

64323-1

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No. 64323-1-I

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

RONNIE G. MCELWANEY,

Appellant.

v.

THE DEPARTMENT OF LABOR AND INDUSTRIES,

and

KING COUNTY,

Respondents.

BRIEF OF RESPONDENT KING COUNTY

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A. PRELIMINARY STATEMENT

The Department of Labor and Industries, the agency charged with the administration of RCW Title 51, the Industrial Insurance Act, will be referred to as the "Department." The Board of Industrial Insurance Appeals, a separate, quasi-judicial agency which hears appeals from the Department's orders, will be referred to as the "Board." The Appellant, Ronnie G. McElwaney, will be referred to as "McElwaney." The Respondent, the self-insured employer, King County, will be referred to as "King County."

B. COUNTERSTATEMENT OF THE ISSUES

1. Did the Superior Court abuse its discretion in granting King County's motion in limine when McElwaney's evidence before the Superior Court was limited to the transcripts, depositions, and exhibits, contained in the Certified Appeal Board Record?
2. Did the Superior Court err in dismissing McElwaney's appeal filed on November 20, 2006, when McElwaney did not present a *prima facie* case for relief before the Board?
3. Did the Superior Court err in dismissing McElwaney's appeal filed on June 1, 2007, when McElwaney did not present a *prima facie* case for relief before the Board?

C. STATEMENT OF THE CASE

1. Nature of the Action.

This matter originated as an industrial insurance appeal before the Board under RCW Title 51, the Industrial Insurance Act. Upon

McElwaney's appeal from the Board, the King County Superior Court held a bench trial. At trial, the court granted King County's motion in limine and specifically identified the universe of evidence to be considered. The court ruled in favor of King County after oral argument and after considering the evidence. McElwaney currently appeals the Superior Court's September 15, 2008 rulings that dismissed his appeals dated November 20, 2006 and June 1, 2007, for failure to present a *prima facie* case for relief at the Board.

2. Combined Statement of Facts and Procedure.

The following facts are established in the record through the pleadings, correspondence and orders from the King County Superior Court, ("CP"), specifically CP 26-54, and the evidence contained in the Board's Certified Appeal Board Record ("CABR"). References to documents and pleadings in the CABR are to the machine-stamped numbers on the lower right side of the page; references to transcripts are by the date of the proceeding and the page number.

On November 20, 2006, McElwaney filed an appeal with the Board that applied to an October 30, 2006 Department order which affirmed an August 14, 2006 order. CABR 90-91. The August 14, 2006 order denied Claim Number SB-55208 on the basis that McElwaney's condition neither resulted from an industrial injury nor an occupational

disease. CABR 94. The Board granted the appeal and assigned Docket No. 06 27309. CABR 125. McElwaney filed a second appeal on June 1, 2007, that applied to a May 3, 2007 Department order which affirmed March 28, 2007 order. The March 28, 2007 order denied reopening of Claim Number SA-35109 as the condition caused by McElwaney's injury had not objectively worsened since final claim closure. The Board granted the second appeal and assigned Docket No. 07 16034. CABR 235. The Board then scheduled the matters for the Board's mediation process.

McElwaney participated in several of the Board's confidential mediation conferences between June and November 2007. Former attorney John Scannell represented McElwaney at the time. CABR 127 and 238. Mr. McElwaney sought to discharge Mr. Scannell on or about October 31, 2007. CABR 170. However, Mr. Scannell formally withdrew on November 13, 2007. CABR 185-186. When it became apparent McElwaney's appeals would not resolve by agreement, the Board forwarded the appeals on for hearing.

Industrial Appeals Judge Carol Molchior, the ("IAJ"), wrote McElwaney on November 7, 2007. By letter, she informed him of the following: as the appealing party, he had the burden of proving, by a preponderance of the evidence, that the Department's orders were incorrect; to prove his claim he needed a medical witness to testify he was

injured at work on or about March 24, 2006 and/or that he suffered an occupational disease in his employment at King County; in order to reopen his claim, he needed a medical witness to testify that his March 9, 2005 work-related injury or condition objectively worsened between December 30, 2005 and May 3, 2007; that he was responsible for arranging for the physician's testimony and paying any witness fees; and the IAJ encouraged McElwaney to speak to an attorney. CABR 178-180. While the matter was initially scheduled for an October 11, 2007 hearing regarding Docket No. 06 27309, it was ultimately rescheduled to allow Docket No. 07 16034 to procedurally catch up.

