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NO. 58200-3-I

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

ENVER MESTROVAC,

Respondent/Cross-Appellant,

v.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF
WASHINGTON, and THE BOARD OF INDUSTRIAL INSURANCE
APPEALS,

Appellants/Cross-Respondents.

**REPLY BRIEF OF APPELLANT/CROSS-RESPONDENT
BOARD OF INDUSTRIAL INSURANCE APPEALS**

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I. INTRODUCTION

Appellant/Cross-Respondent Board of Industrial Insurance Appeals (“Board”) submits this reply brief in support of its appeal from the superior court’s decisions that directly impacted the Board.¹ As it has throughout this matter, the Board makes no argument on the merits, that is, on the extent of worker’s compensation benefits to which Mr. Mestrovac is entitled.

II. ARGUMENT IN REPLY

A. The Board Has Standing To Pursue This Appeal

In his response Mr. Mestrovac argues that the Board does not have standing to pursue this appeal, relying on *Kaiser Aluminum & Chemical Corp. v. Dep’t of Labor & Indus.*, 121 Wn.2d 776, 854 P.2d 611 (1993). Mestrovac Response Brief at 30. However, Mr. Mestrovac does not refute the Board’s point that *Kaiser Aluminum* is not controlling because that case did not involve a situation in which monetary relief was imposed against the Board. Board’s Opening Brief at 19-21. The general rule announced in *Kaiser*, that a quasi-judicial administrative agency should not be allowed to bring an appeal simply to vindicate its decision on the merits, is not involved here.

¹ In general, the Board will leave argument regarding the extent to which Mr. Mestrovac has any constitutional right to greater interpreter services to Appellant/Cross-Respondent Department of Labor and Industries (“Department”).

Mr. Mestrovac argues that the supreme court discussion in *Kaiser* of the exceptions to that general rule, including that a quasi-judicial agency can appeal in order to preserve the integrity of its decision making process, is mere dicta. Mestrovac Response Brief at 31. See *Kaiser Aluminum*, 121 Wn.2d at 782. It may be that, technically, the supreme court's discussion in *Kaiser* of the exceptions to the general rule is dicta, in that the court determined that the Board's appeal in that case did not fit within the exceptions.² However, Mr. Mestrovac has not suggested that the supreme court's analysis in *Kaiser* is incorrect or any given reason why the Court of Appeals should not follow the supreme court's analysis in *Kaiser*, dicta or not. As the court stated, "[o]ur case law is in agreement with these general principles." *Kaiser*, 121 Wn.2d at 783. In addition, since *Kaiser*, the supreme court has permitted an agency, acting in a quasi-judicial capacity, to appeal from a lower court decision under the "integrity of its processes" exception announced in *Kaiser*. See *Local 2916, IAFF v. Public Empl. Relations Comm'n*, 128 Wn.2d 375, 379 n. 3, 907 P.2d 1204 (1995).

² The *Kaiser* court did note that there might be situations in which the Board would have standing to appeal under the exceptions the court had outlined. "As discussed above, a quasi-judicial agency like the Board would generally have authority to appeal other issues, such as those regarding its internal procedures, and the attorney general may have been designated as the Board's representative for such purposes." *Kaiser*, 121 Wn.2d at 783 (emphasis added).

Mr. Mestrovac argues that the respects in which the Board has asserted that the superior court's order of remand impairs the Board's decision-making integrity are without support. Mestrovac Response Brief at 31-32. Mr. Mestrovac is wrong.

The Board is established by statute exclusively as an appellate body to hear appeals from decisions of the Department. The Board has no more authority to make an initial ruling as to how much in costs for additional interpreter services the Department owes Mr. Mestrovac than it would to make an initial ruling as to the extent of worker's compensation benefits due to a worker. Mr. Mestrovac's reference to the Board's industrial insurance judges "who routinely conduct original evidentiary hearings" is misleading. Mestrovac Response Brief at 32. These are hearings in which either the worker or the employer has filed an appeal from a determination by the Department (or a self-insured employer) as to worker's compensation benefits. Until the Department has first ruled, there is nothing for the Board to review in its exclusively appellate capacity. Even assuming the superior court had authority to remand the matter to the Department to make an initial determination as to the amount of additional interpreter services for which the Department was responsible, it was an error for the court to remand the matter to the Board for such an initial determination because doing so would exceed the

Board's statutory role.

