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NO. 81351-5

SUPREME COURT OF THE STATE OF WASHINGTON

RODOLFO M. APOSTOL,

Petitioner,

v.

DEPARTMENT OF LABOR AND INDUSTRIES,

Respondent.

REPLY BRIEF

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REPLY BRIEF

The Department as well as the trial courts incorrectly concludes that Mr. Apostol did not suffer an industrial injury or an occupational disease.

Injury claim due to a hostile work environment which resulted in an employee's post traumatic stress disorder, diagnosed and testified throughout the court hearings by a medical expert testimony and supported by claimant's medical history which includes a history of a pre-existing mental disability is a compensable claim within the definition of the Industrial Insurance Act as instructed to the jury in *Boeing v. Key*, 101 Wn. App. 629.

Key states, "A worker may not receive benefits for a mental disability caused by stress resulting from relationships with supervisors, co-workers, or the public, unless she has a mental disability caused by stress which is the result of exposure to a sudden and tangible happening of a traumatic nature producing an immediate and prompt result." is correct when this instruction was presented to the jury

There is ample evidence throughout the hearings and in the Superior Court that Mr. Apostol testified he had a history of a mental disability and a pre-existing mental condition and along with the post-traumatic disorder diagnosis and dysthymia (submitted to the Department of Labor), qualifies as an industrial injury within the Industrial Insurance Act and rights to a pension benefit for disability is allowed.

In *Romo v. Department of Labor & Industries*, 92 Wn. App. 348; states that “Ms. Romo was injured at her workplace on November 10, 1988. She began receiving benefits on January 4, 1989. As required by the Department, she submitted to medical evaluations in August 1989, February 1990, and January 1991. March 1992, and November 1992. Psychiatric evaluations during that time indicated Ms. Romo suffered from somatization disorder and either post-traumatic stress disorder or dysthymia, all of which were casually related to the workplace injury.”

These mental conditions are identical to the ones Mr. Apostol’s physicians, psychiatrists and medical testimony in the administrative hearings as well as to the Superior Court of Thurston County

In David Dixon, PhD-Furth. Judge's Exam-Feb. 20, 2007 page 32; Judge Gebhardt questioned Doctor Dixon,...."Doctor, I'm getting the impression, and I need you to really correct me if I'm wrong on this one, that you believe that Mr. Apostol suffers from a pre-existing symptomatic, with the affective disorder with the depressive and anxiety features. Did I get that right?"

Doctor Dixon replied, "That is correct."

Definition: affective disorder- A mental disorder characterized by a constant, pervasive alteration in mood, and affecting thoughts, emotions, and behaviors. Answer.com

Definition: symptomatic condition- symptomatic can mean showing symptoms, or it may concern a specific symptom. Symptoms are signs of disease or injury and are usually noticed by the patient. MedlinePlus Medical Encyclopedia

Depressive (features)-adjective. 1. Tending to depress. 2. Characterized by depression, esp. mental depression. – Noun. 3. A person suffering from a depressive illness. Dictionary.reference.com

Anxiety – noun. 1. Distress or uneasiness of mind caused by fear or danger or misfortune. He felt anxiety about the possible loss of his job.

Anxiety – (also called solicitude) is a psychological and physiological state characterized by cognitive, somatic, emotional, and behavioral components. These components combine to create the painful feelings that we typically recognize as anger, fear, apprehension, or worry. Anxiety is often accompanied by physical sensations such as heart palpitations, nausea, and chest pain, shortness of breath, stomach aches, or headache.

Plus, in Superior Court of Thurston County, I had testified to Hon. Judge Richard Hicks on January 25, 2008 on page 7 I said and quote, “I’ve had a doctor—my personal doctor for 25 years in Seattle. He’s seen me through these episodes, all my episodes, on a quarterly basis, sometimes on a six-week basis. I was on medication throughout the whole time. I developed

high blood pressure. I developed—everything—anything that has to do with quotes PTSD, I had, the plainest symptoms. I have anxiety.....” and page 13 I stated that, “---he had a depression, similar to what I had...” and on page 26, I said and quote,...”I mean he’s been formed through his depression. It was very similar to the things I experienced when I was working....”. and on page 27, I said and quoted in utilizing the lighting up doctrine theory...”You had to establish that you had it....”

This statement was in reference to a pre-existing mental disability condition that a claimant must have established in his medical history to prevail in an industrial injury claim.

Mr. Apostol has clearly established his pre-existing mental disability condition that would allow Apostol to prevail in an industrial injury claim.

Moreover, Mr. Apostol has provided further proof and submitted here in this rebuttal brief as Exhibit 1. The testimonial letter by Dr. Hanan Berman, Apostol treating psychiatrist is substantial evidence that supports a pre-existing mental disability which Mr. Apostol was diagnosed in 1997, three years after working for his employer

Furthermore, Doctor Hanan Berman stated he recommended treatment and medication for dysthymia (a chronic form of depression).

In RCW 51.52.115 Court Appeal-Procedure at trial-Burden of proof and states...” The hearing in the superior court shall be de novo, but the court shall not receive evidence or testimony other than, or in addition to, that offered before the board or included in the record filed by the board in the superior court as provided in RCW 51.52.110: PROVIDED, That in cases of alleged irregularities in procedure before the board, not shown in said record, testimony thereon may be taken in the superior court...”

Thus, the testimony given by Mr. Apostol in Superior Court as evidence permitted in the records for review.

Occupational Disease

The courts should accept Mr. Apostol’s injury as an occupational disease because the definition of an occupational disease in an injury claim for post traumatic stress disorder is defined in Boeing Co. v. Key, 101 Wn. App. 629,

as “such disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provision of this title.”

Furthermore, it instructs the jury that, “A worker may not receive benefits for a mental disability caused by stress resulting from relationships with supervisors, co-workers, or the public, unless she (he) has a mental disability caused by stress which is the result of exposure to a sudden and tangible happening of a traumatic nature producing an immediate and prompt result.”

Mental Disability

The fact that Mr. Apostol has established a mental disability -dysthymia, anxiety disorders- history (Department must confirm this conclusion from his personal physician before benefits are allowed) is considered an industrial injury as stated in Key. This is considered an industrial injury.

RCW 34.04.130 (6)(e) recodified as 34.05.570, which provides for judicial reversal of an administrative decision which is “clearly erroneous in view of

the entire record,” permits a broader judicial review of all the evidence than did the earlier version of the same statute, which authorized reversal when the decision was “unsupported by material and substantial evidence.” A decision is “clearly erroneous” when although there is evidence to support it, the reviewing court, without substituting its judgment for or disregarding the expertise of the administrative body, is left with the definite and firm conviction that a mistake has been committed. Nick D. Ancheta et.al, v. Maxine E. Daly, Appellant, 77 Wn. 2d, 255, November 20, 1969.

Also, an appellate review of an administrative decision under the administrative procedure act (RCW 34.04) is made on the record of the administrative body, not the record of the trial court. Stafford v. Labor & Industries, 33 Wn. App. 231, 653 P.2d 1350. November 19, 1982.

The Board acted unreasonably when it disregard Apostol hostile work environment claim.

Standard of Review is not disputed.

The construction of a statute is a question of law and is reviewed de novo. *Stuckey v. Dep't of Labor & Indus.* 129 Wn.2d 289, 295, 916 P.2d 399 (1996). The primary goal of statutory construction is to carry out legislative intent. *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804 P.2d 24 (1991).

Mr. Apostol argues that the Department violated his procedural due process rights by failing to address his hostile work environment. Moreover, throughout the hearings the claimant clearly attempted to prove that the result of his industrial injury and, thus, his present permanent disability, was due to the intentional constant and unending misconducts by co-workers and his supervisors. This statement does not misplace the facts, but, erroneously interpreted the plain language of the statute without regards to the facts and the circumstances that caused Mr. Apostol's injury and disability. The Department acted arbitrary and capricious and thus the decision should be overturned in his favor.

An administration decision will not be overturned as arbitrary and capricious unless the decision lacks support in the record and is a will and unreasonable action in disregard of the facts and circumstances. *Stafford v. Labor and*

Industries, 33 Wn. P. 231, 653 P.2d 1350, Nov. 19, 1982. WEST HILL CITIZENS V. KING CY. COUN., 26 Wn. App. 168, 627 P.2d 1002 (1981).