The IAJ attempted a preliminary scheduling conference regarding both dockets on November 17, 2007. However, the IAJ continued the matter to allow McElwaney to retain attorney Paul Bryan. CABR, Colloquy, 11/16/07. A second unsuccessful scheduling conference was attempted on December 21, 2007. CABR, Colloquy, 12/21/07. The IAJ conducted a preliminary scheduling conference on January 25, 2008, and attorney Paul Bryan appeared on McElwaney's behalf. CABR, Colloquy, 1/25/08. Mr. Bryan confirmed the following issues required resolution before the Board: whether McElwaney had sustained an occupational disease in his employment with King County, and whether his March 9, 2005 industrial injury was aggravated between the dates of December 30,

2005 and May, 2007. IAJ Molchior consolidated the two Board dockets for hearing. Mr. Bryan indicated he would present expert medical testimony by deposition and lay witness testimony at hearing. The IAJ then issued an interlocutory order establishing litigation schedule consistent with the scheduling conference. CABR 130-133. Neither party objected to the interlocutory order.

Mr. Bryan presented the testimony of McElwaney's sole medical witness, Daniel Nelson, M.D., by perpetuation deposition on June 12, 2008. CABR, Deposition of Daniel Nelson, MD. The Board received the official transcript on or about June 30, 2008. According to Dr. Nelson's testimony, on August 3, 2006, he initially saw McElwaney, who related upper extremity pain after reinjuring his neck on the job. CABR, Nelson Dep., pg. 8, lns. 2 – 5. Dr. Nelson was not provided any details about McElwaney's 2005 injury. CABR, Nelson Dep., pg. 22, lns. 12 – 21, and pg. 24, ln. 23 – pg. 25, ln. 18. He did not know the 2005 injury involved only the left foot, and not the neck or the left arm. Dr. Nelson testified about the treatment he provided McElwaney for what he diagnosed as chronic pain syndrome. CABR, Nelson Dep. at pg. 11, ln. 23 – pg. 12, ln. 1. That treatment included a series of left stellate ganglion block injections. CABR, Nelson Dep. at pg. 9, ln. 15 – pg. 10, ln. 8. On September 12, 2006, Dr. Nelson gave the diagnosis of complex regional

pain syndrome ("CRPS")/reflex sympathetic dystrophy or variant thereof. He noted that Mr. McElwaney did not have the objective manifestations of the condition. However his description of pain pointed to CRPS or a CRPS variant. CABR, Nelson Dep. at pg. 11, 23 – pg. 12, ln. 19.

In summary, Dr. Nelson did not provide an opinion, on a more probable than not basis, that McElwaney had any medical condition which arose naturally and proximately out of his employment with King County. Further, Dr. Nelson did not opine, on a more probable than not basis, that McElwaney's industrially related condition which resulted from his March 9, 2005 injury, objectively worsened between the dates of December 30, 2005 and May 3, 2007.

The Board held a hearing in this matter on August 11, 2008, presided over by IAJ Molchior. CABR, Hearing Transcript, 8/11/08. Attorney Paul Bryan appeared on behalf of McElwaney. Deputy Prosecuting Attorney Tylar Edwards appeared on behalf of King County. McElwaney appeared and testified. CABR, Hearing Transcript, 8/11/08, pgs. 4 – 44. Kathy McElwaney testified as well. CABR, Hearing Transcript, 8/11/08, pg. 44 – 47. McElwaney thereupon rested. CABR, Hearing Transcript, 8/11/08, pg. 47, lns. 9-10.

Following McElwaney's testimony, King County moved in writing to dismiss McElwaney's appeals for failure to present a *prima facie* case

for relief. CABR 205 and Hearing Transcript, 8/11/08, pg. 48. The IAJ permitted McElwaney's counsel, Mr. Bryan, the opportunity to file a written response. The IAJ indicated she intended to review the evidentiary record, including Dr. Nelson's testimony, and issue a written decision. CABR, Hearing Transcript, 8/11/08, pgs. 49 – 51. Mr. Bryan filed a response on September 4, 2008. CABR 215. On September 19, 2008, the IAJ issued a proposed decision and order which dismissed each of McElwaney's appeals for failure to establish a *prima facie* case. CABR 81-86. Mr. Bryan withdrew shortly thereafter on October 23, 2008. CABR 74.

