



## **NATURE OF ACTION**

Rodolfo Apostol, claimant in workers' compensation case appeals from district court judgment affirming the denial of benefits in a "mental/mental" injury case.

Superior Court: The Superior Court for Thurston County, Honorable Judge Richard D. Hicks, on February 15, 2008, entered a judgment on a verdict upholding the denial of the claim.

## **APPEAL BRIEF**

Holding that the applicant was entitled to a "lighting -up" instruction and that the general instructions given did not allow the applicant to adequately argue his theory of the case.

I, Rodolfo Apostol was given written instructions from Industrial Appeals Judge, Judit E. Gebhardt, that ".....Mr. Apostol had the opportunity to prove that stress resulting from this single traumatic event (the meeting on September 21, 2005) met the definition of an industrial injury."

RCW 51.08.100 defines 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."

However, on September 29, 2005, I filed an accident report with the Department alleging I had developed an occupational disease (i.e., a major depressive illness accompanied by phobic anxiety leading to post-traumatic stress disorder) caused by a hostile work environment and intolerable work conditions imputed to my employer, Ronald Wastewater District.

Therefore, the Department of Labor and Industry and Insurance Appeals Judge Judit Gebhardt improperly instructed me, to prevail in my industrial injury claim within the definitions of RCW 5.08.100.

Although, Judge Gebhardt had made several attempts explaining the difference between an industrial injury versus an occupational disease, nowhere during the court proceedings nor the court transcripts that I was required or offered to prove my disabling injury as an occupational disease.

RCW 51.08.140 defines an "Occupation disease" means such disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title.

Furthermore, RCW 51.08.142 and WAC 296-14-300 placed further limitations on mental health conditions caused by stress as noted by Judge Gebhardt.

The issue of instructing and misleading the claimant, Apostol, as to prove his case based upon the definition under RCW 51.08.100 would be considered judicial error as well as impossible in scope of the substantial evidence Apostol had provided to the Department of Labor & Industries and

the Board of Industrial Insurance Appeals as well as in the administrative court and district court.

Asking claimant Apostol whether he understood the definition of an occupational disease is not the same as instructing or offering Apostol the opportunity to prove his case as an occupational disease.

As Apostol had noted on his initial claim to the Department of Labor and Industry on September 29, 2005, he had written injury based on a “hostile work environment”. (Exhibit I)

His appeals letter regarding a hostile work environment to the Board of Industrial Insurance Appeals further proffered information to injury resulting more likely than not as a “mental-mental” occupational injury claim. (Exhibit II).

In District Court, Apostol plea to Honorable Judge Richard Hicks describes pertinent details of Apostol work place environment in which co-workers and management had intentional harmed and harassed Apostol, both mentally and physically, via physical assaults, verbal threats, sexually harassment behavior, name calling and violence such as being shot with a gun. (Contained in Administrative hearings transcripts)

As Judge Gebhardt statement is misleading and therefore incorrect in her Finding of Facts Statement 4 “...Apostol’s mental health condition diagnosed after September 21, 2005, was a culmination of a series of events that Mr. Apostol considered traumatic, exacerbating and underlying anxiety

disorder, which then became more flagrant, more pronounced, and more disabling to Mr. Apostol.” due to the fact that a hostile work environment existed long before the September 21, 2005. Apostol personal work file would contain ample material to this fact.

An important detail which was not presented in the courts was Apostol’s workplace physical injury (stress fracture of the left wrist) in August 2005 when he was forced by his supervisor, Maintenance Manager George Dicks to break concrete and cement for four hours with only a sledgehammer. Apostol made a claim (Claim Number- AD81723) on that injury and the Department allowed and paid that claim. This injury further caused Apostol to take further medical leave which his employer denied and instead terminated his employment and in doing so violated a clear mandate of public policy under RCW Title 51.048.25, Retaliation by employer prohibited.

