by Stress

In Dennis, the Washington Supreme Court addressed whether a disability that results from repetitive work-related aggravation of a pre-existing nonwork-related disease was compensable as an occupational disease. Dennis, 109 Wn.2d at 469.

The court held the IIA is "remedial in nature" and must be "liberally construed in order to achieve its purpose of providing compensation to all covered employees injured in their employment, with doubts resolved in favor of the worker." Dennis, 109 Wn.2d at 470. Citing the purpose of the IIA, the rule of liberal construction in favor of coverage, and the broad definition of occupational disease, the court held the worker was entitled to compensation under the IIA. Dennis, 109 Wn.2d at 474.

> By expressly providing that workers suffering disability from occupational disease be accorded equal treatment with workers suffering a traumatic injury during the course of employment, RCW 51.32.180 effectuates the [IIA]'s purpose of providing sure and certain relief to all workers injured in their employment. The worker whose work acts upon a preexisting disease to produce disability where none existed before is just as injured

> in his or her employment as is the worker who contracts a disease as a result of employment conditions.

Dennis, 109 Wn.2d at 471.[5]

In the 1988 legislative session, the legislature enacted a statute directing the director of the Department of Labor and Industries (Department) to adopt a rule to exclude mental conditions and mental disabilities caused by stress from coverage as an occupational disease. LAWS OF 1988, ch. 161, § 16 (codified at RCW 51.08.142). The Final Bill Report states, in pertinent part:

> In a 1987 Washington state supreme court decision, industrial insurance coverage for occupational diseases was extended to certain disabilities caused by repetitive trauma and aggravation of pre-existing nonoccupational diseases. It is not clear whether the court's decision extends coverage to mental stress cases.

FINAL B. REPORT ON ENGROSSED H.B. 1396, 50th Leg., Reg. Sess. (Wash. 1988).

Former WAC 296-14-300 (1988)

In June 1988, the Department adopted a rule excluding occupational disease claims "based on mental conditions or mental disabilities caused by stress." Wash. St. Reg. (WSR) 88-14-011 (June 24, 1988) (codified at WAC 296-14-300, "Mental condition/mental disabilities"). Former WAC 296-14-300(1) (1988) states:

> Claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of an occupational disease in RCW 51.08.140.
>
> Examples of mental conditions or mental disabilities caused by stress that do not fall within occupational disease shall include, but are not limited to, those conditions and disabilities resulting from:
>
> (a) Change of employment duties;
>
> (b) Conflicts with a supervisor;
>
> (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
>
> (d) Relationships with supervisors, coworkers, or the public;

[5] Emphasis in original.

(e) Specific or general job dissatisfaction;
(f) Work load pressures;
(g) Subjective perceptions of employment conditions or environment;
(h) Loss of job or demotion for whatever reason;
(i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
(j) Objective or subjective stresses of employment;
(k) Personnel decisions;
(l) Actual, perceived, or anticipated financial reversals or difficulties occurring to the businesses of self-employed individuals or corporate officers.

However, consistent with coverage for a stress-related industrial injury under the IIA, former WAC 296-14-300(2) states, "Stress resulting from exposure to a single traumatic event will be adjudicated" as an industrial injury under RCW 51.08.100.

The Diagnostic and Statistical Manual of Mental Disorders

The American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM) is the authoritative treatise that defines, classifies, and provides criteria to diagnose mental disorders.

The 1987 third revised edition of the DSM (DSM-3) defined the "essential feature" and symptoms of post-traumatic stress disorder (PTSD) as follows:

> The stressor producing this syndrome would be markedly distressing to almost anyone, and is usually experienced with intense fear, terror, and helplessness. The characteristic symptoms involve re-experiencing the traumatic event, avoidance of stimuli associated with the event or numbing of general responsiveness, and increased arousal. The diagnosis is not made if the disturbance lasts less than one month.

DSM-3, at 247.

The 2013 fifth edition of the DSM (DSM-5) made significant changes to the criteria and diagnosis for trauma- and stress-related disorders, including PTSD. The

DSM-5 defines PTSD as "a type of trauma and stress related disorder." The DSM-5 identifies the diagnostic criteria for PTSD, in pertinent part:

> B. Presence of one (or more) of the following intrusion symptoms associated with the traumatic event(s) . . . :
>
> 1. Recurrent, involuntary, and intrusive distressing memories of the traumatic event(s).
>
> . . . .
>
> 2. Recurring distressing dreams in which the content and/or affect of the dream are related to the traumatic event(s).
>
> . . . .
>
> 3. Dissociative reactions (e.g., flashbacks) in which the individual feels or acts as if the traumatic event(s) were recurring. . . .
>
> . . . .
>
> 4. Intense or prolonged psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event(s).
>
> 5. Marked psychological reactions to internal or external cues that symbolize or resemble an aspect of the traumatic event(s).
>
> . . . .
>
> F. Duration of the disturbance (Criteria B, C, D, and E) is more than 1 month.
>
> G. The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of function.
>
> H. The disturbance is not attributable to the physiological effects of a substance (e.g., medication, alcohol) or another medical condition.
>
> Specify whether:
>
> **With dissociative symptoms:** The individual's symptoms meet the criteria for post-traumatic stress disorder, and in addition, in response

> to the stressor, the individual experiences persistent or recurrent symptoms.

DSM-5, at 271-72.[6]

2015 Amendment to WAC 296-14-300(2)

In June 2015, the Department issued proposed amendments to WAC 296-14-300, Mental condition/mental disabilities; WAC 296-20-330, "Impairments of mental health"; and WAC 296-21-270, "Psychiatric services," consistent with DSM-5:

> In May of 2013, The American Psychiatric Association released the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). [The Department], after seeking the advice of practicing mental health providers and the Industrial Insurance Medical Advisory Committee (IIMAC), is amending rules to adopt the new version of DSM-5 and to aid in the Implementation and consistent use of new DSM versions within the Washington State workers' compensation program.
>
> The purpose of this rulemaking is to make changes necessary to:
> - Amend existing rules that refer to the DSM-IV, its required classification method (axis system), and its assessment instruments, and
> - Clarify how the DSM-5 is implemented within Title 51 RCW.

