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Division III
State of Washington

NO. 30612-7-III

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

OSCAR VILLA,

Appellant,

v.

DEPARTMENT OF LABOR AND INDUSTRIES
STATE OF WASHINGTON

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

This is a worker's compensation case arising under Title 51, RCW, of the Industrial Insurance Act. Oscar Villa contends that the wages at the time of his industrial injury should have been calculated based on the understanding he normally worked 10 hours a day, not eight hours a day, as the Department of Labor and Industries (Department) found.

Mr. Villa normally worked eight hours a day for the bulk of his employment with his employer at the time of his injury. A fact Mr. Villa does not and cannot dispute. Mr. Villa argues that since he worked 10 hours a day during the week that immediately preceded his industrial injury, his wages should have been calculated based on those hours. However, there is no logical reason to solely look to the week preceding the injury to determine the wage rate.

Since RCW 51.08.178(1) directs the Department to calculate a worker's wages based on the number of hours that he or she was "normally employed," and since Mr. Villa was normally employed eight hours a day, the Department properly calculated his wages on that basis. Furthermore, the Board of Industrial Insurance Appeals (Board) and the Benton County Superior Court properly affirmed the Department's decision, and this Court should affirm as well.

II. COUNTERSTATEMENT OF THE ISSUE

Under RCW 51.08.178(1), was it incorrect as a matter of law to conclude that a worker was normally employed eight hours a day and five days per week, where it is undisputed that the worker most often worked 40 hours a week throughout his employment, but where it is also undisputed that the worker worked 50 hours a week in the week that immediately preceded his industrial injury?

III. COUNTERSTATEMENT OF THE CASE

Oscar Villa worked for Nuprecon, Inc. for just over five weeks starting on October 15, 2005, and ending on the date of his industrial injury, November 21, 2005. CP 99, 106, 113. During most of his employment, Mr. Villa's regular work week consisted of eight hour days, five days per week for a total of 40 hour a week. CP 104-05, 133. For the first four weeks of employment, Mr. Villa worked a normal 40 hour work week. CP 104-05, 113. For the last full week of employment prior to the industrial injury, he worked 50 hours, 10 of which were overtime hours. CP 104-05, 113.

Per Nuprecon's payroll records, the following is a list of Mr. Villa's work tenure and corresponding hours worked per week:

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WEEK ENDING ON	HOURS WORKED
1. 10-15-05 (Saturday)	8
2. 10-22-05 (Saturday)	40
3. 10-29-05 (Saturday)	40
4. 11-3-05 (Saturday)	40
5. 11-12-05 (Saturday)	40
6. 11-19-05 (Saturday)	50

CP 113. Mr. Villa was injured on the following Monday, November 21, 2005. CP 100. He never returned to work for Nuprecon following his industrial injury; however, Nuprecon continued to pay Mr. Villa's wages until May 19, 2006. CP 98, 102, 107, 113.

While at Nuprecon, Mr. Villa was assigned to the asbestos abatement project of Rainier High School in Des Moines, Washington. CP 99, 101, 109. Mr. Villa did not know how long it would take to complete this job but estimated approximately eight months to a year. CP 101-02. At the beginning of each workday, Nuprecon would conduct a meeting informing employees of the expected length of the work day. CP 109. Starting on Monday, November 12, 2005, the week before the industrial injury, Nuprecon informed its workers that they would need to work a 10 hour day, two hours of overtime per day. CP 105. After he was injured on November 21, 2005, Mr. Villa never returned to the work site and, thus, never attended

these meetings. CP 107, 109. Therefore, Mr. Villa had no reasonable basis to know whether it is likely that he would have continued to work at a 50 hour a week pattern had he not suffered his industrial injury.

In response to the question of whether he would have continued working 50 hours a week but for the industrial injury, Mr. Villa stated:

Well, to be honest, you know, they told us we were going to start working five 10s because we were so far behind on the job. I'm not sure. All I know is, that's what the meeting was, we're behind on this school so get ready to work five 10s.

CP 107-08. Mr. Villa testified that a regular, normal workweek for him while at Nuprecon was eight hours per day, five days per week. CP 103-05. Mr. Villa testified that the one week in which he worked 50 hours was out of the ordinary, abnormal. CP 103-05.

Q: And this fifth week, that's when you were paid the overtime, right?

A: Yeah. That's when we had to start working the five 10s.

Q: So you were working 2 hours more each day of overtime?

A: Yes.