However, there is a greater problem here impacting the integrity of the Board's decision-making process. The superior court ruled that both the Department and the Board itself were responsible for reimbursement of additional interpreter services costs incurred by Mr. Mestrovac. For the Board to rule, either as an initial matter or even acting in an appellate role, on how much the Department owes would be inappropriate because the Board's ruling with respect to how much the Department owes could directly impact how much the Board itself might owe Mr. Mestrovac. As Mr. Mestrovac himself notes, the superior court's order "does not prescribe the manner in which any decision on this subject must be made; e.g., what evidence must or not be considered, or what the standard of proof should be." Mestrovac Response Brief at 31-32. How can the Board be neutral in adjudicating interpreter services costs as between Mr. Mestrovac and the Department, when the superior court's order has placed the Board in the same position as the Department as owing reimbursement to Mr. Mestrovac? This only underscores the impropriety of the superior court's order granting monetary relief against the Board.

Mr. Mestrovac argues that the status of the Board as an "aggrieved party" under RAP 3.1 is "irrelevant" and has been rejected by the *Kaiser* court as a separate basis for having standing to appeal. Mestrovac

Response Brief at 32-33. But the supreme court in *Kaiser* did not say that Board was not an “aggrieved” party under RAP 3.1. *See Kaiser*, 121 Wn.2d at 786. The only issue was whether the Board had a statutory right to appeal the superior court’s rulings. *Kaiser* does not preclude the Board from doing so in this case, in that *Kaiser* did not involve a situation in which monetary relief had been imposed on the Board. In any event, the Board can appeal under the “integrity of its processes” exception announced in *Kaiser*.

B. The Board’s Motion To Intervene Was Timely, And The Superior Court Erred In Denying It

Mr. Mestrovac argues that the superior court was correct in denying the Board’s motion to intervene on the basis that the motion was untimely. Mestrovac Response Brief at 33-35. The Board’s motion to intervene was timely, and the superior court erred in denying it.

Mr. Mestrovac argues that the Board was on notice of the issues for two years (*i.e.*, since Mr. Mestrovac filed his appeal to superior court). Mestrovac Response Brief at 34. However, nothing in his notice of appeal or any of the pleadings filed until the Department’s March 30, 2006, motion for reconsideration or clarification³ (which was not served on the Board) was sufficient to put the Board on notice that either Mr. Mestrovac

³ CP at 555-56.

or the Department was asking the court to grant monetary relief against the Board. It is unclear if Mr. Mestrovac is contending that his notice of appeal was sufficient to make the Board a party. That position would be inconsistent with Mr. Mestrovac's position, stated earlier in his response, that the Board should not be made a party because then the Board would be in a position to argue the merits of a worker's entitlement to compensation benefits, contrary to *Kaiser*.⁴ Mestrovac Response Brief at 34. If Mr. Mestrovac is arguing that the Board should have entered a notice of appearance and monitored the proceedings continuously for two years after he filed his notice of appeal to see if any of the parties was going to seek monetary relief against the Board, that would be a waste of time and resources for the Board and could create confusion for the court. Assuming it is legally possible to obtain monetary relief against the Board (which the Board contends it is not), then at a minimum the Board has a right to be clearly apprised that such relief is being sought and an opportunity to respond.⁵ This is what the superior court improperly denied.⁶

⁴ The Board has never requested to make, nor has it made, argument on the merits.

⁵ Again, this illustrates that the supreme court in *Kaiser* never contemplated that a party would seek to obtain, or could legally obtain, monetary relief against the Board.

⁶ As argued in the Board's opening brief, the superior court's rulings are internally inconsistent. The court imposed monetary relief against the Board, which it presumably could do only if the Board was a party. On the other hand, the court

In any event, the Board's motion was timely filed. Mr. Mestrovac points to no statute or court rule that sets a time by which a motion to intervene must be filed. Here, the Board did not wait two years, as Mr. Mestrovac contends. The superior court issued its order on reconsideration on April 17, 2006.⁷ The Board filed its motion to intervene on May 11, 2006,⁸ shortly after receiving information informally that the court had entered its order on reconsideration.

The caselaw relied upon by Mr. Mestrovac does not establish that the Board's motion to intervene was untimely. *See* Mestrovac Response Brief at 34-35. In *Martin v. Pickering*, 85 Wn.2d 241, 523 P.2d 380 (1975), the court noted: "In considering the question of timeliness, all the circumstances should be considered, including the matter of prior notice of the lawsuit and the circumstances contributing to the delay in moving to intervene." *Martin*, 85 Wn.2d at 244. Here, there was no notice that any monetary relief was being requested against the Board until shortly before the Board's motion to intervene. In contrast to the Department, which has a statutory obligation to enter a notice of appearance and participate in the appeal, RCW 51.52.110, the only statutory obligation of the Board is to certify the record of proceedings. *Id.* Moreover, the supreme court in

apparently agreed that the Board needed to file a motion to intervene (which the court denied), indicating that the Board was not already a party.