See WSR 15-12-087 (June 2, 2015).

The Department did not propose changing the language of former WAC 296-14-300(1) that excludes occupational disease claims based on mental conditions or disabilities caused by stress. The Department proposed amending WAC 296-14-300(2)(a) to state, "Stress resulting from extreme exposure to a single traumatic event" will be adjudicated as an industrial injury under RCW 51.08.100. WSR 15-12-087. The Department proposed adding new subsections (b), (c), and (d) to WAC 296-14-300(2). WSR 15-12-087.

[6] Emphasis in original.

WAC 296-14-300(2)(b) provides examples of stress resulting from exposure to "an extreme single traumatic event" that will be adjudicated as an industrial injury:

> Examples of extreme single traumatic events include: Actual or threatened death, actual or threatened physical assault, actual or threatened sexual assault, and life-threatening traumatic injury.

WSR 15-12-087.

Subsection (2)(c) defined the ways exposure to "an extreme single traumatic event" must occur:

> These exposures must occur in one of the following ways:
> (i) Directly experiencing the traumatic event; or
> (ii) Witnessing, in person, the event as it occurred to others.

WSR 15-12-087.

Subsection (2)(d) stated:

> Repeated exposure to aversive details of traumatic events, none of which rises to the level of extreme exposure, is not an industrial injury (see RCW 51.08.100) or an occupational disease (see RCW 51.08.140 and 51.08.142).

WSR 15-12-087.

In response to the comments, the Department made a number of changes to the proposed amendments to WAC 296-14-300(2). The Department identified "four major concerns" that had been expressed about the proposed language of WAC 296-14-300(2):

1) Use of the word "extreme" in WAC 296-14-300[(2)] as it relates to the level of exposure needed in a single traumatic event for an accepted industrial injury claim,
2) [The Department] lacks legislative authority to define stress claims as single traumatic events,
3) [The Department] lacks legislative authority to identify mental health conditions that would not be accepted as an industrial injury or occupational disease, and

4) Concern about identifying "pain diagnoses" as not being industrial injuries or occupational diseases.

The Department agreed to delete use of the word "extreme" except as a diagnostic criteria in subsection (2)(c):

> The department disagrees it lacks authority to define the exposure to a traumatic event. However, upon review, the department agrees that the modifier "extreme" is used in only one of several diagnostic criteria in the DSM-5, and the department will make clarifying changes to use the modifier only in the one criterion.

The Department disagreed it lacked authority to amend WAC 296-14-300(2)(d). The Department notes that subsection (2)(d) "is not a change from the existing WAC requiring a single traumatic event" for an industrial injury.[7] However, the Department agreed to change the language of subsection (2)(d) to clarify that repeated exposure to traumatic events is not a mental condition or mental disability that is either an industrial injury or an occupational disease, but a single traumatic event or a single traumatic event that occurs with a series of exposures is compensable as an industrial injury:

> Based on [former] RCW 51.08.142 [(1988)],[8] repeated exposure to traumatic event(s) none of which, alone, meats the full diagnostic criteria for a single traumatic event (based on the updated criteria In DSM-5) as identified in the proposed rule, is not an occupational disease or an industrial injury. However, the department recognizes that the language in WAC 296-14-300[(2)](d) needs to be changed to clarify that while repeated exposures do not accumulate to one injury or occupational disease, an exposure to a traumatic event that does meet all diagnostic criteria would not be precluded merely because the exposure is part of a series or repeated events.

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[7] Emphasis in original; boldface omitted.

[8] The legislature amended RCW 51.08.142 in 2018. LAWS OF 2018, ch. 264, § 2.

Workers' Compensation Claim

Sheila LaRose worked as an attorney for the Public Defender Association. LaRose represented a defendant charged with felony stalking from October 2012 through June 2013. In July 2013, King County assumed responsibility as the Public Defender Association's employer.

On April 4, 2016, LaRose filed a workers' compensation claim with self-insured employer King County. LaRose stated she suffered a "psychological injury" from being "stalked and harassed" by a client "multiple" times in "multiple" locations. LaRose identified Dr. Stanley Shyn as her health care provider and "3/21/15" as the "last date" of her "injury."

The Department denied the claim for benefits:

> No claim has been filed by said worker within one year after the day upon which the alleged injury occurred.
>
> The worker's condition is not an occupational disease as contemplated by section RCW 51.08.140, and is excluded from coverage pursuant to section [former] RCW 51.08.142 and section WAC 296-14-300.

Appeal to Board of Industrial Insurance Appeals

LaRose appealed denial of her claim for benefits to the Board of Industrial Insurance Appeals (Board). LaRose filed a "Stipulation and Motion for Partial Summary Judgment." LaRose stipulated, "[T]his claim is brought exclusively as an occupational disease, and not as an 'injury' within the meaning of RCW 51.08.100." LaRose stipulated that as a "result of distinctive conditions of her employment, she developed post-traumatic stress disorder and major depressive disorder." LaRose stipulated, "[T]hese conditions were not brought about by a singular incident; rather, these

conditions were proximately caused by the cumulative effect of several stalking incidents committed by the same perpetrator."[9]

LaRose argued the 2015 amendment to WAC 296-14-300(2)(d) was invalid as a matter of law. LaRose claimed the legislature authorized the Department to exclude only mental conditions caused by "stress." LaRose argued the Department exceeded the scope of its rulemaking authority under former RCW 51.08.142 by excluding occupational disease claims for mental conditions resulting from "[r]epeated exposure to traumatic events." WAC 296-14-300(2)(d). LaRose asserted the "nature and extent" of her mental conditions "is a factual matter to be proven at hearing through competent medical testimony."