Mr. Apostol now raises an issue of fact and argues that the Department's determination, which the Administrative Law Judge, the Board of Industrial Appeals and Superior Court of Thurston County adopted, was clearly erroneous and arbitrary or capricious. We can declare a finding to be clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. ANCHETA V. DALY, 77 Wn.2d 255, 461 P.2d 531 (1969).

Under RCW 51.52.115, in all court proceedings under Title 51 RCW, the findings and decisions of the Board of Industrial Insurance Appeals are prima facie correct, and the burden of proving that a finding or decision of the Board is incorrect is on the party making the challenge. McDonald v. Labor & Indus., 104 Wn. App. 617, January 5, 2001.

Apostol has supplied information to the Department of Labor and Industries to support a workers Compensation claim. Apostol spoke to his claim Manager Don Rowan on numerous occasions. Letters asking for medical

records from Apostol doctors requested from the Department were made. Testimonies from Medical Experts were sent out in regards to his medical conditions and thus has become permanently disabled and is unable to gain employment due to his ongoing and debilitating medical conditions he now suffers from his previous employer, Ronald Wastewater District. (3)

Footnote 3: Evidence and proof of this statement is provided in Exhibit 2-Exhibit 5.

Exhibit 2-Letter to Dr. Mayeda requesting Med. records be sent to the Department dated January 25, 2006.

Exhibit 3- Letter to Dr. Berman requesting Med. records be sent to the Department dated January 27, 2006.

Exhibit 4-Copy of Letter from Employer terminating Apostol employment dated February 28, 2006.

Exhibit 5-Copy of Apostol Teamsters Local Union No. 763 Grievance Form response of unjust termination.

Apostol does not dispute the Findings of the Fact in the case, only that substantial evidence in support of his injury claim was not investigated by the Department of Labor and Industries, which by law, has the responsibility to determine the validity and the circumstances in which caused the claimant's permanent disability (which can be proven through claimant's medical history and diagnosis throughout his employment with his employer and up to the present.

Throughout Apostol initial filing and throughout the administration hearings and his appeal to the Superior Court of Thurston County, the Department of Labor and Industry, Administration Law Judge, Board of Industrial Insurance Appeals and the Superior Court Judge has erroneously stated that the Apostol injury was the result due to stress and thus concluded by definition that stress is not compensable by WAC 296-14-300, and stress resulting from a single incident will be adjudicated with reference to RCW 51.08.100.

Reversal error has been committed.

In *Rios v. Labor and Industry*, 145, Wn.2d 483, February 2002. The Director of the Department of Labor and Industries has a duty to provide for the promulgation of health and safety standards or controls that most adequately assure, to the extent feasible, that employees will not suffer material impairments of health in the workplace. The statute specifies a duty to create an opportunity for such rule making, not a duty to promulgate rules. RCW 49.17.050 (4).

Furthermore, in *Rios v. Labor and Industry*, RCW 34.05.570 (4) states that an administrative agency erroneously failed to initiate rule making about a matter within a field that the agency is required by law to regulate.

In Mr. Apostol's case, his hostile work environment claim that caused his disability was not investigated even after speaking with Don Rowan, Apostol Claims Manager on numerous occasions and several top level managers within the Department and where Mr. Apostol was denied any opportunity to speak with the Director, Mr. Moore.

In an appeal letter to the Board dated December 13, 2005 explaining Apostol hostile work environment claim and resulting injury claim. (3)

Footnote 3:

Exhibit 6-Appeal letter dated December 13, 2005 to the BIIA.

In this case, Apostol claims of a history of a mental disability that a hostile work environment throughout his employment with his employer of 11 ½ years had escalated and became more severe in the last several year(s) of his employment in which these acts of hostility coming from co-workers and from management (4)and neglected by the Board of Commissioners, in support of his claim that these act which can be imputed to the employer (5) and resulted in his permanent disability and Mr. Apostol inability to be gainful employed in any capacity.

Footnote 4:

Exhibit 7- One of many complaints to Management. This Email letter dated February 23, 2006 address to Mike Derrick, General Manager regarding hostile work environment claim, including threats, assaults, retaliation from co-workers and management. Multiple copies were sent to employers attorneys from Stoel Rives, Tim O'Connell and Margaret Barbier, Apostol

Teamsters Local 763 representing Apostol, Rob McCauley and Mr. D Grage the head of Teamster, Susan Mindenbergs is Apostol attorney at the time, and an attorney from King County Referral Services.

Footnote 5:

RCW 49.17.060 states: Each employer: 1. Shall furnish to each of his employees a place of employment free from recognized hazards that are causing or like to cause serious injury or death to his employees.

WAC 296-126-094 General Duty-Working Conditions state. "It shall be the responsibility of every employer to maintain conditions within the workplace environment that will not endanger the health, safety or welfare of employees. All facilities, equipment, practices, methods, operations and procedures shall be reasonably adequate to protect employees health, safety and welfare." (6)

Footnote 6:

Exhibit 8 is a letter dated January 24, 2006 addressed to employer in notification of Apostol stress fracture injury on his left wrist from breaking

concrete. Management ordered that a sledgehammer was only to be used and if Apostol disobeyed or argue to used a jackhammer which is the proper tool that Apostol was automatically terminated due to insubordination ordered by George Dicks, Maintenance Manager and Safety Manager.

Apostol resulting disabilities allows for pension benefits and time-loss wages and medical benefits as well as specified or unspecified damages within the scope of the Industrial Insurance Act.

In *Clauson v. Department of Labor & Industries*, 130 Wn.2d 580, states:

“The right to workers’ compensation benefits is statutory, and a court will look to the provisions of the Act to determine whether a particular worker is entitled to compensation. *Harrington v. Department of Labor & Indus.*, 9 Wn.2d1, 5, 113 P.2d 518 (1941).”

Clauson also state:

“The construction of a statute is a question of law and is reviewed de novo. Stuckey v. Department of Labor & Indus., 129 Wn.2d 289, 295, 916 P.2d 399 (1996); Waste Management of Seattle, Inc. v. Utilities & Transp. Comm’n, 123 Wn.ed 621, 627, 869 P.2d 1034 (1994); Our Lady of Lourdes Hosp. v. Franklin County, 120 Wn.2d 439, 443, 842 P.2d 956 (1993).

Due to the failure of the Department to investigate the hostile work environment (7) which Mr. Apostol claimed on the workmens’ compensation claim form from the department which was the sole cause of his injury and not stress. If it were not the constant hostility, retaliation, threats and assaults from co-workers along with management, the injury would not have taken place.

Footnote 7:

In Mr. Apostol’s many failed attempts to his claims manager, Don Rowan and along with several layers of decision making managers within the department until Mr. Apostol reached the office of the Head of the Department of Labor and Industries and in which Mr. Apostol was denied

the opportunity to discuss his industry claim, the Department refused and failed to investigate the issues and circumstances which caused Mr. Apostol deteriorating health and ultimately his permanent disability.

Superior Court

The superior court is an appellate court in appeals from the Board. *Shufeldt v. Dep't of Labor & Industries*, 57 Wn.2d 758, 359 P.2d 495 (1961).

An appellate court reviews an agency's findings of fact under RCW 34.05.570 (3)(e) to see whether they are supported by substantial evidence sufficient to persuade a fair-minded person of the declared premise. *Sonnens v. Labor & Industries* 351, 101 Wn. App. 350; June 2000.

Does a hostile work environment (resulting in disability) equate to stress as inferred by the Department the ALJ and affirmed by Superior Court? I think not. But the question is for the Supreme Court to decide.

On questions of statutory interpretation, the Supreme Court is the final arbiter. Elec. Contractors Ass'n v. Riveland, 138 Wn.2d 9, June 3, 1999.

On this note, the Supreme Court must accept this petition for review to resolve the extent an employer may inflict intentional harm to their employees within the stress statute. The statute WAC 296-14-300 is arbitrary and capricious in absence of an employee's pre-existing mental disability with or without knowledge from the employers.

Occupational Disease-Industrial Injury

The courts should accept Mr. Apostol's injury as an occupational disease because the definition of an occupational disease in an injury claim for post-traumatic stress disorder is defined in Boeing Co. v. Key, 101 Wn. App. 629, as "such disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provision of this title."