Q: So this was sort of abnormal as far as the first four weeks you were working?

A: Right.

Q: This was not normal. This was overtime?

A: Yeah. This is overtime.

CP 105.

On August 15, 2008, the Department issued the first wage rate order in Mr. Villa's case setting his rate based upon him working 10 hours per day, having no health care benefits and Mr. Villa being single with no children, among other factors. CP 45, 69. On October 8, 2008, Mr. Villa protested this order. CP 69. On December 8, 2009, the Department scanned into its electronic document system payroll records from Nuprecon. CP 113.¹ On December 9, 2009, the Department issued an order superseding the order of August 15, 2008. CP 50, 71. This order established Mr. Villa's wage rate at eight hours per day, provided \$853.60 per month for health care benefits and established Mr. Villa as having one child, among other factors. CP 50, 71, 114. This order was protested by Mr. Villa on February 5, 2010. CP 71. The Department affirmed on February 26, 2010. CP 71. Mr. Villa then appealed the final Department decision to the Board. CP 48, 72.²

¹ This is evidenced by the document's tattoo date. CP 113. The Department's tattoo date represents when the document was scanned into the Department's electronic document system.

² It is the February 26, 2010 order that was the subject of the Board appeal. Mr. Villa now contends that the August 15, 2008 order was proper. Brief of Appellant (App. Br.) 18. However, previous orders of the Department are not admissions and are irrelevant when considering the validity of the Department order on appeal. *See McDonald v. Dep't of Labor & Indus.*, 104 Wn. App. 617, 622-23, 17 P.3d 1195 (2001).

The industrial appeals judge issued a proposed decision and order that affirmed the Department's wage rate order. CP 124-27. Mr. Villa filed a petition for review with the Board, and this was granted. CP 30-35, 129. The Board issued a decision and order that affirmed the Department's wage order. CP 7-10, 131-134.

In its finding of fact number five, the Board's decision found that, as of November 21, 2005, Mr. Villa had not established a pattern of normally working additional overtime hours. CP 9. The decision also found that Mr. Villa was "regularly employed" eight hours a day during the four weeks prior to November 12, 2005. CP 8.

Mr. Villa appealed to Benton County Superior Court. CP 1-2. The superior court affirmed the Board's decision. CP 143-46. The superior court expressly adopted all of the Board's findings of fact, including its finding that he had not established a pattern of normally working overtime hours as of the date of his industrial injury. CP 143-46.

Mr. Villa then appealed to this Court.

IV. STANDARD OF REVIEW

Under RCW 51.52.115, review is of the trial court's decision. *Rogers v. Dep't of Labor & Indus.*, 151 Wn. App. 174, 180-81, 210 P.3d 355 (2009). Review is governed by RCW 51.52.140, which provides that an appeal shall lie from the judgment of the superior court as in other civil

cases, and that ordinary practice in civil cases shall apply. *McClelland v. ITT Rayonier, Inc.*, 65 Wn. App. 386, 390, 828 P.2d 1138 (1992). Generally in an appeal, the appellate court examines the record to see if substantial evidence supports the findings of the superior court, and if the court's conclusion of law flows from the findings. *Ruse v. Dep't of Labor & Indus.*, 138 Wn.2d 1, 5, 977 P.2d 570 (1999). "Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." *Bering v. Share*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986).

In this case it is not necessary to review the findings for substantial evidence. In his brief, Mr. Villa argues that he is entitled to have his wages calculated based on an assumption of working five days a week, 10 hours a day, since that was the number of hours that he worked during the week immediately before his industrial injury. *See* App. Br. 6-18. Mr. Villa argues that the Board and superior court's finding that he did not establish a "pattern" of normally working fifty hours a week as of the date of his injury is immaterial and that, therefore, it ought not to have been made. App. Br 7. However, Mr. Villa does not argue that the finding that he had not established a pattern of normally working overtime as of the date of his injury is not supported by substantial evidence. *See* App. Br 6-7.

Since Mr. Villa does not contend that any of the superior court's findings lack substantial evidence, all of its findings are verities on appeal, and the sole issue is whether, under the undisputed facts, he is legally entitled to the relief he seeks. *See In re Estate of Lint*, 135 Wn.2d 518, 531-33, 957 P.2d 755 (1998) (stating that if an appellant does not assign error to specific findings of fact and "present the court with argument as to why specific findings of the trial court are not supported by the evidence . . .", the findings are verities on appeal).