The Department and self-insured employer King County filed cross motions for summary judgment. The Department asserted the Board did not have the authority under the Washington Administrative Procedure Act (WAPA), chapter 34.05 RCW, to address the validity of WAC 296-14-300(2)(d). The Department argued that because LaRose stipulated that the cumulative effect of several stalking incidents committed by the same person caused her mental conditions, the Department was entitled to dismissal as a matter of law. The Department asserted the plain language of former WAC 296-14-300(2) allows a stress-related claim only if the mental condition or mental disability is caused by exposure to a single traumatic event. The Department cited

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[9] LaRose filed a lawsuit against King County and the Public Defender Association alleging hostile work environment in violation of the Washington Law Against Discrimination, chapter 49.60 RCW, and disability discrimination and negligence claims. The superior court dismissed the negligence claims as barred by the IIA. On appeal, LaRose argued there was a genuine issue of material fact whether her PTSD was a compensable industrial injury. LaRose v. King County, 8 Wn. App. 2d 90, 437 P.3d 701 (2019). In specific, whether she was exposed to a single traumatic event during the course of repeated exposure to traumatic events over several months. LaRose, 8 Wn. App. 2d at 116-19. We concluded there was a genuine issue of material fact as to whether her PTSD constituted an industrial injury under the IIA and reversed dismissal of the negligence claims. LaRose, 8 Wn. App. 2d at 97.

Rothwell v. Nine Mile Falls School District, 149 Wn. App. 771, 206 P.3d 347 (2009), in support of its argument.

In Rothwell, we held the plaintiff's negligence lawsuit was not barred by the IIA. Rothwell, 149 Wn. App. at 781-82. We stated that stress from exposure to a sudden and single traumatic event can qualify as an industrial injury under RCW 51.08.100. Rothwell, 149 Wn. App. at 780. However, because the plaintiff's PTSD was the result of "a series of incidents over a period of a few days" and not "the result of exposure to a single traumatic event," we concluded the plaintiff's PTSD did not meet the definition of an industrial injury or an occupational disease. Rothwell, 149 Wn. App. at 781-82.

King County argued the stipulations of LaRose established that her claim for PTSD and major depressive disorder was not an occupational disease under former RCW 51.08.142 and WAC 296-14-300 "as enacted in 1988 or the 2015 version." King County submitted the declaration of board certified forensic psychiatrist Dr. Aaron Hunt in support of the motion for summary judgment. Dr. Hunt testified the DSM is an "authoritative treatise" that classifies mental disorders and provides "concise and explicit criteria intended to facilitate an assessment of symptom presentation." Dr. Hunt testified that "[t]rauma and stress-related disorders include diagnosis of Post-Traumatic Stress Disorder." Dr. Hunt quotes the DSM-5 to state PTSD is "a type of trauma and stress related disorder" that requires "an antecedent stressor." See DSM-5, at 271. Dr. Hunt notes that "stress" is "a variably defined, non-technical term" that "cannot be equated with the type of stressor required to diagnosis PTSD." Dr. Hunt testified that the diagnosis of PTSD "requires specific and unique antecedent stressors to be present that directly lead to the symptoms observed."

The industrial appeals judge (IAJ) denied LaRose's motion for partial summary judgment. The IAJ ruled, "Generally (and specifically in this appeal) the Board does not have authority to rule on the validity of an agency's rule." The IAJ granted the summary judgment motions of the Department and King County and affirmed denial of the occupational disease claim for a mental condition caused by stress under former RCW 51.08.142 and WAC 296-14-300. The findings of fact state, in pertinent part:

> 2. The pleadings and evidence submitted by the parties demonstrate that there are no genuine issues as to any material facts in this appeal.
>
> 3. Ms. LaRose applied for benefits under the Industrial Insurance Act based on an occupational disease of post-traumatic stress disorder and major depressive disorder brought about by repeated exposure to traumatic events (none of which amounted to an industrial injury).
>
> 4. Based upon application of [former] RCW 51.08.142 and WAC 296-14-300, the Department denied Ms. LaRose's application for benefits.

The conclusions of law state, in pertinent part:

> 3. Ms. LaRose's application for benefits for an occupational disease based upon a mental condition is specifically barred by law.
>
> 4. The Department and King County are entitled to a decision as a matter of law as contemplated by CR 56.

LaRose filed a petition for review to the Board. The Board adopted the proposed decision and order as its final order but modified conclusion of law 3 "to more clearly explain the legal basis for this decision." Conclusion of law 3 states:

> Ms. LaRose's Application for Benefits for an occupational disease based on mental conditions resulting from repeated stressful events is not an occupational disease within the meaning of RCW 51.08.140, [former] RCW 51.08.142, and Rothwell.

Appeal to Superior Court

LaRose appealed the Board's decision to superior court. LaRose filed a motion for summary judgment. LaRose argued the Department exceeded its statutory authority under former RCW 51.08.142 in amending the language of WAC 296-14-300(2)(d) to state, "Repeated exposure to traumatic events" is excluded as an occupational disease, making the amendment invalid. LaRose asserted that former RCW 51.08.142 allows the Department to adopt a rule that excludes only occupational disease claims based on mental conditions or mental disabilities caused by "stress" but not occupational disease claims for "trauma." LaRose cited dictionary definitions to argue "stress" and "trauma" have "separate and distinct meanings." LaRose sought reversal of the Board decision and remand for a hearing on whether her claim "is a result of stress in the workplace or repeated trauma."

The Department argued that as a matter of law, the 2015 amendment to WAC 296-14-300(2)(d) was valid. The Department asserted the amendment did not exceed statutory authority and was "reasonably consistent with the statute." For the first time, the Department argued that LaRose could not challenge the validity of WAC 296-14-300(2)(d) because the 2015 amendment "was not in effect when her condition became disabling in 2013." The Department also argued that because LaRose did not file a declaratory judgment action, she did not have standing to challenge WAC 296-14-300(2)(d).

For the first time, King County also argued that because the 2015 amendment to WAC 296-14-300(2)(d) "was not in effect at the time her alleged occupational condition manifested" in April 2013, LaRose did not have standing "to challenge the Department's

rulemaking authority."

The superior court rejected the argument that LaRose could not challenge the validity of WAC 296-14-300(2)(d):

> [A]n appellant can raise challenges to the rulemaking authority of the Department in an appeal in Superior Court, where the rule itself is challenged because it is claimed to exceed the bounds of rulemaking authority as applied to this case.