### **STANDARD OF REVIEW**

Where a challenge to jury instructions (in Apostol’s case where a challenge to judges instructions) is at issue, “prejudicial error results when, looking to the instructions as a whole, the substance of the applicable law was not fairly and correctly covered” (Swinton v. Potomac Corp., 270 F.3d794, 802 (9<sup>th</sup> Cir. 2001), quoting earlier caselaw (internal citations omitted)). Where an error is merely harmless, reversal is not required (Wall Data Inc. v. Los Angeles County Sheriff’s Dep’t, 447 F.3d 769, 784 (9<sup>th</sup> Cir. 2006)). As Wall Data, id. Teaches, “We review a district court’s formulation of civil jury

instructions for an abuse of discretion,” and “[w]e review de novo whether a jury instruction misstates the law.” Here analysis reveals that the administrative court committed reversible error when it improperly gave incorrect instructions to prove his case because it failed “fairly and adequately” to cover the issues presented and to state the law correctly, and because it was ultimately misleading.

Swinton, 270 F.3d at 805-06 (quoting earlier caselaw, with internal citations omitted) reconfirmed the standard for evaluating a verdict where the jury has been given an incorrect instruction:

An error in instructing the jury in a civil case requires reversal unless the error is more probably than not harmless. While this standard of review is less stringent than review for harmless error in a criminal case, it is more stringent than review for sufficiency of the evidence in which we view the evidence in the light most favorable to the prevailing party. In reviewing a civil jury instruction for harmless error, the prevailing party is not entitled to have disputed factual questions resolved in his favor because the jury’s verdict may have resulted from a misapprehension of law rather than from factual determinations in favor of the prevailing party.

That yardstick will be applied in our review of the actual and proposed jury instructions at issue on this appeal.

Apostol proposed Judicial Instruction as proscribed in *Dennis v. Dept. of Labor & Indus.*, 109 Wn. 2d 467 (1987), *Dennis* involved particular work-related repetitive physical trauma which rendered preexisting osteoarthritis in the worker’s wrists disabling. And analyzed together with *Favor v. Dep’t*

of Labor & Indus., 53 Wn.2d 698 (1959) in a case involving the allegation that mental stressors caused a psychiatric or physical disability.

“For a worker to establish an occupational disease claim based on mental stress (1) the stress must be objectively corroborated, not just a product of the worker’s own subjective perceptions; (2) the stress must be a requirement or condition of the worker’s employment, not just a condition occurring coincidentally at work; (3) the stress must arise out of and in the course of employment, (4) the stress must be different from the stress attendant to normal everyday life and all employments in general, i.e., the stress must be unusual; and (5) the stress must be a cause of the worker’s psychiatric condition in the sense that, but for the workplace stress, the worker would not be suffering from the psychiatric condition or disability. [Post-Dennis; pre-WAC 296-14-300]...Ann Woolnough, Docket No. 852816, Claim No. S-759286. 85 (1990) Occupational Disease RCW 51.08.140”

### **The Lighting-Up Theory.**

The lighting-up theory provides that if a preexisting dormant or latent condition is activated or “lighted-up” by an industrial injury or occupational disease, the worker is entitled to benefits for the disability resulting therefrom.

Therefore, it is proper to suffice that Appellant claims on appeal that the Board of Industrial Appeals, Administrative Law Judge and the district court erred in 1) finding he had not presented the necessary evidence to support a prima facie case for an industrial injury. 2) Failing to allow claimant to prove his injury under the “light-up” doctrine as an occupational disease. Apostol further claims that failure for the Board of Industrial Appeals, the Administrative Law Judge and the district court that to not allow benefits in

a mental injury resulting from a hostile work environment and intolerable working conditions would be unconstitutional.

## **DISCUSSION**

I disagree with Judge Judit Gephardt's statement three in Findings of the Fact when she stated".....on September 21, 2005, Rodolfo M. Apostol did not experience a sudden and tangible happening of a traumatic nature, which produced an immediate result in the course of his employment with Ronald Wastewater District. Mr. Apostol's stress-related mental health condition is not the result of the alleged September 21, 2005 meeting."

### **Preexisting mental health condition.**

In the summer of 1997, Apostol's employer stipulated to Apostol that in order for him to keep his job he had to attend Anger Management with the employers designated psychologist, Dr. Hans Berman. After several visit to Dr. Berman, he diagnosed Apostol as having dysthymia which is a form of a depressive mental disorder. Apostol was suggested from Dr. Berman that medication was required for treating his mental impairment. Apostol's personal physician, Dr. Kenneth Mayeda prescribed Apostol several medications to begin his treatment. Dr. David Dixon's testimony in the Administrative Hearings before the Board of Industrial Insurance Appeals confirmed Dr. Berman's diagnosis.

Genuine issues of material fact existed to regard Apostol's established record of disability and latent medical condition which would apply to Apostol's proposed injury claim as occupational disease.