Questions of law are reviewed de novo. *Bennerstrom v. Dep't of Labor & Indus.*, 120 Wn. App. 853, 858, 86 P.3d 826 (2004). Although this Court may substitute its judgment for that of the Department, great weight is accorded to the agency's view of the law it administers. *Dep't of Labor & Indus. v. Allen*, 100 Wn. App. 526, 530, 997 P.2d 977 (2000).

V. SUMMARY OF THE ARGUMENT

Under RCW 51.08.178(1) and the undisputed facts in the record, Mr. Villa was normally employed at eight hours per day. Mr. Villa is not entitled to a wage rate set above eight hours per day because, although he was working 10 hours per day on the week that immediately preceded the industrial injury, he failed to establish that he was "normally employed" more than eight hours per day as of the date of his injury. *See* RCW 51.08.178(1).

The Department, Board, and trial court appropriately looked to his pattern of employment to determine the hours he was normally employed. The plain meaning of “normally” requires that the Department determine the usual or common employment and it contemplates looking to the pattern of employment. This is true under the dictionary definition of the term and common sense.

Mr. Villa seeks to limit the inquiry to the week preceding his industrial injury, but there is no principled reason under the statutory language to make such a limitation. Moreover, case law at the Board supports looking to the pattern of employment to determine what hours he was “normally employed.”

VI. ARGUMENT

A. **Because Mr. Villa Was Normally Employed Eight Hours A Day, Five Days A Week, The Department Properly Calculated His Wages Based on That Work Pattern**

1. **RCW 51.08.178(1) Determines The Hours of Employment Based On The Hours The Worker Is “Normally Employed”**

RCW 51.08.178(1) governs how the Department is to determine monthly wages for a regular, full-time worker for industrial insurance compensation purposes. RCW 51.08.178(1) provides that “where the worker’s wages are not fixed by the month, they shall be determined by multiplying the daily wages the worker was receiving at the time of the

injury . . . (e) by twenty-two, if the worker was *normally employed* five days a week.” (Emphasis added.) RCW 51.08.178(1)³ continues by stating that the term “wages” shall include:

The reasonable value of board, housing, fuel or other consideration of like nature received from the employer as part of the contract of hire, but shall not include overtime pay⁴ except in cases under subsection (2) of this section.⁵ . . . The daily wage shall be the hourly wage multiplied by the number of hours the worker is *normally employed*. The number of hours the worker is normally employed shall be determined by the Department in a fair and reasonable manner, which may include averaging the number of hours worked per day.

(Emphasis added.)

The court’s fundamental objective in statutory interpretation is to give effect to the legislature’s intent. *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). If a statute’s meaning is plain on its face, as is the case here, then the court gives effect to that

³ Appellant’s brief is correct in identifying RCW 51.08.178 (1988) as the statutory version in effect at the time of this industrial injury. App. Br. 2. Moreover, appellant’s brief correctly states that the amendment made to RCW 51.08.178 (2007) is not relevant to the issues on appeal. App. Br. 2. As such, the above quotation of the statute excludes the language added by the 2007 amendment.

⁴ In *Mestrovac v. Department of Labor & Industries*, 142 Wn. App. 693, 711-12, 693 P.3d 536 (2008), the court explained that while RCW 51.08.178(1) provides that a worker’s “overtime pay” is not included in his or her wage calculation, this means that the fact that a worker received a higher pay rate for overtime work is not taken into consideration, but overtime hours should be considered.

⁵ Subsection (2) of RCW 51.08.178 addresses how the Department is to calculate wages for an individual whose relationship to employment is “exclusively seasonal” or “essentially part-time or intermittent.” Here, it is undisputed that Mr. Villa’s employment was neither exclusively seasonal nor essentially part-time or intermittent. Therefore, subsection (2) of that statute is irrelevant.

plain meaning as an expression of legislative intent. *State ex rel. Citizens Against Tolls (CAT) v. Murphy*, 151 Wn.2d 226, 242, 88 P.3d 375 (2004).

Where, as here, a worker's wages are calculated under RCW 51.08.178(1), and where the worker received an hourly wage rather than a monthly salary, the Department must determine the worker's hourly wage at the time of injury, the number of days that the worker was "normally employed" per week, and the number of hours that the worker normally worked per day. RCW 51.08.178(1).⁶

The Department calculates the worker's "daily wage" by multiplying his or her hourly wage by the number of hours that the worker was normally employed. *See* RCW 51.08.178(1). The Department is directed to calculate the hours that a worker normally worked per day through any reasonable method, which *may* include averaging. *Id.*

The Department then multiplies the worker's "daily wage" by a number that is specified by the statute, depending on the number of days that the worker was normally employed per week. RCW 51.08.178(1).