The court ruled the Department and King County waived the right to argue for the first time that the 2015 amendment to WAC 296-14-300(2)(d) did not apply. The court concluded the Department "exceeded it[s] rul[e] making authority" by adopting WAC 296-14-300(2)(d) and "excluding repeated exposure to traumatic events from coverage" as an occupational disease. The court reversed the decision of the Board and remanded to the Board for a hearing on whether LaRose "suffered from stress or trauma." The Department appeals the superior court decision.[10]

Standard of Review

In an appeal from the Board, the superior court acts in an appellate capacity and reviews the decision de novo "based solely on the evidence and testimony presented to the Board." Leuluaialii v. Dep't of Labor & Indus., 169 Wn. App. 672, 677, 279 P.3d 515 (2012); Ruse v. Dep't of Labor & Indus., 138 Wn.2d 1, 5, 977 P.2d 570 (1999).

RCW 51.52.140 governs our review of the superior court decision. RCW 51.52.140 states that an "[a]ppeal shall lie from the judgment of the superior court as in other civil cases." See also Rogers v. Dep't of Labor & Indus., 151 Wn. App. 174, 179-81, 210 P.3d 355 (2009).

[10] King County did not appeal but filed a brief in support of the Department. We allowed LaRose to file a brief in response. We deny the motion to strike the brief and award attorney fees.

When reviewing a final administrative decision, we sit "in the same position as the superior court, applying the standards of the WAPA directly to the record before the agency." Tapper v. Emp't Sec. Dep't, 122 Wn.2d 397, 402, 858 P.2d 494 (1993); Brown v. Dep't of Commerce, 184 Wn.2d 509, 544, 359 P.3d 771 (2015). We review the superior court decision on summary judgment de novo. Pearson v. Dep't of Labor & Indus., 164 Wn. App. 426, 431, 262 P.3d 837 (2011). Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c).

Waiver

We conclude the superior court did not err in ruling the Department and King County waived the right to argue for the first time that WAC 296-14-300(2)(d) did not apply. A party on appeal to superior court may raise only those issues that are included in the petition to the Board or the record of the proceedings before the Board. RCW 51.52.115; Value Village v. Vasquez-Ramirez, No. 78629-6-I, slip op. at 9 (Wash. Ct. App. Dec. 30, 2019), http://www.courts.wa.gov/opinions/pdf/786296.pdf.

Validity of WAC 296-14-300(2)(d)

The Department contends the court erred in ruling that the amendment to WAC 296-14-300(2)(d) is an invalid exercise of its rule-making authority under the IIA and former RCW 51.08.142.[11]

Former RCW 51.08.142 states:

> **"Occupational disease"—Exclusion of mental conditions caused by stress.** The department shall adopt a rule pursuant to chapter 34.05 RCW that claims based on mental conditions or mental disabilities caused

[11] The Department does not assign error to the superior court decision that LaRose had the right to challenge the validity of the adoption of WAC 296-14-300(2)(d). See RCW 34.05.570(3).

by stress do not fall within the definition of occupational disease in RCW 51.08.140.

The construction and meaning of a statute is a question of law we review de novo. Columbia Riverkeeper v. Port of Vancouver USA, 188 Wn.2d 421, 432, 395 P.3d 1031 (2017); Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9, 43 P.3d 4 (2002); Cockle v. Dep't of Labor & Indus., 142 Wn.2d 801, 807, 16 P.3d 583 (2001). Our objective is to ascertain and give effect to legislative intent. Campbell & Gwinn, 146 Wn.2d at 9. If the legislature's intent is clear from the statute's plain meaning, we "must give effect to that plain meaning." Campbell & Gwinn, 146 Wn.2d at 9-10; Cockle, 142 Wn.2d at 807.

We look first to the text of a statute to determine its meaning. Griffin v. Thurston County Bd. of Health, 165 Wn.2d 50, 55, 196 P.3d 141 (2008). If a statute is plain and unambiguous, the meaning of the statute must be determined from the wording of the statute itself. W. Telepage, Inc. v. City of Tacoma Dep't of Fin., 140 Wn.2d 599, 608-09, 998 P.2d 884 (2000). Where a statute is clear on its face, its plain meaning should " 'be derived from the language of the statute alone.' " Ford Motor Co. v. City of Seattle, Exec. Servs. Dep't, 160 Wn.2d 32, 41, 156 P.3d 185 (2007) (quoting Kilian v. Atkinson, 147 Wn.2d 16, 20, 50 P.3d 638 (2002)).

We construe statutes so that clauses, sentences, and words have meaning. Porter v. Kirkendoll, 194 Wn.2d 194, 211, 449 P.3d 627 (2019) (citing HomeStreet, Inc. v. Dep't of Revenue, 166 Wn.2d 444, 452, 210 P.3d 297 (2009)). If the plain language is subject to only one interpretation, our inquiry is at an end. Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). Although we must resolve doubts and ambiguities in the language of the IIA in favor of the injured worker,

this provision applies only when doubts or ambiguities exist that must be resolved, and the court will not use the liberal construction requirement to support a " 'strained or unrealistic interpretation' " of the statute. RCW 51.12.010; Cockle, 142 Wn.2d at 811; Birgen v. Dep't of Labor & Indus., 186 Wn. App. 851, 862, 347 P.3d 503 (2015) (quoting Senate Republican Campaign Comm. v. Pub. Disclosure Comm'n, 133 Wn.2d 229, 243, 943 P.2d 1358 (1997)). We must harmonize related statutory provisions to effectuate a consistent statutory scheme that maintains the integrity of the respective statute. Porter, 194 Wn.2d at 212.

The IIA does not exclude industrial injury claims for mental conditions or mental disabilities caused by stress. An industrial "injury" is "a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom." RCW 51.08.100. In contrast, the legislature has expressly excluded coverage of a mental condition or mental disability caused by stress as an occupational disease. Former RCW 51.08.142. The plain and unambiguous language of former RCW 51.08.142 expressly directs the Department to adopt a rule that excludes "mental conditions or mental disabilities caused by stress" from coverage as an occupational disease.