⁷ CP at 643-44.

⁸ CP at 648-55, CP at 656-58.

Kaiser Aluminum indicated that the Board should not, as a matter of course, be participating in appeals from its decisions. Under these circumstances, there was no reason for the Board to have taken any role in the lawsuit until it learned that monetary relief was being imposed on it. The Board's motion to intervene was timely, even after judgment, and the superior court erred in denying intervention.

C. Mr. Mestrovac Has Not Offered Any Authority In Response To The Board's Position That It Has Quasi-Judicial Immunity From The Imposition Of Monetary Relief Against It

As noted above and in the Board's opening brief, the supreme court in *Kaiser Aluminum* was not addressing a situation in which any party was seeking, or the court had imposed, monetary relief against the Board. It is not surprising that the *Kaiser* court did not address or contemplate such a situation because, as the Board argued in its opening brief, a tribunal such as the Board, acting in a quasi-judicial capacity, has immunity from the imposition of monetary relief. Board's Opening Brief at 35-37.

"Absolute privilege extends to administrative bodies in the exercise of quasi-judicial powers which bodies are required by statute to exercise. For example, judges . . . and hearing officers who act in a quasi-judicial role have absolute immunity because they must be free to exercise their judgment impartially and to perform their respective functions

without harassment or intimidation. Administrative law judges exercise independent judgment in performing adjudicatory functions and because of their functional similarities to federal and state trial and appellate judges, administrative law judges, and judicial review officers are entitled to absolute immunity from suit for their judicial acts.” 2 Am. Jur. 2d *Administrative Law* § 589 (2004), at 504 (footnotes and citations omitted). “[A] workers’ compensation board, in making compensation awards, acts as a quasi-judicial body of limited jurisdiction and members of the board are entitled to immunity.” *Id.* § 588, at 502 (footnote and citations omitted); *Indus. Comm’n of Arizona v. Superior Ct.*, 5 Ariz. App. 100, 423 P.2d 375 (1967). The superior court here erred in not recognizing this and in imposing monetary relief in the form of interpreter services costs and attorneys fees on the Board.

Mr. Mestrovac offers no authority in response to the Board’s argument. Rather, he simply contends that the imposition of costs for reimbursing his interpreter services costs and of attorney’s fees does not come within the principle of quasi-judicial immunity because they are not “sanctions” or “damages.” Mestrovac Response Brief at 40. But as the Board noted in its opening brief, the principle of quasi-judicial immunity protects the Board against the imposition of monetary relief, regardless of how the relief is termed or characterized. *See Corrigan v. Tompkins*,

67 Wn. App. 475, 477, 836 P.2d 260 (1992), *rev. denied*, 121 Wn.2d 1003 (1993). Mr. Mestrovac contends that the source of the Board's funding to pay such monetary relief is relevant. Mestrovac Response Brief at 41. However, the principle supporting quasi-judicial immunity—the chilling effect on the tribunal's decision-making—is not affected by the size of the tribunal's budget or its sources of raising funds.

Even if Mr. Mestrovac could show that the Board was legally required to provide more interpreter services than it did and that the Board's failure to do so led the Board to reach an erroneous decision on the merits of his appeal, the appropriate remedy would be to remand for further proceedings. See Board's Opening Brief at 33-34. Alternatively, if the Board's failure to provide interpreter services threatened to impair his ability to present his case, Mr. Mestrovac could seek relief in the form of injunctive, declaratory or other extraordinary relief. See Board's Opening Brief at 36-37. Imposition of monetary relief against the Board or its judges is simply not an appropriate remedy.

Mr. Mestrovac argues that the Board should not “become[] an advocate against the injured worker.” Mestrovac Response Brief at 35. The Board agrees entirely. But the Board is in such a position only because the superior court imposed monetary relief against it erroneously and without giving the Board a chance to defend itself. This Court should

reverse the superior court's rulings and allow the Board to resume its stance of impartiality assumed by the *Kaiser* decision.