Furthermore, it instructs the jury that, “A worker may not receive benefits for a mental disability caused by stress resulting from relationships with supervisors, co-workers, or the public, unless she (he) has a mental disability caused by stress which is the result of exposure to a sudden and tangible happening of a traumatic nature producing an immediate and prompt result.”

The “sudden and tangible happening” element of an industrial injury does not have to be of any specific duration (.as the trial courts incorrectly concluded and inferred from Doctor Dixon testimony-the stress was the result of a manifestation of a series of events), but the connection between the physical condition and employment must be proven before industrial insurance benefits can be awarded. 45 Wn. App. 355, 725 P.2d 463 Garrett Freightlines v. Labor & Industries.

Dennis v. Department of Labor and Industries states:

As noted, we have held that where an injury lights up a quiescent of latent preexisting disease or weakened condition, resulting disability is attributable to the injury. See, E.G., Harbor Plywood Corp v. Department of Labor and Indus., 48 Wn.2d 553, 295 P.2d 310 (1956).

The casual connection between Apostol's weakened condition of a pre-existing mental disability and resulting industrial injury is attributable to his employment from his reaction during and immediately following his meeting with his supervisors on September 21, 2005 as the records reflects.

PROXIMATE CAUSE

Workmen's Compensation - Proximate Cause - Medical Testimony - Necessity. Medical testimony is required to establish a causal relationship between a claimant's injury and the disability for which workmen's compensation benefits are sought. 4 Wn. App. 430, Vaupell Industrial Plastics, Inc., Appellant, v. The Department of Labor and Industries et al., Respondents.

When Judge Gebhardt asks the doctor..."Did the events that occurred on September 21, 2005 proximately cause any of the diagnosis that he's reached?

Doctor Dixon replied.

Doctor Dixon replied...”I believe what you experienced on that day in September of 2005 was the culmination of –series of events you experienced as traumatic, which exacerbated the underlying anxiety disorder that you struggled with to a point where it became flagrant, more pronounced and more disabling.”

In Key, evidence does not reveal a medical diagnosis of a pre-existing mental condition which is a prerequisite in an industrial injury claim for a mental disability for post-traumatic stress disorder.

Apostol here prevails due to substantial evidence in the records which states that Apostol had been diagnosed and treated for dysthymia and anxiety disorder in 1997 by Dr. Berman and again by Dr. Dixon final diagnosis as suffering from a pre-existing symptomatic affective disorder with depressive and anxiety features in early 2007. Apostol first saw Dr. Dixon on December 29, 2006 seeking Forensic Psychiatric Evaluation. In the ALJ Hearings records on page 8 February 20, 2007, Dr. Dixon testified that Apostol “Primary Axis I diagnosis: that you suffered post-traumatic stress disorder, both chronic and acute.”

Substantial evidence standard of RCW 34.05.570 (3)(e) for reviewing a finding of fact entered in an administrative adjudication, substantial evidence is evidence that is sufficient to persuade a fair-minded person of the truth or correctness of the matter. *Superior Asphalt & Concrete Co. v. Dep't of Labor & Indus.*, 112 Wn. App. 291, June 21, 2002.

Substantial evidence and verified proof of Mr. Apostol's pre-existing mental disability and mental condition from Dr. Hanan Berman's letter (see Exhibit 1) and testimony indicates that Mr. Apostol's mental condition on September 21, 2005 "light-up" his mental disability to a more severe form of a mental disability condition called post-traumatic stress disorder which was diagnosed and testified in the Administrative hearings by Doctor David Dixon.

In *Dennis v. Labor & Industries*, 44 Wn. App. 423, July 21, 1986.

RCW 51.32.180 permits compensation for "disability from an occupational disease in the course of employment" to the same extent as for an injury or death under the Act. It thus equates disability from occupational diseases with injuries for compensation purposes. The Act does not compensate

merely the contraction of, or having, an “occupational disease.” A right to compensation only arises when such disease results in a disability. Once the claimant is informed by a physician of the occupational disease and that a claim may be filed for disability benefits, the statute of limitations for filing such claims begins to run. RCW 51.28.055. See WILLIAMS v.

DEPARTMENT OF LABOR & INDUSTRIES, 45 Wn.2d 574, 575 76, 277 p.2d 338 (1954) (silicosis); NYGAARD V. DEPARTMENT OF LABOR & INDUSTRIES, 51 Wn.2d 659, 662, 321 P.2d 257 (asthma).

The Act’s underlying purpose of compensation work-related disability, whether by injury or disease, indicates a worker should be compensated if the occupational activities caused the disability as appears here. This accord with the history of the Act’s provisions covering disease.

Furthermore, the Key court instructs the jury that, “A worker may not receive benefits for a mental disability caused by stress resulting from relationships with supervisors, co-workers, or the public, unless she (he) has a mental disability caused by stress which is the result of exposure to a

sudden and tangible happening of a traumatic nature producing an immediate and prompt result.”

This instruction states the premise of the case more explicitly and more simpler rather than proving a prima facie case within the definition of “injury” as stated in the statute which Apostol had to prove before the ALJ.

Note 1:

Although, this did not prevent Mr. Apostol from proving his case, but, adding addition restraints such as not allowing Apostol’s psychiatrist and personal physician to testify before the Administrative Law Judge was an incorrect ruling and prejudicial towards Mr. Apostol since he acted as his attorney and is unfamiliar with the courts administration process and its rules.

Although, the decision from Superior court and as well as the Administrative hearings incorrectly concluded:

”Dr. Dixon’s testimony reveals that Mr. Apostol’s stress-related mental condition is not the result of a sudden and tangible happening of a traumatic nature producing an immediate and prompt result.

Accordingly, Mr. Apostol has failed to demonstrate coverage under the Industrial Insurance Act. The Board properly found that Mr. Apostol’s mental conditions are not covered by the Industrial Insurance Act as an occupational disease or industrial injury. Accordingly, the Board’s order should be affirmed.”

It does not mean that Mr. Apostol is not entitled to benefits for an industrial injury under the Act.

From the records a fair-minded person or Apostol could conclude the following as well:

“Dr. Dixon’s testimony reveals that Mr. Apostol stress-related mental condition is the result of a sudden and tangible happening.....Mr. Apostol has demonstrated coverage.....The Board ...are covered by the Industrial...the Board’s order should be affirmed.”

Doctor Dixon further testified that, “...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, I think that anxiety disorder has taken –or developed the form of a post-traumatic stress disorder.

This statement alone is substantial evidence that Mr. Apostol has had a history of a mental disability or a pre-existing mental disability that satisfies the definition of a compensable industrial injury claim under the IIA.

This information was available to the Board of Industrial Insurance Appeals as well as to the Superior Court.

For purposes of reviewing a trial court’s findings of fact, an appellate court must consider evidence to be substantial if it is sufficient to persuade a fair-minded person of the truth of the matter, even though other views could reasonably be held. *Garrett Freightlines v. Labor & Industries*, 45 Wn. App. 335, 725 P.2d 463.

TRAUMATIC EVENT

The sole issue here in this rebuttal as well as in *Boeing v. Key* before the jury was whether Key suffered an industrial injury. An industrial injury is defined 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 there-from.” RCW 51.08.100.

Since substantial evidence and verified proof of Mr. Apostol’s pre-existing mental disability and mental condition from Dr. Hanan Berman’s letter (see Exhibit 1) and testimony indicates that Mr. Apostol’s mental condition on September 21, 2005 aggravated his mental disability to a more severe form of a mental disability condition called post-traumatic stress disorder which was diagnosed and testified in the Administrative hearings by Doctor David Dixon.

Doctor Dixon further testified that, “...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, I think that anxiety disorder has taken –or developed the form of a post-traumatic stress disorder.

This information was available to the Board of Industrial Insurance Appeals as well as to the Superior Court.

Again, For purposes of reviewing a trial court's findings of fact, an appellate court must consider evidence to be substantial if it is sufficient to persuade a fair-minded person of the truth of the matter, even though other views could reasonably be held. *Garrett Freightlines v. Labor & Industries*, 45 Wn. App. 335, 725 P.2d 463.

Doctor Dixon also testified that Mr. Apostol's immediate reactions on September 21, 2005 during the time meeting with his supervisors and what followed for the next several hours was indeed a traumatic event.