Under the plain language of RCW 51.08.178(1), to determine the wage rate, the Department must determine the hours the worker was "normally employed."

⁶ The calculation of a worker's wage also takes into account certain forms of consideration including tips, health care benefits, board, housing, and fuel. RCW 51.08.178(1); *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 821-23, 16 P.3d 583 (2001).

2. The Pattern Of Employment Is Relevant In Determining The Hours The Worker Is Normally Employed

To determine the hours a worker is “normally employed,” the Department, Board, and superior court appropriately looked to Mr. Villa’s pattern of employment. Mr. Villa argues that it is improper to consider a worker’s typical work pattern when calculating a worker’s wages because RCW 51.08.178(1) does not use the term “pattern”. App. Br. 14. However, while it is true that RCW 51.08.178(1) does not use the term “pattern,” it does use the term “normally employed,” and it directs the Department to determine the hours that a worker is “normally employed” through a “fair and reasonable” method. “Normally” is not defined by statute, but its plain and ordinary meaning may be determined by resort to a dictionary. *See State v. Sullivan*, 143 Wn.2d 162, 175, 19 P.3d 1012 (2001). Definitions for “normally” include “commonly, usually,” and “under normal conditions”. *Webster’s Third New Int’l Dictionary* 1540 (2002). Definitions for “normal” include “conformed to a type, standard, or regular pattern.” *Id.* Looking at the pattern of employment determines what hours are commonly and usually worked. It is a “fair and reasonable” method to determine the wages by considering the complete employment history.

Mr. Villa does not dispute that he worked eight hours a day during the majority of the days that he worked for Nuprecon, nor does he claim that he had established a pattern of normally working 50 hours a week as of the date of his injury. App. Br. 6-7. Instead, he contends that because he worked 50 hours a week that immediately preceded his injury and would have worked 10 hours a day on the day of his injury (had he not been injured), his wages must be calculated based on the assumption that he was employed 50 hours a week. *See* App. Br. 6-18. Mr. Villa bases this contention on RCW 51.08.178(1)'s directive that a worker's monthly wages must be calculated based on the wages earned "at the time of the injury" and contends that he was "actually" working 50 hours a week at the time that he was hurt. App. Br. 15.

Mr. Villa does not explain precisely what he means when he says that he was working "50 hours a week" at the time of his injury. *See* App. Br. 14. Mr. Villa was injured on November 21, 2005, which was the first day of that particular work week. CP 99. He was sent home early as a result of his injury. CP 102, 106. Thus, it is not true, literally speaking, that Mr. Villa was working 50 hours a week at the time of his injury, nor did he work 10 hours on the day he was injured. CP 106. Rather, Mr. Villa worked 50 hours during the week that preceded the date of his injury. Thus, Mr. Villa is not actually contending that his wages should be

calculated based on the number of hours he actually worked at the precise moment of his injury. Rather, he is seeking a wage calculation based on a work pattern that was in place at a time before his injury.

In other words, Mr. Villa, like the Department, contends that the calculation of his wages at the time of his injury should take into account the number of hours that he was working at times before the date of his actual injury. Mr. Villa differs from the Department only in the scope of the period of time that he believes is relevant to that inquiry: he apparently contends that only the week that immediately precedes an injury is relevant to a determination of how many hours a worker was normally employed at the time of the injury, while the Department contends that the worker's complete work history with the employer of injury is relevant when determining how many hours a worker was "normally" employed as of the date of an injury.

Mr. Villa offers neither legal authority nor a logical basis for concluding that it is only the number of hours that the worker worked during the week that immediately preceded the worker's industrial injury that is relevant when determining the number of hours that the worker was *normally* employed as of the date of the injury. On the contrary, in order to arrive at a reasonable determination as to how many hours per day a worker was "normally employed" as of the date of an injury, the

Department must, by necessity, consider more than just the hours that the worker worked on the precise day that the worker was injured, and it must consider more than just the week that immediately preceded that injury. The Department can only arrive at a reasonable determination as to how many hours a worker was “normally” employed by looking at either the worker’s entire history of employment with the employer of injury, or by looking at a smaller period of time which is representative of the worker’s usual work pattern.