D. Neither WAC 263-12-097 Nor RCW 2.43 Requires The Board To Provide Or Reimburse Mr. Mestrovac For Interpreter Services Outside The Evidentiary Hearing

Contrary to Mr. Mestrovac's argument, neither the Board's rule on interpreter services, WAC 263-12-097, nor the statute on interpreter services for non-English speaking persons, RCW 2.43, requires the Board to provide or reimburse Mr. Mestrovac for interpreter services beyond the evidentiary hearing conducted by the Board.

In its decision in this case, the Board interpreted its own rule as not requiring interpreter services for anything other than the evidentiary portions of the hearings. Mr. Mestrovac contends that the Board is misreading its own rule and that the language in the rule permitting the industrial appeals judge to "appoint an interpreter to assist the party or witness throughout the proceeding" means that Mr. Mestrovac is entitled to interpreter services for *all* activities after he has filed his appeal to the Board. Mestrovac Response Brief at 36-37. This would include private attorney-client communications during the evidentiary hearing, as well as meetings or conversations between him and his attorney outside the hearing, and his doctors, his employer, and the Department. Mestrovac Response Brief at 36-37.

Mr. Mestrovac is asking the Court to second-guess the Board's application of its own rule. While the proper interpretation of a rule is a matter of law on which the courts have the final say, the courts will generally defer to an agency's interpretation of its own rules, particularly its own procedural rules. *See City of Yakima v. Yakima Police and Fire Civil Serv. Comm'n*, 29 Wn. App. 756, 631 P.2d 400, *rev. denied*, 96 Wn.2d 1013 (1981). *See generally* cases cited in Board's Opening Brief at 27. The Court should defer to the Board's interpretation of its own rule as providing for interpreter services only during the evidentiary hearing.⁹

Mr. Mestrovac argues that the Board's interpretation of its rule is inconsistent with RCW 2.43, which he contends is the authority under which the Board adopted its rule.¹⁰ Mestrovac Response Brief at 23-27. This argument is incorrect. The Board's authority to adopt WAC 263-12-097 is not RCW 2.43, but rather the Board's general authority in RCW 51.52.020 to "make rules and regulations concerning its functions and procedure"¹¹ *See also* RCW 51.52.100 (members of the Board

⁹ Mr. Mestrovac suggests that under the Board's interpretation of the rule, the Board would not provide an interpreter for testimony perpetuated under WAC 263-12-117. This is not an issue in this case, and there has been no showing that the Board denied interpreter services for testimony taken in any preservation depositions in this case.

¹⁰ Mr. Mestrovac appears to have abandoned any argument that RCW 2.42, relating to interpreter services for persons of disability, applies here.

¹¹ *See* citation to authorizing authority at end of WAC 263-12-097.

and its industrial appeals judges have power to “do all things conformable to law which may be necessary to enable them, or any of them, effectively to discharge the duties of his or her office”). In its rule, the Board did cross-reference to portions of RCW 2.43 (as well as RCW 2.42 and GR 11) for certain definitions, appointment standards and other matters. However, this does not mean that these were the sources of the Board’s authority to adopt its rule.

Even if RCW 2.43 were involved here, it would not require the Board to provide or reimburse for interpreter services. In response to the Board’s argument that RCW 2.43.040 requires the agency to pay for the interpreter services only when the governmental body initiates the proceedings, Mr. Mestrovac argues that either the Department or the Board initiates all Board proceedings because “[t]he appeal proceeding does not occur unless BIIA [the Board] issues an order accepting the appeal after giving DLI [the Department] the opportunity to reconsider.” Mestrovac Response Brief at 24 n. 21. Mr. Mestrovac’s position is without merit. That the Department may, after an employee or employer has filed an appeal, reassume jurisdiction,¹² or that the Board may, upon review of the record, deny the appeal without hearing or grant the appeal

¹² See RCW 51.52.060(3).

and proceed to a hearing,¹³ does not mean that the appeal was “initiated by the governmental body”, RCW 2.43.040(2), rather than by the employee. To adopt such a view of RCW 2.43.040 would make every appeal one “initiated by the governmental body” and would render the statutory distinction in RCW 2.43.040(2) and (3) between proceedings initiated by the governmental body and those not so initiated meaningless.¹⁴ “Statutes should be construed to effect their purpose and unlikely, absurd or strained consequences should be avoided.” *State v. Stannard*, 109 Wn.2d 29, 36, 742 P.2d 1244 (1987).

E. The Constitution Does Not Require The Board To Provide Or Pay For More Interpreter Services Than It Did

Mr. Mestrovac takes the position that the Board had a duty to provide or pay for interpreter services in connection with everything he did regarding his appeal to the Board. Nothing in the United States or Washington constitutions requires the Board to provide or pay for more interpreter services for Mr. Mestrovac than it did.¹⁵ Mr. Mestrovac does not cite to one state or federal case that squarely supports his position. On the contrary, in a variety of situations courts have rejected the contention

¹³ See RCW 51.52.080, RCW 51.52.090.