“You explained to me that you had an emotional breakdown...So first and foremost, it was important for me to, one, assess your psychological

condition, assess your psychological functioning, not only in the present, here and now, but also to attempt to assess your mental status at the time of that event....To do that, I needed to get to know you and put together all the forms of data that I had available to me, including letters...your self-report ...interviewed you....conducted a formal mental status examination... battery of standardized psychological tests in an attempt to understand you....then I'd have a better understanding about what you meant when you said you had an emotional breakdown.”

Mr. Apostol's ultimate emotional breakdown soon after meeting with his supervisors on September 21, 2005 resulting from the meeting on September 21, 2005 caused his mental disability and is compensable under the IIA..

When I next ask Dr. Dixon, “...in your expert ----would it be valid for me to say that I have experienced an emotional ---traumatic event?

Doctor Dixon replied, “Yes, I'd say that would be a reasonable statement.”

When Judge Gebhardt asks Doctor Dixon ...”did the events that occurred on September 21, 2005 proximately cause any of the diagnoses that he’s reached?”

Doctor Dixon replied...”I believe what you experienced on that day in September of 2005 was the culmination of –series of events you experienced as traumatic, which exacerbated the underlying anxiety disorder that you struggled with to a point where it became flagrant, more pronounced and more disabling.”

This statement alone does not disprove that Mr. Apostol is not entitled to benefit under the Act, since the, “sudden and tangible happening” element of an industrial injury does not have to be of any specific duration, but the connection between the physical condition and employment must be proven before industrial insurance benefits can be awarded. 45 Wn. App. 355, 725 P.2d 463 Garrett Freightlines v. Labor & Industries.

Therefore, the sentence, “I believe what you experienced on that day in September of 2005 was the culmination of –series of events you experienced as traumatic” satisfy the first prong of the prima facie element of an

industrial injury. For a mental disability claim The second sentenced,
“...which exacerbated the underlying anxiety disorder that you struggled
with...”satisfies the second prong of the prima facie case of an industrial
injury for a mental disability claim the existence of a pre-existing mental
disability or disorder that Mr. Apostol had testified and contained within the
records, saves and survives Mr. Apostol industrial injury claim.

This statement can be interpreted on the contrary of what the Superior
Courts reveal as well as reinforces and strengthens Mr. Apostol’s case of an
industrial injury claim that occurred on September 21, 2005.

This statement contains all the prima facie elements of an industrial injury
claim based on a mental disability for post-traumatic stress disorder as
presented to the jury in Key.

Footnote 1:

Mr. Apostol would like to mention that Judge Gebhardt denied Mr.
Apostol’s personal physician, Dr. Kenneth Mayeda as a witness and testify

and confirm his compensable mental disability and history (In 1997 and 1998, Dr. Mayeda knew I was seeing Dr. Berman for Anger Management training and knew of Mr. Apostol dysthymia diagnosis from Dr. Berman because Dr. Berman specifically suggested I take SSRI's for treatment) in the Administration Hearing before Judge Gebhardt to summarize Mr. Apostol's mental health conditions and diagnosis and other disabilities Mr. Apostol suffers. The reason given was that physician testimony would be considered as hearsay rather than proof. I do not agree with her reasoning or decision, since the hostile work environment Mr. Apostol had endured from co-workers and from supervisors were not only intentional and malicious misconducts but as well as illegal in the State of Washington.

The Department had had to of known this fact because I was required to submit medical records from my doctors, Dr. Mayeda and Dr. Berman to the Department for their review in this claim. (See Exhibit 2 and Exhibit 3) Furthermore, I was required by the Department to see a Doctor in Tumwater and hired from the Department for an interview regarding my mental disability and medical condition.

35 Wn. App. 139, 665 P.2d 434 Ilene Price, Appellant, v. The Department of Labor and Industries, Respondent.

Industrial Insurance - Psychological Injury - Medical Testimony - Subjective Complaint - Instructions. In a workers' compensation case involving psychological injuries, an instruction characterizing the workers statement to his physician as a "subjective complaint" while requiring an objective basis for the physician's opinion is not prejudicial if the instructions taken as a whole would be reasonably understood by an average juror as permitting full consideration of psychiatric testimony as proof of psychological injury.

Key v. Boeing

Therefore, the question is the same to Mr. Apostol's as in Key. In short, claims for mental disability resulting from an industrial injury are allowed and such claims are allowable under circumstances that constitute an industrial injury. This statement accurately summarizes the law.

Superior Courts and the ALJ erroneously concluded when they state that Mr. Apostol's claim is the caused of stress.

Apostol claim is for an hostile work environment claim and is classified as "certain circumstances" for a mental disability claim as an industrial injury.

As Mr. Apostol had claim from the day he file an injury claim and throughout his hearings and appeals, and the testimony given by Dr. David Dixon and Dr. Berman's letter of Mr. Apostol's past mental disability history which was diagnosed and being treated up to this day, summarizes the law as follows which is compensable to: The law does not state that the claimant may not receive benefits for a mental disability caused by stress resulting from relationships with supervisors and coworkers. Nor does it state that stress claims are not covered by the Industrial Insurance Act. Rather, it specifies that such claims are allowed under circumstances that constitute an industrial injury.

The courts concluded incorrectly that Mr. Apostol's claim was the result of stress rather than the proper conclusion and compensable claim that Mr.

Apostol's claim was the result of a stress-related claim (hostile-work environment) and met the definition of an industrial injury under the IIA.

Proximate Cause.

The Act further states before claims be allowed Mr. Apostol must satisfy proximate cause which in *Wendt* defines "proximate cause" means a cause which in a direct sequence, unbroken by any new independent cause, produces the disability complained of and without which such disability would not have happened. There may be one or more proximate causes of a disability. A workman is entitled to benefits under the Industrial Insurance Act if his injury is a proximate cause of the alleged disability for which benefits are sought. The law does not require that the injury be the sole proximate cause of such disability. *Wendt v. Dep't & Labor & Indus.*, 18 Wn. App. 674, 571 P.2d 229, November 9, 1977;

Doctor Dixon testimony in court proves proximate cause during the Hearings before Judge Gephardt questioned Dr. Dixon did the events that

occurred on September 21, 2005 proximately cause any of the diagnoses that he's reached? .

Doctor Dixon replied... "I believe what you experienced on that day in September of 2005 was the culmination of –series of events you experienced as traumatic, which exacerbated the underlying anxiety disorder that you struggled with to a point where it became flagrant, more pronounced and more disabling."

Wendt added that proximate cause must be established by medical testimony which Dr. Dixon explicitly just stated.

Proximate Cause Theory 1

Furthermore, the gun shooting incident which was introduced in the Administrative Hearings before Judge Gebhardt which Mr. Apostol cross examined Brent Proffitt, a co-worker of Mr. Apostol and admitted that he indeed knew of the gun, saw the gun and admitted that Jason Sharpe did have the gun the day before the shooting incident and saw that Jason Sharpe

did have the gun that same morning before he pointed the gun inches away from Mr. Apostol's head that morning. Everyone in the maintenance staff including the Maintenance Manager, George Dicks saw it because everyone laughed and said nothing on that morning of August 2005 can be a possible proximate cause.

Proximate Cause Theory 2

The June 1, 2005 gun shooting incident when Jason Sharpe pointed a gun to Mr. Apostol's head can be considered as a proximate cause.

Proximate Cause Theory 3

The August 2005 incident when Mr. Apostol suffered a fracture on his left wrist can also be considered a proximate cause.

According to Wendt, Mr. Apostol did not have to establish which particular one incident or proximate causes that caused his disability. And the

resulting disability injury occurred within the workplace which is undisputed.

As Wendt went on to explain, “We do think, however, that Wendt was entitled to an appropriate instruction on the theory he may have been attempting to present in his proposed instructions.....that his total permanent disability is compensable as such even though it results from the combined effects of his industrial injury (lighted-up arthritis) and other, completely unrelated disabling conditions. HURWITZ V. DEPARTMENT OF LABOR & INDUSTRIES, 38 Wn.2d 332, 229 P.2d 505 (1951)....In actuality, the “multiple proximate cause” theory is but another way of stating the fundamental principle that, for disability assessment purposes, a workman is to be taken as he is, with all his preexisting frailties and bodily infirmities...If, in fact, an industrial injury is a proximate cause of a disability, it matters not that such an injury would not have disabled another workman in the same degree because the latter previously enjoyed perfect health.