WAPA governs our review of the validity of an administrative rule and the WAPA standard of review is an overlay to the summary judgment standard. RCW 34.05.570; Verizon Nw., Inc. v. Emp't Sec. Dep't, 164 Wn.2d 909, 915-16, 194 P.3d 255 (2008). The extent of rule-making authority and the validity of an agency rule is a question of law we review de novo. Wash. Hosp. Ass'n v. Dep't of Health, 183 Wn.2d 590, 595, 353 P.3d 1285 (2015); Wash. Pub. Ports Ass'n v. Dep't of Revenue, 148 Wn.2d 637,

645, 62 P.3d 462 (2003); Local 2916, IAFF v. Pub. Emp't Relations Comm'n, 128 Wn.2d 375, 379, 907 P.2d 1204 (1995). An agency rule is invalid if it exceeds the statutory authority of the agency. RCW 34.05.570(2)(c); Swinomish Indian Tribal Cmty. v. Dep't of Ecology, 178 Wn.2d 571, 580, 311 P.3d 6 (2013).

We review Washington Administrative Code regulations under the rules of statutory interpretation. Overlake Hosp. Ass'n v. Dep't of Health, 170 Wn.2d 43, 51-52, 239 P.3d 1095 (2010). We derive the intent of the rule from the plain language, considering the text of the provision and the context and related provisions. Columbia Riverkeeper, 188 Wn.2d at 432; Campbell & Gwinn, 146 Wn.2d at 10.

Where, as here, "the Legislature has specifically delegated the power to make regulations to an administrator, such regulations are presumed to be valid." St. Francis Extended Health Care v. Dep't of Soc. & Health Servs., 115 Wn.2d 690, 702, 801 P.2d 212 (1990). "The burden of overcoming this presumption rests on the challenger, and judicial review will be limited to a determination of whether the regulation in question is reasonably consistent with the statute being implemented." St. Francis, 115 Wn.2d at 702. An agency may adopt rules necessary to effectuate a statutory scheme. State of Wash. ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass'n, 140 Wn.2d 615, 634, 999 P.2d 602 (2000); Green River Cmty. Coll. v. Higher Educ. Pers. Bd., 95 Wn.2d 108, 112, 622 P.2d 826 (1980). If " 'the rule is "reasonably consistent with the controlling statute[s]," an agency does not exceed its statutory authority.' " Wash. Hosp. Ass'n, 183 Wn.2d at 595[12] (quoting Swinomish Indian Tribal Cmty., 178 Wn.2d at 580 (quoting Wash. Pub. Ports Ass'n, 148 Wn.2d at 646)).

[12] Alteration in original.

In accord with the express direction of the legislature, former WAC 296-14-300(1) expressly excludes from coverage occupational disease "[c]laims based on mental conditions or mental disabilities caused by stress." Former RCW 51.08.142. Consistent with coverage for an industrial "injury," former WAC 296-14-300(2) states, "Stress resulting from exposure to a single traumatic event will be adjudicated with reference to RCW 51.08.100" as an industrial injury. The 2015 amendment states, "Stress resulting from exposure to a single traumatic event will be adjudicated as an industrial injury. See RCW 51.08.100." WAC 296-14-300(2)(a).

The 2015 amendments add subsections (b), (c), and (d) to WAC 296-14-300(2). WSR 15-19-139. WAC 296-14-300(2)(b) provides specific examples of a "single traumatic event." WAC 296-14-300(2)(c) states, "These exposures must occur in" specific ways. And WAC 296-14-300(2)(d) clarifies, "Repeated exposure to traumatic events, none of which are a single traumatic event as defined in subsection (2)(b) and (c) of this section, is not an industrial injury (see RCW 51.08.100) or an occupational disease (see [former] RCW 51.08.142)."

WAC 296-14-300, Mental condition/mental disabilities, states, in pertinent part:

> (1) Claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of an occupational disease in RCW 51.08.140.
>
> Examples of mental conditions or mental disabilities caused by stress that do not fall within occupational disease shall include, but are not limited to, those conditions and disabilities resulting from:
>
> (a) Change of employment duties;
>
> (b) Conflicts with a supervisor;
>
> (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
>
> (d) Relationships with supervisors, coworkers, or the public;
>
> (e) Specific or general job dissatisfaction;
>
> (f) Work load pressures;

(g) Subjective perceptions of employment conditions or environment;
(h) Loss of job or demotion for whatever reason;
(i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
(j) Objective or subjective stresses of employment;
(k) Personnel decisions;
(l) Actual, perceived, or anticipated financial reversals or difficulties occurring to the businesses of self-employed individuals or corporate officers.
(2)(a) Stress resulting from exposure to a single traumatic event will be adjudicated as an industrial injury. See RCW 51.08.100.
(b) Examples of single traumatic events include: Actual or threatened death, actual or threatened physical assault, actual or threatened sexual assault, and life-threatening traumatic injury.
(c) These exposures must occur in one of the following ways:
(i) Directly experiencing the traumatic event;
(ii) Witnessing, in person, the event as it occurred to others; or
(iii) Extreme exposure to aversive details of the traumatic event.
(d) Repeated exposure to traumatic events, none of which are a single traumatic event as defined in subsection (2)(b) and (c) of this section, is not an industrial injury (see RCW 51.08.100) or an occupational disease (see [former] RCW 51.08.142). A single traumatic event as defined in subsection (2)(b) and (c) of this section that occurs within a series of exposures will be adjudicated as an industrial injury (see RCW 51.08.100).

WAC 296-14-300(2) subsections (b) and (c) provide examples and criteria for industrial injury claims for mental conditions or mental disabilities caused by stress that are not precluded from coverage. WAC 296-14-300(2)(d) clarifies that a single traumatic event that occurs within a series of exposures will be treated as an industrial injury, but repeated traumatic events are otherwise precluded from coverage as an industrial injury or occupational disease. Construing all the language of WAC 296-14-300(2)(d), we conclude the phrase "[r]epeated exposure to traumatic events" modifies "none of which are a single traumatic event as defined in subsection (2)(b) and (c) of this section" and the provision that "[a] single traumatic event . . . that occurs within a series of exposures will be adjudicated as an industrial injury." WAC 296-14-300(2)(d).