In general, Workers' compensation statutes generally cover injuries and occupational diseases that are either caused or aggravated by work-related conditions. The standard rule in workers' compensation cases is that a work-related aggravation of a preexisting or latent condition is a compensable injury. Larson, Workers' Compensation Law, § 56-25. The majority of jurisdictions, including even those which have taken steps to limit coverage for workplace stress claims, appear to apply this rule equally to claims based on psychological as well as physical injury. According to Larson, there appear to be no reported decisions in which compensation was denied solely because there was a preexisting "neurotic tendency." Id. Of course, in all disputed workers' compensation cases, there is a burden on the plaintiff to prove that circumstances related to the employment caused the claimed injury.

As Apostol claim, judicial error of improper instructions prevented him to prove that circumstances related to his employment caused his injury.

### **Circumstances.**

The events leading to September 21, 2005 for example Apostol's physical injury claim on August 2005, Apostol's being shot with a gun June 2005, Apostol's demotion and 30 day suspension in January 2005, and his maintenance staff co-workers betrayal and daily harassment towards him in

February 2005 after returning from his suspension and further retaliation from coworkers when Apostol reported these acts (Apostol work file all reflect these reported incidences) to Management George Dicks and Mike Derrick. Apostol's personal clothing was ripped, his leather work boots were marked and scratched by a sharp object and the fronts of the boots were sanded down to show the metal toe. Management retaliated further by taking away Apostol's Standby Duty Assignment and was assigned to back breaking physical labor assignments.

To an ordinary person these acts would appear extraordinary and unusual.

**Washington State Court Rulings applying the lighting-up Doctrine.**

Citing McDonagh v. Department of Labor & Industries 68 Wn. App. 749, 845 P2d 1030. Holding that the applicant, Thomas M. McDonagh was entitled to a "lighting-up" instruction and that the general instructions given did not allow the applicant to adequately argue his theory of the case. McDonagh claims he is entitled to a new trial since the trial courts should have given the jury a "lighting-up" instruction. The appeals court agreed.

McDonagh graduated from Washington State University in 1983 with a degree in economics. Shortly, thereafter he went to work at Capital Savings Bank as a teller and promoted to a senior financial counselor. By the end of 1985, McDonagh's mental health deteriorated and testified that a great deal of pressure and stress accompanied his job at the bank when dealing with clients and their personal finances. McDonagh began suffering headaches, nausea, and insomnia and memory loss. A psychiatrist testified and

diagnosed McDonagh with a major depressive illness accompanied by a phobic anxiety. The doctor further testified that McDonald's symptoms.....were associated with concerns he had about work and described McDonagh as a very conscientious person, perhaps excessively so at times [who] took his responsibilities very, very seriously. He was always concerned with whether or not his actions were approved of by those around him, particularly by supervisors or bosses or parents, and ....think he probably felt more a sense of guilt and remorse and responsibility than the average person. That's the makeup of his personality.

Apostol claim that his personality type is very similar to that of McDonagh. Apostol, too, graduated from Washington State University. Apostol received his B.S. degree in Engineering in 1981. His work history at Ronald Wastewater District shows his conscientious effort to do everything right. Apostol was a dedicated and a hard-working employee who religiously show up to work forty-five minutes early every day. Despite, Apostol receiving the highest possible ratings and rated the top technician in the District, the District failed to promote Apostol as an office staff in the Permitting Office as General Manager, Phil Montgomery had promised.

### **New Management Team**

In September 2003, both General Manager Phil Montgomery and Maintenance Manager retired. Mike Derrick replaced Phil Montgomery as General Manager and George Dicks replaced Steve Paulis as Maintenance Manager. Both, Mike Derrick and George Dicks treated Apostol unequal

amongst all employees at the District (Ronald Wastewater District is a public agency acting as a Municipal Corporation in Shoreline, Washington which the District is franchised with the City of Shoreline to Manage and Maintain the Sanitary Sewer Collection System as it has since 1951. The District employed 17 people and seven consisted of the Maintenance staff which Apostol worked as a Technician. The technicians work consisted of mostly manual outdoor labor maintaining and cleaning the Sanitary Sewer Systems consisting of pumps, motors, pipes, inspections and operated all equipments from dump trucks to Vactor truck the size of a cement truck. The work is considered hazardous and dangerous)

The new management team became less favorable towards Apostol and scrutinized his every move. Apostol's co-workers reacted the same way. When Apostol spoke to management concerning his co-workers increasing hostility towards him, management did nothing. The hostility grew more and more from both his Managers and his co-workers.