This statement resolves all further questioning to be heard in this rebuttal. And establishes that indeed Mr. Apostol has a compensable industry injury

claim. Mr. Apostol ask the Supreme Court for acceptance of this review and reverse judgment of the Superior Court and order the BIIA to reverse judgment to affirm Mr. Apostol's injury claim back to the Department to determine the extent of Mr. Apostol's disability and to compensate Mr. Apostol all benefits allowed under the Industrial Insurance Act as well as reimbursement fees of paid to the Attorney General Office's for Mr. Apostol appeal charge in Superior Court.

CASE LAW

In *Dennis v. Labor and Industries*, 44 Wn. App. 423, 722 P.2d 1317, July 21, 1986 states:

Workers' Compensation-The Act invokes the State's police power to create the public system of providing compensation to workers for work-related injuries. The state system is expressed designed so that "sure and certain relief for workers, injured in their work, and their families and dependents is...provided regardless of questions of fault..."RCW 51.04.100. The Act states that "[there is a hazard in all employment" and that it is to be "liberally construed for the purpose of reducing to a minimum the suffering

and economic loss arising from injuries and/or death occurring in the course of employment.” RCW 51.52.010.

I respectfully ask the Court to accept review, and affirm judgment on my industrial insurance claim and have the department determine the extent of my disability and benefits I am so entitled under the IIA.

Other Discussions

In *Flanagan v. Labor & Industries*, 123 Wn.2d 418, Mar. 1994 states:

When interpreting a statute, a court must avoid absurd and fundamentally unjust results.

”allowing the Department to not investigate and not allowing claimants’ to argue his circumstances of his injury would allow employers the power to act in illegal misconduct (discrimination, retaliation, harassment, and the list is unending) which can be labeled malicious and intent to cause harm and other illegal harm to targeted employee such as myself in this particular.

Physical Injuries

My testimony in Superior Court Case Number 81351-5, Apostol vs. BIIA, on January 25, 2008 on page 19 reads: “But meantime I was injured in this work, my job, and people there were treating me. The thing is that they can do that, my workers could continue their harassment. My supervisors could continue the—continue the ----the demotions and the emotional stress that they put on me throughout this—all through this whole time. You know, everything’s—and that’s one thing I couldn’t understand. I can’t use that in my case to win. And it’s a loophole. A loophole in the system. But then again, where can I go ---where---where else is the law going to support me?”

Furthermore, Flanagan added:

If injury results to a worker from the deliberate intention of his or her employer to produce such injury the worker or beneficiary of the worker shall have the privilege to take under this title and also have cause of action against the employer as if this title had not been enacted, for any damages in excess of compensation and benefits paid or payable under this title.

The Supreme Court must accept as reason stated within this rebuttal.

The meeting with his supervisors, regardless whether or not his supervisor yelled or threatened Mr. Apostol, is a compensable claim because of the exposure to a sudden and tangible happening has no bearing of what or how his supervisors treated Mr. Apostol, (only that the meeting did occur which is an establish fact). The immediate reaction that followed was critical of whether or not Mr. Apostol's claim would be compensable. The emotional breakdown and resulting mental disability of post-traumatic stress disorder was confirm by Dr. Dixon testimony, Furthermore, (emotional breakdown-see Exhibit provided supporting evidence by Susan Mindenbergs written testimony that Mr. Apostol indeed experienced a very extreme and difficult emotional crisis.

The injury of PTSD Mr. Apostol suffers is irreversible and he is no longer marketable in today's job market despite his superfluous credentials. As noted in his testimony in Superior Court:

“You know, I'd done excellent work. There was no reason why this happen to me. My work was just ...superior, top notch. I grew up in this area. Everyone knows me... I'm top student in Timberline High School; graduate top of the class...excelled in sports—went through college and got my degree at Washington State University in engineering and paid—got a

scholarship, paid every single penny of my education. I work 80 hours on books ...I start from scratch, read all the books, read all the laws...I taught myself how to be an attorney, how to represent myself and where my rights were—violated. And basically that's the reason I feel so strong about what happened to me and that I was injured, and I had to find a way how the court can—how can L & I compensate me for my injuries, which has been established that I was injured, emotionally and mentally and physically....”

Note 3:

Mr. Apostol has pursued the job market far and wide, but, to no avail.

The Supreme Court must accept review on this particular matter and reverse judgment on the Superior Court and affirm judgment for Mr. Apostol workers compensation claim as an industrial injury and order the Department to determine the extent of my disability for disability pension benefits as well as total time loss-compensation per RCW 51.08.178. 96 Wn. App. 69, Cockle v. Dep't of Labor & Indus. Plus, reimbursement attorney fees.

I, Rodolfo Apostol, humbly ask the Supreme Court to make me whole on this particular matter.

Rodolfo Apostol (pro se)

7936 Union Mills Rd. SE

Lacey, WA 908503

Signature  dated 12/22/2018

HANAN BERMAN, Ph.D.

Clinical Psychologist

To Whom It May Concern:

RE: Rudolfo Apostol
DoB: June 17, 1957
L&I: Y-67589

Background:

Mr. Rudolfo Apostol first presented to my offices on September 18, 1997 on referral from his employer, the Shoreline Wastewater Management District, for anger management counseling. Our initial sessions focused on obtaining a personal history, on his work relationships, his work history, his perceptions of co-workers, his role in the then-recent processes and on alternate ways to interact with management and co-workers. Our work soon expanded to address Mr. Adolfo's relative isolation, lack of extra-work friendships and activities. Our sessions soon went from weekly to bi-weekly.

I note in reviewing my session notes for the preparation of this narrative that Mr. Apostol and I discussed whether he might be dysthymic on 1-14-98 and he indicated that he would speak with his PCP, Ken Mayeda, M.D., Jefferson Park Clinic, regarding possible medication trials. He later indicated that he began a trial of Prozac and noted that his PCP had previously recommended psychotherapy.

Our sessions became monthly and then bi-monthly in 1998 and we had what then seemed like our last session on 10-5-98. Mr. Apostol came for a follow-up, however, on 7-27-99 following a work incident in 5-99 and another the day preceding our session. Mr. Apostol felt himself to be fully innocent in the matter and did not feel the need for further sessions.

About 7 years later, Mr. Apostol returned for psychotherapy on 4-20-2006. He indicated that he was still obtaining medications from Dr. Mayeda, including Zoloft for depression and anxiety and Ambien for sleep. Mr. Apostol recited his work history since 1999 ending with his termination of employment on 2-15-06 although he was apparently last at work on 9-21-05. He appeared to be highly stressed at his circumstances and highly distressed at his treatment by his former employer. He described symptoms fully consistent with a substantial level of anxiety. We met every 2, then every 3-4 weeks and discussed his current stressors, including the process of his claims against L&I and his former employer. Our last regular session was on 7-31-06. In 12-06, Mr. Apostol called for an ASAP appointment and we met on 12-22-06 to discuss a pending hearing. I noted that he seemed highly anxious and not fully functional. I have had no clinical contact with Mr. Apostol for about the last 2 years.

In reviewing my files, I find no reports or forms completed on behalf of Mr. Apostol although I do find records of having provided copies of my session notes to the Department of L&I and to the Social Security Administration. In looking back over my billing records, I find that the working diagnosis that I using for Mr. Apostol was 309.28 (DSM-4), adjustment disorder with features of anxiety and depression.

Summary:

After reviewing my records, I find:

- a. that in 2007, Mr. Apostol was treated for difficulties in his workplace interactions and was diagnosed as having an adjustment disorder.
- b. that Mr. Apostol likely had been dysthmic (a type of depression) for years preceding our initial contact.
- c. that Mr. Apostol has a history of workplace difficulties.
- d. that Mr. Apostol is likely acutely anxious and depressed in response to his ongoing situation and may well continue to have an adjustment disorder that is in direct response to the events of recent years.

All of my findings must be considered tentative as I have not seen Mr. Apostol for almost 2 years, my contacts with him were focused and time-limited and my role was solely to provide support and short term psychotherapy. Interested parties are advised to obtain a comprehensive forensic evaluation of Mr. Apostol's current and recent conditions.

Hanan Berman, Ph.D.