McElwaney filed a pro se petition for review with the Board on October 31, 2008. CABR 3-73. He took no specific exception to the Board's findings of fact and conclusions of law. CABR 3-73. On November 20, 2008, the Board issued an order denying McElwaney's petition for review. CABR 1. This became the final order of the Board. Then, on December 12, 2008, McElwaney filed a Notice of Appeal with the King County Superior Court. He filed a subsequent petition for review on December 16, 2008. The trial date was initially set for July 20, 2009. However, the trial court continued the matter for its own reasons.

King County filed its trial brief on June 19, 2009. CP 28-36. It filed a motion in limine and memorandum of authorities on August 7,

2009. CP 39-43. On September 15, 2009, the motion in limine was heard prior to McElwaney's bench trial. Following oral argument, the Honorable Cheryl Carey granted King County's motion in limine in its entirety. CP 45-46. Following a bench trial, the court ruled in favor of King County and dismissed both of McElwaney's appeals for failure to present a *prima facie* case for the relief sought. CP 49-52.

McElwaney filed a "Motion for Reconsideration." On October 13, 2009, the court denied McElwaney's motion for reconsideration and specifically found the motion defective due to the following: failure to include calendar note for motion; failure to include proposed order; failure to timely note the motion without oral argument; failure to include a stamped envelope addressed to all parties who have appeared in the action; and failure to provide proof of notice to all parties who have appeared in the action. CP 53-54. McElwaney appealed these court rulings to this Court on October 19, 2009. CP 22-25.

D. SUMMARY OF ARGUMENT

McElwaney fails to present to the Court any substantive argument or authority in support of his assignments of error. Instead, he argues what he perceives to be the merits of his industrial insurance claim and recounts his resistance to the Board's and Superior Court's evidentiary rulings and appropriate dispositions of his appeals. Regardless, King

County presents the following argument and authority to demonstrate that the Superior Court's orders are indeed correct.

The Superior Court's ruling on King County's motion in limine was correct. The Superior Court did not abuse its discretion in granting the motion, and McElwaney failed to challenge it. Throughout this process, McElwaney peppered the Board of Industrial Insurance Appeals and, subsequently, the Superior Court, with a host of nonsensical pleadings, and irrelevant and unsupported statements, which warranted the Superior Court's grant of King County's motion in limine.

E. ARGUMENT

Though McElwaney did not appeal the motion in limine, King County wishes from the outset to establish the Superior Court's ruling on the motion was correct. Further, neither McElwaney's subsequent requests for reconsideration nor his appeals can change the fact that he did not present sufficient medical evidence before the Board to support his requests for additional industrial insurance benefits. By failing to present a medical opinion on a more probable than not basis, he did not present a *prima facie* case for relief. All of McElwaney's subsequent maneuvering must be considered in this context.

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1. Standard of Review of Motion in Limine.

The admissibility of evidence is within the sound discretion of the trial court and will be reversed only upon showing abuse of discretion. *Burnside v. Simpson Paper Co.*, 123 Wn.2d 93, 107, 864 P.2d 937 (1994). An abuse of discretion occurs when the decision is “manifestly unreasonable ... or based upon untenable grounds or reasons.” *Id.*, at 107. If a trial court makes an erroneous evidentiary ruling, the question becomes whether the error was prejudicial, for error without prejudice is not grounds for reversal. *Brown v. Spokane County Fire Protection Dist. No. 1*, 100 Wn. 2d 188, 196, 668 P.2d 571 (1983). “Error will not be considered prejudicial unless it affects, or presumptively affects, the outcome of the trial.” *Id.*, at 196. The appellant “bears the burden of proving the trial court abused its discretion.” *Childs v. Allen*, 125 Wash.App 50, 58, 105 P.3d 411 (2004).

2. The Superior Court’s Ruling on the Motion in Limine was Correct.

The trial court, when conducting a *de novo* trial of appeal from the Board, acts in an appellate capacity and is entitled to independently resolve questions relating to the admission of evidence. *Ruff v. Dep’t of Labor and Indus.*, 107 Wash.App. 289, 295, 28 P.3d 1 (2001). Before the trial court, McElwaney submitted a trial notebook and a petition for

review which were replete with irrelevant and unsupported statements. CP 1-12. The statements and miscellaneous pieces of information were not treated as evidence. The Board included those documents in the CABR because McElwaney submitted them with his pleadings. However, they were neither offered to the Board as evidence at hearing nor included in the Board's record. Specifically, they contained a combination of hearsay statements, and unsupported quasi-medical literature from McElwaney's own Internet research. The trial court, after reviewing King County's motion and the CABR, and hearing oral argument, granted the motion in limine and specified the universe of evidence under consideration. CP 45-46.