Apostol's mental health deteriorated and he developed post traumatic stress disorder which his Dr. David Dixon had diagnosed and testified in the hearings. ".....That was my primary Axis I diagnosis: that you suffered post-traumatic stress disorder, both chronic and acute....you continued to explain a history of crucial events as you experienced them at work. You reported being demoted, and harassed by co-workers...being threatened with fists.....being yelled at.....being told you don't belong here.....you were afraid of working.....you believed they tried to run over you with a truck....you described to me your emotional breakdown.....my opinion is that you've suffered an anxiety disorder for some time and that you have a

certain style of personality for some time.....Those factors played into your response to environmental occupational conditions...currently you suffer a twofold affective disorder, with both anxiety and depressive components to it. That historically you've struggled with depression and generalized anxiety. More recently, with continued experiences over the last two to five years...anxiety disorder has taken---or developed the form of a post-traumatic stress disorder.”

Furthermore, Doctor Dixon described Mr. Apostol's personality characteristics predisposed him to this type of illness and that the stress of his employment was the causative factor in triggering his depressive disorder.

In the case of *Wendt v. Department of Labor & Industries*, 18 Wn. App. 674, 571 P.2d 229, Wendt's major contention on appeal is that he was entitled to an instruction based upon the so-called “lighting-up” theory which has been approved by our Washington courts. *Harbor Plywood Corp. v. Department of Labor and Industries*, 48 Wn 553, 295 P.2d 310 (1956); *Jacobsen v. Department of Labor & Industries*, 37 Wn. 2d 444, 224 P. 2d 338 (1950); *Miller v. Department of Labor & Industries.*, 200 Wash. 674, 94 P. 2d 764 (1939) and the many cases cited therein. These cases have consistently held that such an instruction should be given where there is substantial evidence to support it.

Apostol, citing *McDonagh* and *Wendt*, claims that where there is substantial evidence to support the giving of an instruction on the lighting-up theory, it

is reversible error to refuse to give such an instruction. And, because it was ultimately misleading.

Apostol claims as does McDonagh, the record is replete with evidence to support the giving of the instructions.

Cite McDonagh: The “lighting-up” doctrine, whereby an industrial injury or occupational disease is compensable if it makes active a latent medical condition, is applicable regardless of whether the medical condition was diagnosed or present throughout the claimant’s life. A personality characteristic can qualify as a latent medical condition.

“.....Furthermore, contrary to the Department’s claim, there is no prerequisite that there be a “diagnosed” or “preexisting” condition” to be described the condition held to mandate the lighting-up instruction. In addition, there is no authority to support the proposition that a “personality characteristic” is precluded from qualifying as a preexisting condition. The fact that a biological predisposition for the development of a mental illness is the type of case encompassed by the lighting-up theory is exemplified by our court’s use of such terms as “infirmity” or “weakness” to describe preexisting conditions. See *Miller v. Department of Labor & Industries*, 200 Wash. 674, 682, 94 P.2d 764 (1939), *Dennis v. Department of Labor & Industries*, 109 Wn. 2d 467, 471, 745, P.2d 1295 (1987).”

### **Proximate Cause.**

There may be one or more proximate causes of a condition. For a worker to recover benefits under the Industrial Insurance Act, the industrial injury or occupational disease must be a proximate cause of the alleged condition

complained of and without such condition would not have happened. Cite McDonagh.

The law does not require that the industrial injury or occupational disease be the sole proximate cause of such condition. Cite McDonagh.

Apostol finds that the instructions given from Industrial Appeals Judge Judith E. Gebhardt to describe a single traumatic event to prove his injury did not serve the same purpose as the proposed lighting-up instruction since, as noted by the court in *Wendt*, the theory is esoteric and must be adequately explained to a jury.

In such a case the law should be explicated by the judge in particular terms to insure that pro se claimants such as me grasp its subtleties. When such a key issue is involved, a correctly worded and particularized instruction should be given, and general instructions such as the Gebhardt court gave here will not suffice.