January 25, 2006

Kenneth Mayeda, M.D.
Jefferson Park Family Medicine
2902 Beacon Avenue South
Seattle, Washington 98144

RE: Labor and Industries Request for Medical Records from 1994 for Claim Number Y677589

Dear Dr. Mayeda:

The Department of Labor and Industries has sent me a letter requesting for my Medical Records in my work-related injury claim that I had filed with the Department last September 2005.

I have enclosed a copy of the letter from the Department requesting my Medical records from the hypertension, insomnia, stress, and other health related issues concerning my claim. The letter specify Medical records from the year 1994, which is the year I started working for Ronald Wastewater District.

Enclosed is the signed release Form #2 (Page 3 Of 4) from the Department of Labor and Industries and the signed permission form (Page 4 of 4).

I will be sending copies of these signed forms to the Department for Labor and Industries for their records.

Page 1 of 4 states the Department of Industries is requesting this information by 2/1/06. I apologize for this short notice since I did not go to my PO box until yesterday when I receive the letters from the Department. (I did call the Department of Labor last week and I was told that they are reconsidering my case which the Board of Industrial Insurance Appeals State of Washington made an Order Returning Case to Department for Further Action.)

Thank you for your help!

Sincerely,

Rodolfo M. Apostol

enclosures

Exhibit 3.

January 27, 2006

Hanan Berman PhD.
515 Minor Street
Seattle, WA 98104

RE: Request for Medical Records, notes, etc. from Washington State Labor and Industries for Diagnosis and Treatment for Depression.

Dear Mr. Berman PhD:

I was one of your past patients which my employer, Ronald Wastewater District had sent me to see you. Through our meetings, you had diagnosed me and treated me for depression.

The State Labor and Industries are requesting that you verify my diagnosis and treatment for this illness. I have enclosed a letter copy from the Department of Labor and Industries which explains in further detail what information is required and the return address for the Department of Labor and Industries. The deadline they have requested for this information is February 1, 2006. I understand this is in short notice and I do apologize for your inconvenience.

If there are any questions you may have, please do not hesitate to call me at anytime at (206) 682-1249. Thank you for your help.

Sincerely,

Rodolfo M. Apostol
(206) 682-1249
PO Box 77378
Seattle, WA 98177

1



Ronald Wastewater District
 17505 Linden Avenue North • P.O. Box 33490
 Shoreline, Washington 98133-0490
 (206) 546-2494 • Fax (206) 546-8110

COMMISSIONERS
 Arnold H. "Arnie" Lind
 Arthur L. Wadckemper
 Brian T. Carroll

GENERAL MANAGER
 Michael U. Derrick

February 28, 2006

Mr. Rodolfo Apostol
 P.O. Box 77378
 Seattle, WA 98177

Post-It® Fax Note	7671	Date	3/1/06	# of pages	3
To	R. McCauley	From	M DERRICK		
Co./Dept.	763	Co.	RWD		
Phone #	441 0763	Phone #	546 2494		
Fax #	441 6376	Fax #	546 8110		

Dear Mr. Apostol:

As you did not show up at your Lauderhill hearing the District made its determination based on the evidence available to it.

The District is terminating your employment based on your failure to either show up for work on February 13, 2006 or furnish adequate medical certification by the deadline of January 25, 2006 (and extended deadlines established by the District) supporting your third extension of medical leave. The letter your doctor faxed to the District on February 17, 2006, even if timely, does not certify that the medical conditions given as the reason for your leave prevent you from performing the essential functions of your position and necessitate medical leave. Rather, your doctor states that you have "apparently been unable to work all this time" and he recommends that you not work "because of the adverse working conditions" not because of medical illness or injury.

The District explained the medical information it needed from you to support your continued medical leave beyond January 9, 2006, gave you a reasonable period to obtain that information, and informed you of the consequences for failing to furnish the information or report to work. Accordingly, consistent with its written communications to you, your failure to report to work on February 13 is being classified as a voluntary resignation effective Wednesday, February 15.

We enclose your final paycheck in the amount of Six hundred six and 37/100 dollars (\$606.37) which includes 120 hours of vacation leave and 16 hours of floating holiday. (See the enclosed details.) Your medical benefits have terminated as of this date. You have the option to continue those benefits by self paying the premiums. Please contact the Public Employees Benefit Board, Benefit Services, 1-800-200-1004 or 360-412-4200 in Olympia for information. Please contact the State of Washington regarding any retirement benefits for which you may be eligible. <http://www.drs.wa.gov/> or DRS Mailing Address: Department of Retirement Systems, PO Box 48380, Olympia, Washington 98504-8380 or DRS Phone Number: (360) 664-7000 or toll-free (outside the Olympia area) 1-800-547-6657.

Working for Environmental Protection

A special purpose district formed pursuant to RCW title 57

C.



TEAMSTERS LOCAL UNION NO. 763

533 John Street - Seattle, WA 98109-5085 - (206) 441-0783 - Fax (206) 441-6376

David A. Grage, Secretary-Treasurer

GRIEVANCE FORM

Grievance must be submitted by: US Mail, Fax or in person only

Print Name Rodolfo Apostol

Date 3/3/06

Phone # area code ()

Best time to call AM PM

Home Address PO Box 77378

City/Stage/Zip Seattle/WA 98177

e-mail Address RDapstl@aol.com

Start time 700 AM PM

Classification _____

Employer Ronald Wastewater

NATURE OF GRIEVANCE (Mark One)

Unjust discharge Unjust Suspension Protest of Warning Pay Claim Other

WHEN did the violation occur? Date(s) and times(s) 2/28/06 by letter

WHERE did the violation take place? Ronald Wastewater

WHO were the people involved? Give the first and last names of all witnesses along with their phone numbers, if known. Identify all management personnel involved and indicate their title or area of responsibility.

Michael Derrick

WHAT happened? In as few words as possible tell what caused this grievance. One issue per grievance.

Grievant was unjustly terminated

LIST ALL CONTRACT ARTICLES VIOLATED: Art. 13

The grievance alleges a violation of all relevant articles of the contract including the articles listed above.

SETTLEMENT REQUESTED: What needs to happen to fix the problem.

The grievance asks to be "made whole" in every way in addition to the following remedy:

That the termination be rescinded and the grievant be made whole.

GRIEVANT'S SIGNATURE _____ Date Reported To Steward 3/2/06

By the above signature I hereby give authority to any representative of the Union to represent me in this matter in the event I am not present at any subsequent hearing on this grievance.

Work Location
Address _____ City/Zip _____
Supervisor _____

STEWARD SECTION (to be completed by steward)	
Name _____	Date _____
Phone number _____	e-mail Address _____

WHITE COPY - FILE

PINK COPY - BUSINESS AGENT

YELLOW COPY - GRIEVANT

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 77378
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.

cont.

Page 2

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 sent 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 BIIA:

I am requesting a relief of loss wages and

i

cont.

Page 3

APPEAL Claim Number: Y677589

any other benefits that I am entitled to.

City of preference for the proceedings to take place: Seattle, Washington

Signed Robert M. Spaul Date 12/13/05

Exhibit 1

Subj: Re: **Laudermill Hearing for R. Apostol**
Date: 2/23/2006 1:27:20 PM Pacific Standard Time
From: RdApstl
To: mderrick@ronaldwastewater.org
CC: R.mccauley@teamsters763.org, D.grage@teamsters763.org, susanmm@msn.com, Jcmforlaw, MLBARBIER@stoel.com, tjconnell@stoel.com

Dear Mr. Derrick:

I do not understand why a meeting is necessary for my request of Medical Leave. Contradictory to what you have said in your correspondence, my Doctor and I have sent all necessary documents and Doctor's certifications in which you requested in a timely manner for the approval of my Leave. If you have not received these documents I am willing to resend copies to you.

Again, as I have mentioned before, I have experience trauma in which my life have been in danger and threats to my life have been made which unables me to report to work at this time.

For example some of these incidents are but not limited to the following:

1. Jason Sharpe pointing a gun at me from point blank.
2. Chad Sehnert rolling a 1500 gallon Vactor truck while him knowingly I was working on and near it.
3. Kim Cheung assaulted me three times in the field while flushing and jetting.
4. Sexual harass by Kim Cheung when he stuck broomstick handles and screw-drivers up my rear end while I was bent over working.
5. Chad Sehnert made threatening remarks to me ..".....that when someone hurts him, he will find a way to get back at them/him....."
6. Both Chad Sehnert and Jason Sharpe had threatening me out in the field and at the shop with a clenched fist, while being verbally abusive towards me and threatening to hit me.