3. In an Industrial Insurance Case, the Burden of Proof Falls at all Times on the Claimant to Establish his Entitlement to Worker's Compensation Benefits.

RCW 51.52.110 and RCW 51.52.115 govern judicial review of matters arising under the Industrial Insurance Act. Appellate review is based solely on the evidence and testimony presented to the Board. Board decisions are *prima facie* correct and the burden of proof is on the party attacking them. RCW 51.52.115; *Ravsten v. Dep't of Labor & Indus.*, 108 Wn.2d 143, 146, 736 P.2d 265 (1987). Appellate review is limited to examining the record to see whether substantial evidence supports the Board's findings of fact which were affirmed by the superior court, and

whether the court's conclusions of law flow from the findings. *Ruse v. Dep't of Labor & Indus.*, 138 Wn.2d 1, 5, 977 P.2d 570 (1999) (citing *Young v. Dep't of Labor & Indus.*, 81 Wn.App. 123, 128, 913 P.2d 402 (1996)).

In any workers' compensation appeal where the issue is a worker's entitlement to benefits, the burden of proof on the issue of entitlement is at all times with the worker. *Olympia Brewing Co., v. Dep't of Labor & Indus.*, 34 Wn.2d 505, 208 P.2d 1181 (1941), *overruled on other grounds*, *Windust v. Dep't of Labor & Indus.*, 52 Wn.2d 33, 323 P.2d 241 (1958); *see also*, *Cyr v. Dep't. of Labor & Indus.*, 47 Wn.2d 92, 286 P.2d 1038 (1955).

McElwaney had the burden to present a *prima facie* case before the Board. He failed to produce sufficient admissible medical evidence in support of his appeals. Without sufficient testimony of a medical expert, he could not establish his entitlement to further benefits. *Jackson v. Dep't of Labor & Indus.*, 54 Wn.2d 643 (1959). For these reasons, the Board IAJ had no choice but to dismiss McElwaney's appeals, CABR 83-84, and the Superior Court was correct to dismiss the appeals as well. CP 49-52.

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4. The Evidence is Limited to That Contained in the Certified Appeal Board Record.

Appellate review of a Board order is *de novo* and is limited to the evidence contained in the CABR. RCW 51.52.115. *Rector v. Dep't of Labor & Indus.*, 61 Wash. App. 385, 386, 810 P.2d 1363 (1991). On appeal, the only issues that may be raised are those properly raised in the notice of appeal to the Board or the record of the proceedings before the Board. *Id.* McElwaney's appeal to Superior Court was limited to the issues and evidence before the Board. The record is limited to the transcripts, depositions, and exhibits offered during the Board hearings. Specifically, the evidence presented before the Board was limited to the testimony of Ronnie G. McElwaney, Kathy McElwaney, and Daniel Nelson, MD. CABR 82-83.

In McElwaney's case, the evidentiary record was completed when the Board's IAJ adjourned the hearing and McElwaney rested. Though Mr. Bryan and McElwaney were specifically told they needed medical evidence to prove McElwaney's entitlement to benefits, no continuance was requested or granted.

Wash. Admin. Code § 263-12-135 provides as follows:

The record in any contested case shall consist of the order of the department, the notice of appeal therefrom, responsive pleadings, if any, and notices of appearance, and any other written applications, motions, stipulations or

requests duly filed by any party. Such record shall also include all depositions, the transcript of testimony and other proceedings at the hearing, together with all exhibits offered. No part of the Department record or other document shall be made part of the record of the board unless offered in evidence.

RCW 51.52.140 provides that “the practice in civil cases shall apply” to industrial insurance appeals. Wash. Admin. Code § 263-12-115(4) provides that all rulings at the industrial insurance hearings shall be made in accordance with the rules of evidence applicable to Superior Courts. Wash. Admin. Code § 263-12-125 provides that the Superior Court rules shall apply where there is no conflict with the Board's rules. Wash. Admin. Code § 263-12-140 provides that after the record has been completed and the issues have been submitted to the industrial appeals judge, the judge shall issue a proposed decision and order. *See also* RCW 51.52.104.