### **WASHINGTON COURT DECISIONS UTILIZING THE LIGHT UP DOCTRINE.**

In *Xieng v. Peoples Nat'l Bank*, 63 Wn. App. 572, 821, P.2d 520 Dec. 1991; the Court of Appeals upheld and affirm the judgment that there was substantial evidence of discrimination causing the plaintiff's disability.

Medical testimony by Xieng's psychiatrist, Dr. Maurice Lustgarten, demonstrated a casual relationship between the Bank's national origin discrimination and Xieng's severe emotional distress and depression.".....in his opinion it was reasonably certain that events at the Bank "lit up" Xieng's preexisting posttraumatic stress disorder, which arose from the loss of his country and family."

Xieng's physician, Dr. John Baldwin, testified that Xieng's emotional condition "more likely than not" aggravated his symptoms of Sjogren's syndrome and chronic active hepatitis. Another of Xieng's physicians, Dr. Bang D. Nguyen, testified that Xieng's physical problems were "more likely than not" caused by the depression of his body's immune system due to emotional distress.

In view of the heavy burden placed on reviewing courts which address whether substantial evidence supports a trial court's finding of facts, see discussion, supra, the Xieng court conclude that the trial court did not abuse its discretion in finding that the Bank's failure to promote caused Xieng's disability. The trials court's finding is reasonably supported by Xieng's medical experts' testimony.

In retrospect, on reviewing court record Proposed Decision and Order Docket No. 06 12871, Claim No: Y-677589 dated May 2, 2007; Industrial Appeals Judge Judit E. Gebhardt FINDINGS OF FACT section contains substantial evidence that would qualify judicial instructions to prove an industrial claim based on the "light-up" theory to claimant Apostol and that

his compensable injury was the result of a preexisting psychiatric condition or disability

### **Constitutional Rights.**

Under Washington State Law RCW 49.60.030, Freedom from Discrimination-Declaration of civil rights. (1) The right to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability.....This right shall include, but not limited to: (a) The right to obtain and hold employment without discrimination;”.

### **Bad Faith Workers’ Compensation**

In Hough v. Pacific Insurance Co, 927 P2d 858 (1996), the Supreme Court of Hawaii held that allegations of an insurer’s “outrageous and intentional” denial of medical benefits and disability payments are not “work injuries” as defined within its workers’ compensation statute, rendering the exclusive remedy defense inapplicable. Thus, a worker who sustains injuries that originally fall under the exclusive jurisdiction of the state compensation system is not precluded from bringing a separate claim for the insurer’s intentional tortuous acts.

The Hawaii Supreme Court accepted the appeal, and concluded that the tort claims can survive the exclusive remedy defense based on the following rationale:

The courts have upheld the right to bring an action for independent intentional torts because the tortious conduct, which give rise to the action, does not arise our of the original employment relationship. It occurs after employment and arises out of the employee's relationship with the insurance carrier after the employment relationship had been terminated. The insurance carrier is no longer the 'alter ego' of the employer, but rather is involved in an independent relationship to the employee when committing such tortuous acts.

I, the claimant am seeking a remedy for emotional distress and other harm caused by the Department of Labor and Industries intentional acts during the administration of the claim. This injury is distinct in time and place from the original on-the-job physical injury which is subject to the compensation statue. The injury for which I seek recovery does not occur while I am employed but rather, after my employment was terminated. The civil action is not based on the original work-related injury but on a second and separate injury resulting from either the intentional acts and/or bad faith conduct of the Department of Labor & Industries and its agents while investigating my claim.

### **SUMMARY**

The hostile work environment and intolerable work conditions as described and reviewed in this appeals meets the requirements of Dennis and Favor impose requirements in a stress claim such as this.

In conclusion, Apostol respectfully request reverse judgment and have the case sent to the Department to determine the extent of disability and compensation.