So on and so on.....

Management and the Board of Commissioners of Ronald Wastewater District have totally ignored all my complaints and have dismissed any of these incidents. I had my sister, Carol Apostol, a rate payer and a citizen of Shoreline, attend your Board meetings in the hope to get more attention. Instead, again, the management and the Board of Commisioners of Ronald Wastewater District dismissed and denied any of the complaints brought up by my sister.

I had to tell my sister from stop going to the meetings because you and George Dicks retaliated against me by demoting me and makeing my life at Ronald Wastewater District a "living hell" by taking away my Standby Duty, telling me I cannot drive and/or operate certain vehicles, and taking some of my responsibilities and seniority away from younger coworkers, write-ups which I am put to blame, and reassigning me with cruel and harsh working conditions such as breaking concrete for four hours (you and Scott Christenson witness and saw me performing the chores while you both were inspecting the new grinder pumps at Apple Tree Lane) with the use of only a sledgehammer and my barehands which a jackhammer is normally used for this job. This job resulted in a bone fracture of my left wrist which I am still being under care by a physician and given time off from work.

The inability of the District including management and the Board of Commssioners to protect me from further damage (harsh working environment and conditions) and provide me support are additional reasons why I am unable to report to work.

My physical, mental and emotional state at this time are additional reasons for my inability to report to work at this time. I have been experiencing stress and insomnia caused by the trauma and mistreatment that I have received during my tenure at the District. I have reoccurring nightmares and thinking about going back to work with the same environment and working conditions will only add more damage to my well-being.

The ongoing discrimination and disparage treatment that I have received are painful as it is, since, my work habits and the work I perform for the district is second to none, my past work performances have been exemplary and the highest amongst the group, and job opportunities at the district is not made available to me since my history file at the district makes me nonpromotable (defamation of my character). One incident while makeing a complaint to Phil Montgomery he said ".....you think Charlie and Kim would do those things, I would not believe it. They have been here over 20 years and I know them both well. Get out of my office and I don't want to see your brown face....."

Thursday, February 23, 2006 America Online: RdApstl

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Exhibit 7 (Empty Page)

EXHIBIT 0

January 24, 2006

Mike Derrick
General Manager
Ronald Wastewater District
PO Box 33490
17505 Linden Avenue North
Shoreline, WA 98133-0490

MEMO: Injury Notice-Rodolfo M. Apostol

TO: Mike Derrick

Last fall I was given an assignment from George Dicks to break concrete/cement at Appletree Lane Grinder Pumps #15 and #18. George Dicks told Richard Davies that the only tool I would use is a sledgehammer.

For four hours that morning, I was swinging the sledgehammer on the concrete/cement with my bare hands. As a result, I injured my left wrist. I sought medical attention and it was determined that I had fractured my left wrist.

Sincerely,

Rodolfo M. Apostol

2.

Susan Mindenbergs does certify and declare under penalty of perjury under the laws of the State of Washington that the following is true and correct and from my personal knowledge.

1. I am an attorney licensed to practice in Washington. In June 2005, I was representing the interests of Rodolfo Apostol in a dispute with his employer, Ronald Wastewater District.
2. Mr. Apostol has asked me to write a declaration on his behalf about what I observed about him in between June 2005 and September 2005.
3. Mr. Apostol came to my office very upset about harassing incidents that had happened to him in the workplace.
4. Mr. Apostol was worried that his safety could be compromised and that he might be endangered because of actions of his co-workers.
5. I wrote a letter to Michael U. Derrick, the General Manager of Ronald Wastewater District on June 1, 2005. In that letter, I explained to Mr. Derrick how emotionally traumatized Mr. Apostol was due to harassment in the workplace. Attached as an exhibit hereto is a true and accurate copy of the June 1, 2005 letter I wrote to Mr. Derrick.
6. Part of Mr. Apostol's concerns was that he was being constantly exposed to Rootx, a chemical for which he had sensitivity. He reported that the chemical to which he was exposed caused headaches and other physical symptoms.
7. Through Ronald's counsel, I sought accommodations for Mr. Apostol's chemical sensitivities. Attached is a true and accurate copy of the letter I sent to Timothy O'Connell, Ronald's legal counsel dated August 17, 2005.
8. On or about September 21, 2005, I had a conversation with Mr. Apostol. He informed me that he had just met with Mr. Derrick and Ronald Supervisor George Dicks. He told me they falsely accused him of misconduct and threatened to fire him. When I spoke to Mr. Apostol, he was nearly incoherent. He sobbed during the entire conversation so much so that I could hardly understand what he was saying. He talked about suicide. I encouraged him to get to an emergency room immediately. I told him that I thought he should take medical leave from work because of his obvious emotionally labile condition.

Dated this 10th day of December 2008 at Seattle, Washington.



Susan Mindenbergs

Susan Mindenbergs, Attorney
119 1st Ave. S.
Suite 200
Seattle, WA 98104
206-447-1560
Fax: 206-447-1523

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: (206) 546-8110

To: Michael U. Derrick, General Manager
Ronald Wastewater District

From: Susan B. Mindenbergs

Client/Matter: *Rodolfo Apostol*

Date: June 1, 2005

DOCUMENTS	NUMBER OF PAGES, including cover sheet
Letter dated June 1, 2005.	5

COMMENTS: N/A.

The information contained in this facsimile message is information protected by attorney-client and/or the attorney/work product privilege. It is intended only for the use of the individual named above and the privileges are not waived by virtue of this having been sent by facsimile. If the person actually receiving this facsimile or any other reader of the facsimile is not the named recipient or the employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, or copying of the communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via U.S. Postal Service.

June 1, 2005

Michael U. Derrick, General Manager
Ronald Wastewater District
17505 Linden Avenue North
P.O. Box 33490
Shoreline, WA 98133-0409

SUBJECT: Rodolfo Apostol

Dear Mr. Derrick:

I am an attorney representing Rodolfo Apostol. This correspondence addresses the accusations made against Mr. Apostol in your letter to him dated May 18, 2005 and his on-going issues with harassment and safety violations in the workplace.

Mr. Apostol is a ten-year veteran of the Ronald Wastewater District. During those years, Mr. Apostol has had several performance evaluations—all of which have concluded that his work performance is excellent. Yet, Mr. Apostol has been the target of harassment by some co-workers and supervisors. For over a year, Mr. Apostol has been complaining to you about workplace harassment. On several occasions during the past year he has met, both formally and informally, with you and George Dicks to apprise you of incidents of harassment and incidents where Mr. Apostol's co-workers have put his safety in danger. Your response has been to largely ignore Mr. Apostol's complaints until late March 2005.

In late March 2005, you informed Mr. Apostol that the District had hired an investigator to investigate his complaints arising out of three electronic mail memoranda Mr. Apostol sent to you in January 2005. Mr. Apostol agreed to participate in the investigation and informed you that he and his lawyer would attend meetings with the investigator. You agreed that Mr. Apostol could be accompanied by his lawyer in the meetings with the investigator. Approximately one week later, with no explanation, you told Mr. Apostol that he could not bring his attorney to the meeting with the investigator.

Michael U. Derrick
June 1, 2005
Page 2

On April 20, 2005, Nina Sanders contacted Mr. Apostol to discuss meeting with him to have him explain his allegations. Mr. Apostol told Ms. Sanders that he was in the process of preparing to talk with her and he told her that his allegations were outlined in correspondence to you. Ms. Sanders informed Mr. Apostol that if he failed to arrange a meeting with her by April 22, 2005, she would assume he was "foregoing an opportunity" to meet with her. At no time was Mr. Apostol told that he was being directed to meet with Ms. Sanders. Nor did Mr. Apostol know he would be disciplined for not meeting with Ms. Sanders. Moreover, at no time did Mr. Apostol indicate he refused to meet with Ms. Sanders. He merely told her that he needed more time to prepare since the District was refusing to allow his attorney be present at the meeting. Now, however, Mr. Apostol is being disciplined for his "refusal to participate in this investigation." To the contrary, Mr. Apostol has been forthcoming with you throughout the duration of your management of the Ronald Wastewater District.