¹⁴ Mr. Mestrovac’s theory would not be limited to proceedings under RCW 51.52 conducted by the Board of Industrial Insurance Appeals. Under the Administrative Procedure Act, RCW 34.05, “upon the timely application of any person, an agency shall commence an adjudicative proceeding.” RCW 34.05.413(2).

¹⁵ The Board provided interpreter services for the recorded portions of the evidentiary hearings. Accordingly, in this appeal, the Court does not need to consider whether the Board was constitutionally required to do so.

that governmental agencies have a constitutional duty to provide interpreter services.¹⁶ In addition, the courts have expressly rejected Mr. Mestrovac's argument that language equates to national origin or race for purposes of constitutional analysis. See *Commonwealth v. Olivo*, 369 Mass. 62, 337 N.E.2d 904, 911 (1975) (class of those unable to speak English is not a suspect class); *Soberal-Perez v. Heckler*, 717 F.2d 36, 41 (2nd Cir. 1983) ("[l]anguage, by itself, does not identify members of a suspect class"); *Vialez v. New York City Housing Auth.*, 783 F. Supp. 109, 122 (S.D.N.Y. 1991). The Board did not violate either the Due Process or Equal Protection Clause in not providing or paying for additional interpreter services for Mr. Mestrovac.

F. Whether To Provide Additional Interpreter Services Is A Policy Decision For The Board And The Legislature; Placing Limits On The Extent Of Such Services Does Not Constitute Illegal Discrimination Against Non-English Speaking Persons

As discussed above, the Board is under no statutory, constitutional, or other legal obligation to provide Mr. Mestrovac or other non-English speaking appellants with additional interpreter services. Mr. Mestrovac argues that the cost of doing so would be minimal and that the Board's decision not to provide additional interpreter services at this time

¹⁶ The Board understands that this issue will be briefed fully by the Department of Labor and Industries in connection with Mr. Mestrovac's claim that the Department should have provided him notices translated into Bosnian and refers the Court to the Department's brief and cases cited therein.

evidences discrimination against non-English speaking appellants.

Mr. Mestrovac is incorrect in both assertions.

In some places in his brief, Mr. Mestrovac gives the impression that all he was seeking here was for the Board to allow the interpreter whom it provided for the evidentiary hearing to also interpret off-the-record communications between Mr. Mestrovac and his attorney during the hearing. *See* Brief of Respondent/Cross-Appellant at 15. However, what Mr. Mestrovac actually is requesting and what the superior court broadly ordered is that the Board pay for an interpreter for all communications relating to his appeal. This includes discussions between him and his attorney (whether in the hearing room or at his attorney's office), between him and his doctors, and between him and his employer.

Specifically, the superior court order stated:

The Board is directed to hold a hearing to determine the amount of *all* interpreter expenses Mr. Mestrovac incurred because of the Department's and the Board's failure to provide interpreter services for Mr. Mestrovac *to communicate with the Department, his employer, his health care providers and his lawyer* regarding and about his claim *The Board shall pay those interpreter expenses incurred and interest thereon after Mr. Mestrovac filed his first notice of appeal to the Board.*

Order on Reconsideration, Conclusion No. 2.6 (emphasis added) (CP 644).¹⁷

As noted in the Board's opening brief, there is no feasible way for the Board to limit its potential expenses if it had to pay for such services. Furthermore, if the Board were required to provide or pay for interpreter services in such situations for Mr. Mestrovac, the Board may logically have to do the same for all non-English speaking appellants. As pointed out by the Department in its opening brief, there are thousands of languages in the world. The relief sought by Mr. Mestrovac, carried to its logical conclusion, would result in an unknown, but potentially very large expense.

Courts have recognized this problem. As noted by the California supreme court in *Guerrero v. Carleson*, 9 Cal.3d 808, 512 P.2d 833, 109 Cal. Rptr. 201 (1973):

As plaintiffs candidly concede, a decision in their favor could not properly be limited to the AFDC program and the Spanish language, but would also apply (1) to Spanish speaking recipients under any of the other half-dozen categorical assistance programs and (2) to any other language-Chinese or Japanese, Russian or Greek, Filipino or Samoan-in which a non-English speaking recipient of such assistance was known to be literate, regardless of how small that language group might be.