Rodolfo Apostol (pro se)

Claimant

Appellee

*Rodolfo Apostol*  
*Sept. 23, 2008*

# EXHIBIT I

P. 1/1

WORKER INFORMATION

1. Name (First-middle-last) <b>Rodolfo Malonzo Apostol</b>		2. Sex Select one <input checked="" type="radio"/> Male <input type="radio"/> Female		14. Date of injury Month-day-year <b>9/21/05</b>		15. Time of injury Select one AM PM <b>AM</b>		CLAIM NUMBER: <b>Y677589</b>	
3. Social Security number <b>537-42-9016</b>		4. Home phone <b>206-682-1249</b>		5. Birthdate Month-day-year <b>4/17/57</b>		16. Shift Select one Day Swing Night <b>Day</b>		17. Part of body injured or exposed Right ankle, left index finger, lungs, etc. <b>Brain - Stress</b>	
6. Home address Number and street <b>801 Spring St. #23</b>		7. Height <b>5'8"</b>		8. Weight <b>227</b>		18. Describe in detail how your injury or exposure occurred Include tools, machinery, chemicals or fumes that may have been involved <b>Hostile Work Environment at the workplace, harassment by coworkers</b>		19. Where did your injury or exposure occur? Select one At home <input type="radio"/> At work <input checked="" type="radio"/> Other <input type="radio"/> At work: Select one Employer Premises <input checked="" type="radio"/> Jobsite <input type="radio"/> Other <input type="radio"/>	
9. Mailing address (if different from home address) Number and street or P.O. Box number <b>PO Box 77378</b>		10. Marital Status Select one Married <input type="radio"/> Widowed <input type="radio"/> Separated <input type="radio"/> Divorced <input checked="" type="radio"/>		11. Dependent children (include unborn, estimate birthdate. Benefits will be based, in part, on number of legally dependent children. If you don't have custody, complete item 13.)		20. Address where injury or exposure occurred Business name if at business location <b>Ronald Wastewater District</b>		21. Address where injury or exposure occurred City <b>505 Linden Ave. N.</b> State <b>WA</b> ZIP code <b>98123</b>	
12. Name and address of children's legal guardian <b>NA</b>		13. Name and address of children's legal guardian <b>NA</b>		22. Was this incident caused by failure of a machine or product OR someone who is not a co-worker? YES <input type="radio"/> NO <input checked="" type="radio"/> POSSIBLY <input type="radio"/>		23. List any witnesses <b>Brent Proffitt</b>		24. When will you return to work? <b>10/26/05</b>	
25. When did you last work? <b>9/21/05</b>		26. Did you report the incident to your employer? Name/title of person reported to <b>YES</b> <input checked="" type="radio"/> <b>NO</b> <input type="radio"/> <b>Mike Derruk Gen. Mgr.</b>		27. Date you reported it <b>9/26/05</b>		28. Was your employer contributing to you (and/or family's) medical, dental and/or vision insurance on the day you were injured? YES <input checked="" type="radio"/> NO <input type="radio"/>		29. How many paying jobs do you have? <b>1</b>	
30. Business name of employer <b>Ronald Wastewater District Public Agency</b>		31. Type of business <b>Public Agency</b>		32. How long have you worked there? Select appropriate unit of time <b>11</b> Years <b>2</b> Months <b>0</b> Weeks <b>0</b> Days		33. Employer phone number <b>(206) 546-2494</b>		34. Your job title and duties <b>Wastewater Technician</b>	
35. Rate of pay at this job Write amount, select rate <b>\$ 19.63</b> Hour <input checked="" type="radio"/> Week <input type="radio"/> Day <input type="radio"/> Month <input type="radio"/>		36. Hours/day <b>8</b>		37. Days/week <b>5</b>		38. Additional earnings (daily average) Select one Piecework <input type="radio"/> Tips <input type="radio"/> Commission <input type="radio"/> Bonuses <input type="radio"/>		39. Are you? <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> Owner <input type="checkbox"/> Corp. Sharehldr. <input type="checkbox"/> Partner <input type="checkbox"/> Corp. Director <input type="checkbox"/> Corp. Offr <input type="checkbox"/> Optional Covrg.	
40. Signature <b>X Rodolfo Malonzo Apostol</b>		41. Signature <b>X Rodolfo Malonzo Apostol</b>		NOTE: READ LEGAL NOTICES ON LAST PAGE I declare that these statements are true to the best of my knowledge and belief. In signing this form, I permit doctors, hospitals or clinics to release medical reports generated by themselves & others to the Dept. of Labor and Industries. Month-day-year <b>9/29/05</b>		Today's date <b>9/29/05</b>			

**LEGAL NOTICES:**

Any person who knowingly gives false information in a claim or application for industrial insurance benefits shall be guilty of a Class C felony when the claim involves \$500 or more. If the claim involves less than \$500, that person shall be guilty of a gross misdemeanor (RCW 51.48.020).

You are not required to give us your Social Security number. We request it to facilitate the handling of your industrial insurance claim.