The IIA does not define "stress." LaRose cites dictionary definitions of "stress"[13] and "trauma"[14] to argue former RCW 51.08.142 excludes only claims for mental conditions or mental disabilities caused by "stress" and not mental conditions or disabilities caused by "trauma." "Dictionaries are an appropriate source of plain meaning when the ordinary definition furthers the statute's purpose. But the ordinary definition of a term is not dispositive of a statute's plain meaning when the term is also a term of art." Gorre v. City of Tacoma, 184 Wn.2d 30, 37, 357 P.3d 625 (2015).[15]

Here, dictionary definitions do not further the express intent of the legislature to exclude mental conditions and mental disabilities caused by stress. The IIA, the DSM, and the uncontroverted medical evidence in the record support the conclusion that use of the phrase "mental conditions or mental disabilities caused by stress" is a medical term of art. An injured worker under the IIA is entitled to "receive proper and necessary medical and surgical services." RCW 51.36.010(2)(a). The causal connection between a worker's mental condition or mental disability and employment must be established by medical testimony. Dennis, 109 Wn.2d at 477; Street v. Weyerhaeuser Co., 189 Wn.2d 187, 196-97, 399 P.3d 1156 (2017). The legislature gives the Department the authority to make rules regarding the provision of medical care and treatment. RCW 51.04.020, .030. The DSM is the authoritative psychiatric treatise that defines the criteria to

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[13] Webster's Third New International Dictionary, at 2260 (2002), defines "stress" as "a physical, chemical, or emotional factor (as trauma, histamine, or fear) to which an individual fails to make a satisfactory adaptation, and which causes physiologic tensions that may be a contributory cause of disease."

[14] The dictionary defines "trauma" as "a psychological or emotional stress or blow that may produce disordered feelings or behavior" and "the state or condition of mental or emotional shock produced by such a stress or by a physical injury." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, at 2432.

[15] Citation omitted.

diagnose mental disorders, including PTSD. The uncontroverted testimony of Dr. Hunt establishes the interrelationship between "stress" and "trauma" in diagnosing PTSD. Hunt testified the diagnosis of PTSD requires "an antecedent stressor" to a traumatic event:

> Specifically, Post Traumatic Stress Disorder (PTSD), a type of trauma and stress related disorder includes specific and explicit criteria which requires an antecedent stressor of an "[e]xposure to actual or threatened death, serious injury[,] or sexual violence" to have occurred, through personal exposure, witnessing these events happen to others, learning of [an] event happening to [a] person close to the individual, or repeated and extreme exposure to the details of those traumatic events.[ ] (DSM-5, Pg. 271).

We hold the adoption of WAC 296-14-300(2)(d) is a valid rule within the agency's delegated authority. WAC 296-14-300(2)(d) is consistent with allowing a claim for mental conditions or mental disabilities caused by stress that meet the definition of industrial injury and the express statutory directive under former RCW 51.08.142 to exclude stress-related occupational disease coverage for mental conditions or disabilities caused by "[r]epeated exposure to traumatic events."[16]

Recent legislative amendments support our conclusion. In 2018, the legislature enacted a new section to define PTSD as a disorder that meets the criteria of DSM-5. LAWS OF 2018, ch. 264, § 1 (codified at RCW 51.08.165). RCW 51.08.165 states:

> "Posttraumatic stress disorder" means a disorder that meets the diagnostic criteria for posttraumatic stress specified by the American psychiatric association in the diagnostic and statistics manual of mental disorders, fifth edition, or in a later edition as adopted by the department in rule.

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[16] Accordingly, WAC 296-14-300(2)(d) is a legislative rule. See Ass'n of Wash. Bus. v. Dep't of Revenue, 155 Wn.2d 430, 446-47, 120 P.3d 46 (2005). Without citation to authority, LaRose argues for the first time that if the rule is valid, "then the legislature has unconstitutionally delegated a legislative function to an administrative agency without any standards, guidelines, or safeguards." We decline to consider an argument unsupported by legal analysis. Schroeder v. Excelsior Mgmt. Grp., LLC, 177 Wn.2d 94, 108, 297 P.3d 677 (2013).

In 1987, the legislature created a prima facie rebuttable presumption that respiratory disease is an occupational disease for firefighters under RCW 51.08.140. LAWS OF 1987, ch. 515, § 2 (codified at RCW 51.32.185).

> The legislature finds that the employment of fire fighters exposes them to smoke, fumes, and toxic or chemical substances. The legislature recognizes that fire fighters as a class have a higher rate of respiratory disease than the general public. The legislature therefore finds that respiratory disease should be presumed to be occupationally related for industrial insurance purposes for fire fighters.

LAWS OF 1987, ch. 515, § 1. The legislature amended the statute in 2002 and 2007 to apply the occupational disease presumption of respiratory disease to supervisors and include other conditions related to exposure to "smoke, fumes, or toxic substances." LAWS OF 2002, ch. 337, § 2; LAWS OF 2007, ch. 490, § 2.

In 2018, the legislature amended RCW 51.32.185 to apply the presumption to law enforcement officers and add PTSD as a prima facie presumption of an occupational disease. LAWS OF 2018, ch. 264, § 3. Former RCW 51.32.185 (2018) provides, in pertinent part:

> [(1)](b) In the case of firefighters as defined in *RCW 41.26.030(16) (a), (b), (c), and (h) and firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, and law enforcement officers as defined in *RCW 41.26.030(18) (b), (c), and (e), who are covered under this title, there shall exist a prima facie presumption that posttraumatic stress disorder is an occupational disease under RCW 51.08.140.[17]
>
> . . . .
>
> (5) The presumption established in subsection (1)(b) of this section only applies to active or former firefighters as defined in *RCW 41.26.030(16) (a), (b), (c), and (h) and firefighters, including supervisors,

[17] (Emphasis added.) Former RCW 51.32.185(6) (2018) states:

> If the employer does not provide the psychological exam as specified in RCW 51.08.142[(2)(b)] and the employee otherwise meets the requirements for the presumption established in subsection (1)(b) of this section, the presumption applies.

> employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, and law enforcement officers as defined in *RCW 41.26.030(18) (b), (c), and (e) who have posttraumatic stress disorder that develops or manifests itself after the individual has served at least ten years. [18]

The legislature amended former RCW 51.08.142 to specifically exempt firefighters, supervisors, and law enforcement officers from the exclusion for "claims based on mental conditions or mental disabilities caused by stress [that] do not fall within the definition of occupational disease." LAWS OF 2018, ch. 264, § 2. As amended, RCW 51.08.142 states:

> **"Occupational disease"—Exclusion of mental conditions caused by stress, except for certain firefighters.** (1) Except as provided in subsection (2) of this section, the department shall adopt a rule pursuant to chapter 34.05 RCW that claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of occupational disease in RCW 51.08.140.
>
> (2)(a) Except as provided in (b) and (c) of this subsection, the rule adopted under subsection (1) of this section shall not apply to occupational disease claims resulting from posttraumatic stress disorders of firefighters as defined in *RCW 41.26.030(16) (a), (b), (c), and (h) and firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, and law enforcement officers as defined in *RCW 41.26.030(18) (b), (c), and (e).
>
> (b) For firefighters as defined in *RCW 41.26.030(16) (a), (b), (c), and (h) and firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, and law enforcement officers as defined in *RCW 41.26.030(18) (b), (c), and (e) hired after June 7, 2018, (a) of this subsection only applies if the firefighter or law enforcement officer, as a condition of employment, has submitted to a

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[18] "*Reviser's note: RCW 41.26.030 was amended by [Laws of] 2018[,] c[hapter] 230[,] [section] 1, changing subsections (16) and (18) to subsections (17) and (19), respectively." In the most recent amendment to RCW 51.08.142 in 2019, the legislature applied the presumption for firefighters, supervisors, and law enforcement officers to "public employee fire investigators." LAWS OF 2019, ch. 133, § 1.

> psychological examination administered by a psychiatrist licensed in the state of Washington under chapter 18.71 RCW or a psychologist licensed in the state of Washington under chapter 18.83 RCW that ruled out the presence of posttraumatic stress disorder from preemployment exposures. If the employer does not provide the psychological examination, (a) of this subsection applies.
>
> (c) Posttraumatic stress disorder for purposes of this subsection (2) is not considered an occupational disease if the disorder is directly attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by an employer.[19]

In sum, the Department had the express authority to adopt WAC 296-14-300(2)(d). We reverse the superior court decision and the award of attorney fees. We affirm the decision of the Board to deny the occupational disease claim for PTSD and major depressive disorder.

Schindler, J.P.T.*

WE CONCUR:

Mann, A.C.J.

Dwyer, J.

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[19] "*Reviser's note: RCW 41.26.030 was amended by [Laws of] 2018[,] c[hapter] 230[,] [section] 1, changing subsections (16) and (18) to subsections (17) and (19), respectively."

* The Washington Supreme Court has appointed Judge Schindler to serve as a judge pro tempore pursuant to RCW 2.06.150.

RCW 51.08.142

"Occupational disease"—Exclusion of mental conditions caused by stress, except for certain firefighters.

(1) Except as provided in subsection (2) of this section, the department shall adopt a rule pursuant to chapter **34.05** RCW that claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of occupational disease in RCW **51.08.140**.

(2)(a) Except as provided in (b) and (c) of this subsection, the rule adopted under subsection (1) of this section shall not apply to occupational disease claims resulting from posttraumatic stress disorders of firefighters as defined in *RCW **41.26.030**(16) (a), (b), (c), and (h) and firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, and law enforcement officers as defined in *RCW **41.26.030**(18) (b), (c), and (e).

(b) For firefighters as defined in *RCW **41.26.030**(16) (a), (b), (c), and (h) and firefighters, including supervisors, employed on a full-time, fully compensated basis as a firefighter of a private sector employer's fire department that includes over fifty such firefighters, and law enforcement officers as defined in *RCW **41.26.030**(18) (b), (c), and (e) hired after June 7, 2018, (a) of this subsection only applies if the firefighter or law enforcement officer, as a condition of employment, has submitted to a psychological examination administered by a psychiatrist licensed in the state of Washington under chapter **18.71** RCW or a psychologist licensed in the state of Washington under chapter **18.83** RCW that ruled out the presence of posttraumatic stress disorder from preemployment exposures. If the employer does not provide the psychological examination, (a) of this subsection applies.

(c) Posttraumatic stress disorder for purposes of this subsection (2) is not considered an occupational disease if the disorder is directly attributed to disciplinary action, work evaluation, job transfer, layoff, demotion, termination, or similar action taken in good faith by an employer.

[**2018 c 264 § 2; 1988 c 161 § 16.**]

NOTES:

***Reviser's note:** RCW **41.26.030** was amended by 2018 c 230 § 1, changing subsections (16) and (18) to subsections (17) and (19), respectively.

WAC 296-14-300 Mental condition/mental disabilities. (1) Claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of an occupational disease in RCW 51.08.140.

Examples of mental conditions or mental disabilities caused by stress that do not fall within occupational disease shall include, but are not limited to, those conditions and disabilities resulting from:

(a) Change of employment duties;

(b) Conflicts with a supervisor;

(c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;

(d) Relationships with supervisors, coworkers, or the public;

(e) Specific or general job dissatisfaction;

(f) Work load pressures;

(g) Subjective perceptions of employment conditions or environment;

(h) Loss of job or demotion for whatever reason;

(i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;

(j) Objective or subjective stresses of employment;

(k) Personnel decisions;

(l) Actual, perceived, or anticipated financial reversals or difficulties occurring to the businesses of self-employed individuals or corporate officers.

(2)(a) Stress resulting from exposure to a single traumatic event will be adjudicated as an industrial injury. See RCW 51.08.100.

(b) Examples of single traumatic events include: Actual or threatened death, actual or threatened physical assault, actual or threatened sexual assault, and life-threatening traumatic injury.

(c) These exposures must occur in one of the following ways:

(i) Directly experiencing the traumatic event;

(ii) Witnessing, in person, the event as it occurred to others; or

(iii) Extreme exposure to aversive details of the traumatic event.

(d) Repeated exposure to traumatic events, none of which are a single traumatic event as defined in subsection (2)(b) and (c) of this section, is not an industrial injury (see RCW 51.08.100) or an occupational disease (see RCW 51.08.142). A single traumatic event as defined in subsection (2)(b) and (c) of this section that occurs within a series of exposures will be adjudicated as an industrial injury (see RCW 51.08.100).