The Board, a quasi-judicial body, appropriately did not consider any of McElwaney's extraneous materials as part of the record when issuing the proposed decision and order, and then deciding McElwaney's petition for review. *Floyd v. Dep't of Labor & Indus.*, 44 Wash.2d 560, 575, 269 P.2d 563 (1954). The Board, being a quasi-judicial body, must base its determination on the evidence. *Kaiser Alum. & Chem. Corp. v. Dep't of Labor & Indus.*, 45 Wash.2d 745, 748, 277 P.2d 742 (1954). The

Superior Court also appropriately did not consider these documents. Based on the evidence contained in the Board's record, the Superior Court correctly dismissed McElwaney's appeals.

5. McElwaney did not Meet his Burden of Proof Because he Failed to Present Sufficient Medical Testimony.

At a Board's hearing on a claimant's appeal from an order issued by the Department, the parties shall present all evidence on the issues raised, and the claimant has the burden of establishing a *prima facie* case for the relief sought. RCW 51.52.050. In an appeal to Superior Court, the appealing party must prove by a preponderance of the evidence that the Board was incorrect. RCW 51.52.115.

a. Dr. Nelson's Testimony Does Not Support Aggravation Between The Terminal Dates.

A worker is entitled to reopening of an industrial insurance claim only upon showing aggravation of the worker's condition. RCW 51.32.160. In order to establish aggravation, there must be medical evidence of a worsened condition based at least in part upon objective findings of a physician. There must be proof of greater disability on the last terminal date (here, May 3, 2007) than on the first terminal date (December, 30, 2005). *Dinnis v. Dep't of Labor & Indus.*, 67 Wn. App. 654, 656, 409 P.2d 477 (1965); *Quine v. Dep't of Labor & Indus.*, 14 Wn. App. 340, 540 P.2d 927 (1975). The evidence must also establish by

expert medical testimony that the aggravation was more probably than not proximately caused by the industrial injury. See WPI 4th 155.12.01; *White v. Dep't of Labor & Indus.*, 41 Wn.2d 276, 278, 248 P.2d 566 (1952); the burden rests on the worker to show that the aggravation of his condition is a result of the injury and not due to a condition or cause independent of the injury. *Nagel v. Dep't of Labor & Indus.*, 189 Wash. 631, 66 P.2d 318 (1937). Testimony of "possibility" of causal relationship is not sufficient. *Stampas v. Dep't of Labor & Indus.*, 38 Wn.2d 48, 227 P.2d 739 (1951); *Seattle-Tacoma Shipbuilding Co. v. Dep't of Labor & Indus.*, 26 Wn.2d 233, 173 P.2d 786 (1946); *Boyer v. Dep't of Labor & Indus.*, 160 Wash. 557, 295 P. 737 (1931).

Dr. Nelson did not opine, on a more probable than not basis that the Claimant's 2005 industrially related condition, the left foot, objectively worsened between the dates of December 30, 2005 and May 3, 2007. Whether there is an aggravation, and whether it is due to the industrial injury, must be established by medical testimony. *Lewis v. IIT Continental Baking Co.*, 93 Wn.2d 1, 603 P.2d 1262 (1979). Aggravation and the extent thereof must be established by comparative testimony, i.e. a comparison of the claimant's condition within the limits of the aggravation period, based at least in part, upon objective findings. See *Quine v. Dep't of Labor & Indus.*, 14 Wn. App. 340, 540 P.2d 927 (1975). Dr. Nelson

provided no comparative testimony and no opinion regarding an objective worsening of Mr. McElwaney's March 9, 2005 industrial injury between the terminal dates. Therefore, Dr. Nelson's opinion was insufficient to establish a *prima facie* case of aggravation.

b. Dr. Nelson's Gave No Causation Opinion for an Occupational Disease.

RCW 51.08.140 defines an occupational disease as follows:

“Occupational disease means such disease or infection as arises naturally and proximately out of employment under the ... provisions of this title.” In *Dennis v. Dep't of Labor & Indus.*, 109 Wn.2d 467, 745 P.2d 1295 (1987), the Supreme Court held that a worker must establish his or her occupational disease came about as a matter of course as a natural consequence or incident of distinctive conditions of his or her particular employment. The Court emphasized the conditions which caused the disease-based disability must be conditions of employment, “that is, conditions of the worker's particular occupation as opposed to conditions coincidentally occurring in his or her work place.” *Id.* To satisfy the “naturally” requirement, the worker must show that his or her particular work conditions more probably caused his or her disease or disease-based disability than conditions of everyday life or all employments in general; the disease must be a natural incident of that worker's particular

employment. *Id.* A causal relationship between a condition and an occupational exposure must be established by medical testimony. *Jackson v. Dep't of Labor & Indus.*, 54 Wn.2d 643, 343 P.2d 1033 (1959); *Krlevich v. Dep't of Labor & Indus.*, 23 Wn.2d 640, 161 P.2d 661 (1945).