## We listen. We care. We respond.

If you have questions, the Department of Labor and Industries has 20 service locations to assist you. Please call the one nearest you or our Office of Information and Assistance at 1-800-LISTENS (1-800-547-8367). Phone numbers are listed under Washington State of in the white pages of the telephone book.

- |            |                |            |              |             |
|------------|----------------|------------|--------------|-------------|
| ABERDEEN   | EAST WENATCHEE | MOSES LAKE | PORT ANGELES | TUKWILA     |
| BELLINGHAM | EVERETT        | MT. VERNON | SEATTLE      | VANCOUVER   |
| BREMERTON  | KENNEWICK      | OKANOGAN   | SPOKANE      | WALLA WALLA |
| COLVILLE   | LONGVIEW       | OLYMPIA    | TACOMA       | YAKIMA      |

WORKER'S COPY

WORKER'S COPY

# EXHIBIT II

P. 1/3

12/16/05 SC3 6340:12

DOCKET NO. 05 23468

December 13, 2005

Board of Industrial Insurance Appeals  
Executive Secretary  
PO Box 42401  
Olympia, WA 98504-2401

RE: Appeal for Claim Number: Y677589

This letter is for an appeal to the Board of Industrial Insurance Appeals for Claim Number Y677589.

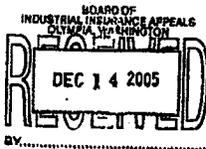
Name: Rodolfo M. Apostol  
Address: PO Box 73378,  
Seattle, WA 98177

Employer: Ronald Wastewater District  
Address: 17505 Linden Avenue North  
PO Box 33490  
Shoreline, WA 98133-0490

Claim Number: Y677589

Description of injury/disease:

Since 1994, I have been and still being treated by my personal physician for insomnia, hypertension, stress and other health related issues which was caused by a hostile work environment at my place of employment. I have documented cases and situations in which I have been subjected to, but, not limited to the following acts of mistreatment and mis-behavior at the workplace: physical assault, threats, verbal abuse, harassment, bullying, mobbing, retaliation and discrimination. The damage and injuries that I received as a result of these acts have damaged me physically and mentally, and, I believe, permanently.



Date of injury:

I have been subjected to this type of treatment as described at my place of employment from August 1994 (soon after I was employed) to September 21, 2005 (last day I worked). The mistreatment that I was receiving continued throughout my tenure and had escalated over the past few years to the point where I no longer can work with these conditions.

CLLW  
EW  
BKI

12-16-05

# EXHIBIT II P. 2/3

12/16/05 SC3 6340:13

cont.

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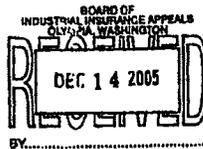
APPEAL

Claim Number: Y677589

Reason for disagreeing with L&I's decision:

The reason I am disagreeing with L&I's decision is that in my specific case and the health issues and health problems that I have suffered as a result of the ongoing mistreatment and abuse I received, has taken it's toll, both physically and mentally. The type of acts I was being subjected to and the repetitions of these acts, along with the duration of eleven years, is cruel and unusual and has to be taken in consideration. My complaints to upper management have fell upon deaf ears. The denial of management of any problems, (i.e. harassment) and the participation of management in the form of retaliation and discrimination are, also, reasons for reconsideration. As a result, for my personal safety and my personal well-being, I had no alternative but to request for a Medical Leave at my place of employment, which was granted.

Another reason I am appealing the decision made by Labor & Industry is the fact that my claims manager made a decision based upon the update information of my return to work date I supplied online. I did not mail or send information such as Medical Records, etc. as required for a "protest". My claims manager added that "any" information they received is considered a protest. I went on further and explained that I supplied the information as for a good faith deed on my part to update information for L & I's records and tracking as mentioned and required by all claimants.



The relief I am requesting from the BIA:

I am requesting a relief of loss wages and

12-16-05

# EXHIBIT II

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12/16/05 BCS 6340:14

Page 3

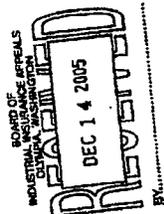
cont.

APPEAL Claim Number: Y677389

any other benefits that I am entitled to.

Seattle, Washington

City of preference for the proceedings to take place:



Signed Frederic M. Graft Date 12/13/05

10 12-05