There is simply no reason under the statute, the case law, or common sense to treat the number of hours that the worker worked during the week that immediately preceded a worker’s injury as dispositive when determining how many hours per day that a worker was “normally” employed. While the week that preceded the injury is relevant to that determination, so too are the worker’s work schedule and history of employment at other times before the injury. And where, as here, the evidence shows that the week that immediately preceded the worker’s injury was not reflective of the number of hours that the worker was normally employed, it follows that it would be error to conclude that the worker was “normally” employed at that rate.

Mr. Villa argues that the consideration of the pattern of employment rendered RCW 51.08.178’s reference to the wage “at the time

of injury” superfluous. *See* App. Br. 10. While the Department agrees that a statute should not be interpreted in a way that renders portions of it superfluous, Mr. Villa fails to support his argument that the Department’s interpretation of RCW 51.08.178 renders its reference to wages “at the time of injury” superfluous.

The Department’s interpretation of RCW 51.08.178(1) gives legal effect to both its reference to “the daily wage the worker was receiving at the time of injury” and to its reference to the number of hours per day a worker was “normally employed.” The Department considered the worker’s work history from the date he was hired to the date of his injury, and it then decided, as of the date of his injury, how often he was normally employed. This gave legal effect to all of the relevant statutory language: the worker’s wages as of the date of injury is the focal point of the inquiry, but the worker’s overall work pattern is considered when deciding how often the worker was “normally employed” as of that date.

Here, the record amply supports that Mr. Villa was “normally employed” eight hours a day as of the date of his injury. While Mr. Villa worked 50 hours a week during the week that immediately preceded his injury, he worked 40 hours a week during every other week that he was employed. CP 100, 102, 113. Moreover, and critically, the superior court found that Mr. Villa failed to prove that he had established a new pattern of

regularly working 50 hours a week as of the date of his injury. CP 7-9, 143-47. As Mr. Villa does not challenge this finding, it is a verity on appeal that the week that immediately preceded his injury did *not* constitute a shift in his regular working pattern. *In re Estate of Lint*, 135 Wn.2d at 531-33.

3. Case Law Supports Looking At The Pattern Of Employment

Further support for the conclusion that Mr. Villa was “normally employed” 40 hours a week as of the date of his injury can be found in the significant Board decision,⁷ *In Re Maggie Stedman*, 2010 WL 5882056, BIIA Dec. 09 22981 (Wash. Bd. Indus. Ins. Appeals, November 18, 2009). While Board decisions are not binding on this Court, this Court may properly consider them as persuasive authority. *See, e.g., Ackley-Bell v. Seattle Sch. Dist. No. 1*, 87 Wn. App. 158, 165, 940 P.2d 685 (1997).

In *Stedman*, a worker was scheduled to work 40 hours a week, but she occasionally worked either more or less than eight hours a day. *Stedman*, 2010 WL 5882056 at *3. A proposed decision and order was issued that calculated the worker’s wages by averaging the hours she worked over a period that the industrial appeals judge believed was representative of her normal working pattern. *See id.* at *1. The Board concluded that where a worker has a “more or less permanent” working schedule, and where a

⁷ The legislature has directed the Board to designate, index and make available to the public its significant decisions. RCW 51.52.160.

worker has only “minor variations” but no “persistent deviations” from that set schedule, then the worker’s wages should be calculated based on the worker’s scheduled hours rather than based on the worker’s average hours worked over any particular time period. *Id.* at *2. Thus, the Board concluded that Ms. Stedman was “normally employed” eight hours a day and five days a week, even though, on average, she actually worked somewhat less than 40 hours a week. *Id.* at *1, *3.

Where a worker is regularly scheduled to work a set number of hours per week, and where the worker most often worked the set number of hours throughout the worker’s employment, it follows that the worker’s set schedule is the number of hours that the worker was “normally” employed, in the absence of a showing that the worker established a *new* working pattern at some point after the worker was originally hired and before the worker’s injury. *See Stedman*, 2010 WL 5882056 at *2. Since, in *Stedman*, the Board found that there was no evidence that the worker’s usual work pattern had shifted into a pattern where she worked less than 40 hours a week on a consistent basis, it concluded that her wages should be calculated based on her scheduled work pattern. *Id.*

Here, as in *Stedman*, the worker had a clearly established work pattern of *normally* working 40 hours a week. CP 113. Although Mr. Villa worked 50 hours during the week that immediately preceded his injury, he

failed to establish that this represented a more or less permanent shift to his usual working pattern. CP 100-01, 113. Therefore, his wages were properly calculated based on the number of hours he normally worked at all times throughout his employment, i.e., eight hours a day. *Stedham*, 2010 WL 5882056 at *2.