Although Mr. Apostol has informed you of many of the incidents of workplace harassment and safety violations, the following is a reiteration of events that have occurred in the past year:

1. Mr. Apostol's summer shorts and short sleeve sweater were intentionally ripped by persons unknown in the spring 2004;
2. Last spring, Jason Sharpe and Mr. Apostol were cleaning a storm pipe. Mr. Sharpe became very aggressive and began yelling at Mr. Apostol. Mr. Sharpe lunged at Mr. Apostol with his fists.
3. In the fall of 2004, a co-worker took Mr. Apostol's work boots out of his locker and sliced gouges in the toes of Mr. Apostol's boots down to the metal surface with an utility knife, or something as sharp.
4. There were dirty wadded up paper towels stuffed in Mr. Apostol's desk drawer last fall.
5. Two incidents that occurred in the fall 2004 where other employees intentionally endangered Mr. Apostol are as follows:
 - a. Chad Sehnert left Mr. Apostol alone in the middle of 152nd Street, which is adjacent to Highway 99, while they were jetting and flushing. Mr. Sehnert shut off flushing and jetting operations. Mr. Apostol hand communicated to Mr. Sehnert to learn why Mr. Sehnert shut off the jetting and flushing functions. Mr. Sehnert ignored Mr. Apostol and just continued to leave Mr. Apostol alone in the middle of a busy street.

- EXHIBIT 1 107-417
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- b. Mr. Sehnert attempted to run over Mr. Apostol with the Vactor truck. After Mr. Sehnert shut off the engine and put the truck in park, Mr. Apostol got out and began filling the hose he was working on which was behind the truck. The truck began rolling toward him—he had to jump out of the way. When he told Mr. Sehnert to be more careful, he became angry and began yelling. When Mr. Apostol and Mr. Sehnert returned to the office, Mr. Apostol told Kim Chung about the incident with Mr. Sehnert. Mr. Sehnert responded by threatening Mr. Apostol with his fists.
6. In the fall 2004, George Dicks accused Mr. Apostol of taking extended breaks. Mr. Apostol is very careful about the time he takes for breaks and lunch. He carefully watches the clock. Mr. Dicks accused Mr. Apostol of doing nothing for two hours when he had been sweeping leaves and merely took a 15 minute break. In December 2004, Mr. Dicks accused Mr. Apostol of taking a 45 minute break when he had no idea how long Mr. Apostol had been on break. Mr. Apostol knows for a fact it had not been more than 15 minutes.
7. In February 2005, someone in the office put a blown-up rubber glove in Mr. Apostol's desk. It had very definite sexual overtones.
8. In February 2005, Mr. Apostol was washing down a truck when he got wet. He decided to return to the office and change into overalls. When he took his overalls out of his locker, he noticed that someone had deliberately wiped the floor with the overalls and they were filthy.
9. In March and April 2005, Mr. Apostol has been subjected to disrespectful and harassing behavior from his co-workers. Although the recent behavior has not put Mr. Apostol's safety in danger, he has been forced to work in a hostile environment. Co-workers have yelled at Mr. Apostol; another pointed his back side at Mr. Apostol and "passed gas;" another burped loudly in Mr. Apostol's face; a co-worker ordered Mr. Apostol to get out of the restroom.

These instances are examples of the harassment and safety violations Mr. Apostol has endured while working at the Ronald Wastewater District. Ms. Apostol is the only Filipino-American at the District. He believes the harassment and safety violations are substantially motivated by his race. When Mr. Apostol has complained about the harassment, management has done nothing to put a stop to it. Ignoring Mr. Apostol's complaints over the past year have given Mr. Apostol's co-workers permission to continue the harassment and continue the safety violations. It is obvious to Mr. Apostol's co-workers that the District management is going to take no action to protect Mr. Apostol, no matter how outrageous or dangerous the employees'

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Exhibit 9 Page 6/7

Michael U. Derrick
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behavior is toward Mr. Apostol. Failing to protect Mr. Apostol under these circumstances is either intentional on the part of management or its behavior is negligent supervision. Either way, the District is culpable for the on-going harassment and safety violations aimed at Mr. Apostol.

Instead of protecting Mr. Apostol, you have issued a formal written warning against him for complaining about the workplace harassment and safety violations he has endured. It is our belief that this warning was issued in retaliation for Mr. Apostol attempting to protect himself in the workplace and vindicate his civil rights.

It is our expectation that the District will take every effort to immediately halt the hostile and unsafe work environment in which Mr. Apostol has worked. Moreover, we expect that the May 18, 2005 warning letter sent to Mr. Apostol will be permanently removed from his personnel file and that the warning will be rescinded. Mr. Apostol is a dedicated and experienced employee who has exhibited skill and loyalty in the exercise of his job. He wants to be able to perform his job duties without harassment and with the knowledge that his safety is a concern to the District management and that he will be protected from harassing and dangerous situations at work.

Very truly yours,

Susan B. Mindenbergs

cc: Rodolfo Apostol

U.

August 17, 2005

Timothy J. O'Connell
Stoel Rives, LLP
600 University Street, Suite 3600
Seattle, WA 98101

SUBJECT: *Rodolfo Apostol and Ronald Wastewater District*

Dear Mr. O'Connell:

This letter is in response to the letter dated July 21, 2005 from Michael Derrick to Rodolfo Apostol. Just to clarify and correct the record, at no time did Mr. Apostol refuse to perform any job functions directed to him by his supervisor or other management at Ronald Wastewater District. He indicated he had a chemical sensitivity and that he was concerned about the effects of Rootx.

Mr. Apostol wanted to make sure he was protected from any contact with Rootx. Mr. Derrick's comment to the effect that Rootx "is mixed in a sealed container and then passed to a sealed applicator with no exposure to the applicant" is incorrect. In fact, when Brent Proffitt mixed Rootx and transferred it from a plastic holder into the sewer system, the chemical leaked around the clamps and Mr. Proffitt was forced to put a rag around the clamps to absorb the chemical leaks. Mr. Apostol did work with the Rootx product with a mask, safety glasses, and rain gear.

Very truly yours,

Susan B. Mindenbergs

cc: Rodolfo Apostol

Addendum I

On my previous brief, I had added that I sustained a physical injury of a stress fractured left wrist which resulted in a compensable industrial claim Number AD81723. I am entitled to obtain workers compensation benefits that my stress fracture left wrist which happened prior to my September 21, 2005 meeting with my supervisors aided in my post-traumatic stress disorder and made me permanently disabled.

Cite: John J. Donnelly v. DLI, Docket Number: 55197-3-I, Date 10/13/2004

Apparently, the non-cooperation appeal was ultimately resolved by the superior court's order granting summary judgment in favor of Donnelly on February 6, 2004.

FILED
DEC 22 2008

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STATE OF WASHINGTON
[Signature]

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BY RONALD R. CARPENTER

CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

RODOLFO M. APOSTOL,

Petitioner,

v.

DEPARTMENT OF LABOR AND INDUSTRIES,

Respondent.

REPLY BRIEF

RODOLFO M. APOSTOL
Pro Se
7936 Union Mills Rd. SE
Lacey, WA 98503
(360)491-3339

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Sent To: DUSTIN DAUGHER ASSY ATTORNEY G. ROBERT KENNEDY
 Street, Apt. No., or PO Box No.: LABOR INDUSTRIES PO BOX 40121
 City, State, ZIP+4: DUMPLING WA 98504-0121

PS Form 3800, August 2006 See Reverse for instructions

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08/27/2001

Filed injury report with employer for Mental Stress. Mental Stress injury accepted and signed by General Manager, Mike Battistoni. He wrote no objections, or plan of corrective actions on this form.

UNKNOWN DATE

In first phone contact with Claims Manager Claimant was told the the Dept. of L&I does not accept Mental Stress or Plantar Fasciitis as occupational injuries.

10/09/2001-----(**Oversight by Claims Manager**)

Claim for Mental Stress denied by Claims Manager, per RCW 51.08.142 and WAC 296-14-300. **Claims Manager did not take into account of the significant decesion of the Washington State Industrial Insurance Board of Appeals,**

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, 85 2816 (1990) Occupational Disease RCW 51.08.140

lll