McElwaney failed to make a *prima facie* case that he suffered an occupational disease. McElwaney failed to present competent medical testimony to show that his condition was probably, as opposed to possibly, caused by his employment at King County. Dr. Nelson provided no testimony which could be construed as a clearly articulated “but for” opinion on causation. *Simpson Logging v. Dep't of Labor & Indus.*, 32 Wn.2d 472, 202 P.2d 448 (1949). Instead, Dr. Nelson testified he did not know the Claimant’s job duties. CABR, Nelson Dep. at pg. 24, lns. 19 – 24, and pg. 30, lns. 3 – 16. He also indicated that his purpose was to treat Mr. McElwaney, not necessarily to provide an opinion on the cause of a job related injury. CABR, Nelson Dep. at pg. 25, ln. 18 – pg. 26, ln. 4.

6. The Board’s Findings are Verities on Appeal.

Unchallenged facts of an agency’s final decision are verities on appeal. *Rogers v. Dep't of Labor & Indus.*, 151 Wash. App. 174, 210 P.3d 355 (1999); *Roller v. Dep't of Labor & Indus.*, 128 Wash. App. 922, 927,

117 P.3d 385 (2005). McElwaney assigned no error to the Board's factual findings, specifically findings 3 and 4 which read as follows:

3. The claimant, Ronnie G. McElwaney, failed to present medical testimony demonstrating that as of March 2006, he suffered from an upper extremity condition which arose naturally and proximately from the distinctive conditions of his employment with King County.

4. The claimant, Ronnie G. McElwaney, failed to present medical testimony demonstrating that between December 30, 2005 and May 3, 2007, his condition proximately caused by his industrial injury of March 9, 2005, objectively worsened.

Accordingly, the Board's factual findings 3 and 4 are verities on appeal. *Dep't of Labor & Indus. v. Allen*, 100 Wash. App. 526, 530, 997 P.2d 977 (2000); CABR 84, Ins. 24 – 30. McElwaney is therefore precluded from challenging the Board's findings of fact.

F. STATUTORY ATTORNEY FEES

King County respectfully requests the Court to award statutory attorney fees pursuant to RAP 18.

G. CONCLUSION

McElwaney failed to present a *prima facie* case for relief at the Board. On his appeal to superior court, the superior court properly granted King County's motion in limine. The superior court then properly dismissed McElwaney's appeals. King County respectfully requests that this Court affirm the superior court's September 15, 2009 orders.

Respectfully submitted this 7th day of May, 2010.

DANIEL T. SATTERBERG
King County Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Tyler A. Edwards". The signature is written in a cursive style with a large, sweeping initial "T".

Tyler A. Edwards, WSBA #37565
Deputy Prosecuting Attorney
Attorneys for King County

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION 1

RONNIE G. MCELWANEY,)
) NO. 64323-1-I
 Appellant,)
 vs.)
) CERTIFICATE OF
 THE DEPARTMENT OF LABOR AND) SERVICE
 INDUSTRIES AND KING COUNTY,)
)
 Respondent.)

I, Nicolette Batra, hereby certify and declare under penalty of perjury under the laws of the state of Washington as follows:

1. I am a legal secretary employed by King County Prosecutor's Office, am over the age of 18, am not a party to this action and am competent to testify herein.
2. On May 7, 2010, I did cause to be delivered in the manner noted below a true copy of King County's Brief of Respondent and this Certificate of Service to:

///

Ronnie G. McElwaney
11418 71st Pl. South
Seattle, WA 98178

[ABC Legal Messenger]

John Wasberg, Sr. Counsel
Attorney General's Office
Labor and Industries Division
800 Fifth Ave, Ste 2000
Seattle, WA 98104-3188

[Hand Delivered]

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

SIGNED this 7 day of May, 2010, at Seattle, WA.

By: 
Nicolette Batra, Legal Secretary