As Mr. Villa does not dispute that he worked 40 hours a week throughout the bulk of his employment with his employer, and as he has failed to show that it was incorrect as a matter of law to calculate his wages based on the number of hours that he was normally employed as of the date of his injury, the superior court properly affirmed the Board and the Department. This Court should affirm as well.

B. The Liberal Construction Doctrine Is Of No Aid To Mr. Villa

Mr. Villa attempts to bolster his arguments by citing to the liberal construction doctrine. App. Br. 17-18. However, while it is true that the provisions of the Act are “liberally construed,” this rule of construction does not authorize an interpretation of a statute that produces strained or absurd results that defeat the plain meaning and intent of the legislature. *See* RCW 51.12.010; *Bird-Johnson v. Dana Corp.*, 119 Wn.2d 423, 427, 833 P.2d 375 (1992); *Senate Republican Campaign Comm. v. Pub. Disclosure Comm’n of State of Wash.*, 133 Wn.2d 229, 243, 943 P.2d 1358 (1997). This rule of construction is also not used when the statute is

unambiguous. *Harris v. Dep't of Labor & Indus.*, 120 Wn.2d 461, 474, 843 P.2d 1056 (1993).

Here, no provision of the Act, and no legal authority, supports Mr. Villa's argument that the Department should have calculated his wages based only on the hours he worked during the week that immediately preceded his injury rather than based on the hours that he normally worked per day. Because the doctrine of liberal construction cannot be used to create a rule of law out of thin air, and since no authority supports Mr. Villa's arguments, the liberal construction doctrine is of no aid to him.

The doctrine of liberal construction is also inapplicable because the rule of law that Mr. Villa seeks would not necessarily work to the advantage of injured workers as a whole. While it is beneficial to Mr. Villa, in his particular case, to have his wages calculated based only on the hours he worked during the week that immediately preceded his industrial injury, many other workers would be harmed by a rule of law that was so myopically focused on that time period and that ignored the worker's overall employment history and working pattern. While Mr. Villa worked more hours than he normally worked during the week that immediately preceded his injury, it is equally likely that an injured worker could have worked *fewer* than normal hours during the week that immediately preceded his or her injury. Thus, if, for example, a worker worked 40

hours a week throughout most of his or her employment, and the worker happened to be injured during a period of time in which the employer was temporarily reducing its workers' hours, the worker would be harmed by a rule of law that examined only the hours worked during a time period that immediately preceded the worker's injury and that ignored the worker's overall, clearly established, pattern of working 40 hours a week.

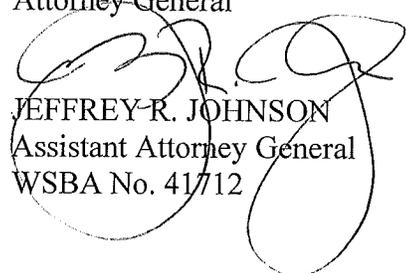
Since the rule of law that Mr. Villa seeks would not necessarily be beneficial to injured workers as a class, and would be equally likely to increase rather than decrease the economic losses they would suffer as a result of their injuries, the liberal construction standard is inapplicable.

VII. CONCLUSION

For the reasons discussed above, the Department asks that this Court affirm the superior court's decision, which affirmed the Department's order in this case.

RESPECTFULLY SUBMITTED this 3RD day of October, 2012.

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NO. 30612-7

COURT OF APPEALS FOR DIVISION III
OF THE STATE OF WASHINGTON

OSCAR VILLA,

Appellant,

v.

DEPARTMENT OF LABOR AND
INDUSTRIES FOR THE STATE OF
WASHINGTON,

Respondent.

DECLARATION
OF SERVICE

Mary Cochenour declares as follows:

That she is now and was at all times hereinafter mentioned a citizen of the United States and of the State of Washington, over the age of majority and not a party to this action.

On October 3, 2012, she electronically transmitted this Declaration of Mailing and the original Brief of Respondent in the above-referenced matter to the Washington State Court of Appeals, Division III.

A copy of the Brief of Respondent was sent to Appellant's counsel on this date, postage prepaid, to the following address:

Christopher Luke Childers
Smart Connell Childers & Verhulp
PO Box 7284
Kennewick WA 99336-0617

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 3rd day of October, 2012.


Mary Cochenour, Legal Assistant