Guerrero, 512 P.2d at 837-38.

¹⁷ Copy attached as Appendix I to Board's Opening Brief.

As the Sixth Circuit Court of Appeals noted in *Frontera v. Sindell*,
522 F.2d 1215 (6th Cir. 1975):

If Civil Service examinations are required to be conducted in Spanish to satisfy a few persons who might want to take them, what about the numerous other nationality groups which inhabit metropolitan Cleveland?
...

In order to accommodate all nationality groups, the city might be compelled to establish a department of languages with a staff of linguists to translate the tests and supervise them.

Frontera, 522 F.2d at 1219.

Courts have recognized that, while providing expansive interpreter services might be a goal to work toward, it is not always feasible given other demands on public agency resources. As the court noted in *Moua v. City of Chico*, 324 F. Supp. 2d 1132 (E.D. Cal. 2004):

[W]hile it might be a laudable goal for cities to provide interpreters for all language groups in the provision of all services, the practical ability to meet that goal in a diverse nation in an era of limited public funds may be doubted. Nor ought the Equal Protection Clause dictate budget priorities by elevating language services over all other competing needs.

Moua, 324 F. Supp. 2d at 1138. See also *Vialez v. New York City Housing Auth.*, 783 F. Supp. 109, 120 (S.D.N.Y. 1991) (requiring housing authority to translate notices into multiple languages of tenants “would place an insurmountable and unjustified burden” on agency); *Alfonso v. Bd. Of*

Review, Dep't of Labor & Indus., 89 N.J. 41, 444 A.2d 1075, 1077 (1982) (“salutary considerations by no means translate into a requirement, under procedural due process concepts, that the State adopt a policy mandating the use of such [bilingual] documents”).

Contrary to Mr. Mestrovac’s suggestion, the extent to which a public agency provides additional interpreter services is indeed a policy choice, not a constitutional requirement, as the courts have recognized. As stated by the New Jersey Supreme Court in the *Alfonso* case:

The decision to provide translation, encompassing as it does the determination of when a translation should be provided, and to whom, and in what language, is best left to those branches of government that can better assess the changing needs and demands of both the non-English speaking population and the government agencies that provide the translation.

Alfonso, 444 A.2d at 1077. *See also Commonwealth v. Olivo*, 369 Mass. 62, 337 N.E.2d 904, 910 n. 6 (1975) (The determination of whether to give bilingual notices “should be done by legislative action. It is not appropriate for this court to enter so difficult and obscure an area without legislative mandate.”).

In other circumstances, our supreme court has recognized the same principle. In *In re Grove*, 127 Wn.2d 221, 236, 897 P.2d 1252 (1995), dealing with public funding for appeals by indigent litigants, the court stated: “It is the Legislature’s prerogative, as the taxing and appropriating

branch of government, to determine what actions other than those which are constitutionally mandated will be publicly funded.”

The determination of whether to provide additional interpreter services to non-English speaking appellants such as Mr. Mestrovac is a policy matter for the Board or the legislature.

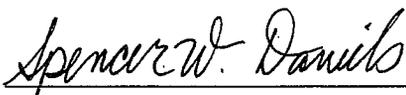
III. CONCLUSION

For the reasons set forth above and in the Board’s opening brief, the Court of Appeals should reverse the rulings of the superior court that imposed on the Board monetary relief and a duty to hold an evidentiary hearing.

RESPECTFULLY SUBMITTED this 2nd day of April, 2007.

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Bd. Of Industrial Insurance Appeals

NO. 58200-3-I

**COURT OF APPEALS FOR DIVISION I
OF THE STATE OF WASHINGTON**

ENVER MESTROVAC,

Respondent/Cross-Appellant,

v.

DEPARTMENT OF LABOR
AND INDUSTRIES OF THE
STATE OF WASHINGTON, and,
THE BOARD OF INDUSTRIAL
INSURANCE APPEALS,

Appellants/Cross-Respondents.

CERTIFICATE OF SERVICE
BY MAIL

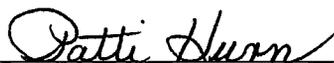
The undersigned, under penalty of perjury pursuant to the laws of the state of Washington, declares that on the date below, I mailed the Reply Brief of Appellant/Cross-Respondent Board of Industrial Insurance Appeals (BIIA), and this Certificate of Service by Mail to counsel for all parties on the record by depositing a postage prepaid envelope in the U.S.

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DATED this 2nd day of April, 2007.



PATTI HURN
Legal Assistant

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