(3) Mental conditions or mental disabilities that specify pain primarily as a psychiatric symptom (e.g., somatic symptom disorder, with predominant pain), or that are characterized by excessive or abnormal thoughts, feelings, behaviors or neurological symptoms (e.g., conversion disorder, factitious disorder) are not clinically related to occupational exposure.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 51.08.142. WSR 15-19-139, § 296-14-300, filed 9/22/15, effective 10/23/15. Statutory Authority: Chapters 51.08 and 51.32 RCW. WSR 88-14-011 (Order 88-13), § 296-14-300, filed 6/24/88.]

Time-loss compensation is not paid to workers who voluntarily retired from the work force.

(c) Payment of union dues or medical or life insurance premiums does not constitute attachment to the work force.

(2) **When is a worker determined not to be voluntarily retired?** A worker is not voluntarily retired when the industrial injury or occupational disease is a proximate cause for the retirement.

[Statutory Authority: RCW 51.04.020. WSR 99-18-062, § 296-14-100, filed 8/30/99, effective 9/30/99. Statutory Authority: RCW 51.32.060, 51.32.090, 51.32.160, 51.21.220(6) [51.32.220(6)] and 51.32.240 (1), (2) or (3). WSR 86-18-036 (Order 86-33), § 296-14-100, filed 8/28/86.]

WAC 296-14-150 Definition of gainful employment for wage. Gainful employment for wages for the purposes of RCW 51.32.160 shall mean performing work at any regular gainful occupation for income, salary or wages.

[Statutory Authority: RCW 51.32.060, 51.32.090, 51.32.160, 51.21.220(6) [51.32.220(6)] and 51.32.240 (1), (2) or (3). WSR 86-18-036 (Order 86-33), § 296-14-150, filed 8/28/86.]

WAC 296-14-200 Waiver of recovery for worker compensation benefits overpayments. Whenever the director determines whether to exercise the discretion granted by RCW 51.32.240 (1), (2) or (3) or 51.32.220(6) the following shall apply:

(1) The decision of the director shall apply to the state fund or to the self-insurer, as the case may be.

(2) In the case of recoupment of an overpayment from any future payments, the director will entertain a request to exercise his or her discretion to waive recovery up to sixty days after communication of the order and/or notice to the recipient that benefits are being withheld to satisfy the previous overpayment.

(3) A finding by the director that recovery of an overpayment would be against equity and good conscience shall be required before the overpayment can be waived in whole or in part. The director shall consider the following factors and any other factors relevant to the particular case:

(a) Whether the claimant was without fault in applying for and accepting benefits which gave rise to the overpayment;

(b) Whether recovery of the overpayment, in whole or in part, would defeat the purposes of Title 51 RCW;

(c) Whether the claimant reasonably relied upon the benefits, or notice that such benefits would be paid and relinquished a valuable right or changed his or her position for the worse;

(d) Whether the claimant reasonably relied upon misinformation from an official source (i.e., a representative of the department or self-insurer, as the case may be) in accepting the benefit payment which gave rise to the overpayment.

(4) The claimant's application for waiver of an overpayment contemplated under RCW 51.32.240 (1), (2), or (3), or 51.32.220(6) shall clearly set forth the reason(s) that he or she believes that recovery of the overpayment in whole or in part, as the case may be, is against equity and good conscience.

[Statutory Authority: RCW 51.32.060, 51.32.090, 51.32.160, 51.21.220(6) [51.32.220(6)] and 51.32.240 (1), (2) or (3). WSR 86-18-036 (Order 86-33), § 296-14-200, filed 8/28/86.]

WAC 296-14-300 Mental condition/mental disabilities. (1) Claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of an occupational disease in RCW 51.08.140.

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(f) Work load pressures;

(g) Subjective perceptions of employment conditions or environment;

(h) Loss of job or demotion for whatever reason;

(i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;

(j) Objective or subjective stresses of employment;

(k) Personnel decisions;

(l) Actual, perceived, or anticipated financial reversals or difficulties occurring to the businesses of self-employed individuals or corporate officers.

(2) Stress resulting from exposure to a single traumatic event will be adjudicated with reference to RCW 51.08.100.

[Statutory Authority: Chapters 51.08 and 51.32 RCW. WSR 88-14-011 (Order 88-13), § 296-14-300, filed 6/24/88.]

WAC 296-14-310 When does a presumption of occupational disease for firefighters apply? RCW 51.32.185 specifies a presumption that certain medical conditions are occupational diseases for firefighters. Those conditions are heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances; respiratory disease; specific cancers as defined by RCW 51.32.185; and infectious diseases as defined by RCW 51.32.185.

For claims filed on or after July 1, 2003, the presumption may not apply to heart or lung conditions if a firefighter is a user of tobacco products.

When the presumption does not apply, the claim is not automatically denied. However, the burden is on the worker to prove that the condition is an occupational disease.

[Statutory Authority: RCW 51.04.020, 51.32.185. WSR 03-12-046, § 296-14-310, filed 5/30/03, effective 7/1/03.]

WAC 296-14-315 Definitions. (1) **Tobacco products:** For purposes of this rule, tobacco products are limited to those that are smoked, including cigarettes, pipes and cigars.

(2) **User of tobacco products:** For the purposes of this rule, a user of tobacco products is a "smoker."

(3) **Current smoker:** A current smoker is a regular user of tobacco products, has smoked tobacco products at least one hundred times in his/her lifetime, and as of the date of manifestation did smoke tobacco products at least some days.

(4) **Former smoker:** A former smoker has a history of tobacco use, has smoked tobacco products at least one hundred times in his/her lifetime, but as of the date of manifestation did not smoke tobacco products.

DECLARATION OF SERVICE

I certify that I have this day served a true and correct copy of Respondent's Petition for Review under Cause No. 78454-4-I on the parties to this proceeding, as listed below, by email and United States mail, postage prepaid, or by other method where indicated.

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ORIGINAL TO:

Washington Court of Appeals, Division 1
E-filed via Washington State Appellate Courts' Secure Portal

Dated this 26th day of February, 2020.

By Brian M. Wright, WSBA # 45240

CAUSEY WRIGHT

February 26, 2020 - 1:25 PM

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