

No. 72646-3-1

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

LORENZO THOMAS,
Appellant,

v.

DEPARTMENT OF LABOR AND INDUSTRIES,
Respondent.

BRIEF OF APPELLANT

JAMES R. WALSH
Attorney for Appellant
P.O. Box 2028
Lynnwood, WA 98036
TEL (425) 774-6883
FAX (425) 778-9247

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TABLE OF CONTENTS

I.	ASSIGNMENTS OF ERROR.....	1
	A. Assignments of Error.....	1
	B. Issues Pertaining to Assignments of Error.....	2
II.	STATEMENT OF THE CASE.....	2
III.	SUMMARY OF ARGUMENT.....	5
IV.	ARGUMENT.....	6
	A. <i>The Industrial Appeals Board and Superior Court erred by ignoring the due process notice requirement.</i>	10
	1. <i>Mr. Thomas has a vested interest in his disability payment.</i>	10
	2. <i>The IIA and due process require notice, a requirement not met in Mr. Thomas' case.</i>	11
	3. <i>Mr. Thomas does not seek added procedural safeguards; he asks that the Department respect safeguards currently in place.</i>	15
	B. <i>The Industrial Appeals Board and Superior Court erred in their application of res judicata.</i>	16
	1. <i>The cause of action of a reopening application is the worsening of the worker's condition while the cause of action of a closing order is their condition at the time of the closing order, one does not preclude the other.</i>	17
	2. <i>Fundament fairness requires that Mr. Thomas be advised of the closing date, he was not and res judicata is not appropriate.</i>	19
	C. <i>The Industrial Appeals Board and Superior Court misapplied <u>Singletary</u> to Mr. Thomas when rights and liabilities are fixed on the date of injury.</i>	20
V.	CONCLUSION.....	21

TABLE OF AUTHORITIES

Cases

<i>Ashenbrenner v. Dep't. of Labor and Indus.</i> , 62 Wash.2d 22, 380 P.2d 730 (1963).....	21
<i>Clark v. Pacificorp</i> , 18 Wash.2d 167, 882 P.2d 162 (1991).....	8
<i>Cockle v. Dep't of Labor & Indus.</i> , 142 Wash.2d 801, 15 P.3d 583 (2001).....	8
<i>Dennis v. Dep't of Labor & Indus.</i> , 109 Wash.2d 467, 745 P.2d 1295 (1987).....	8
<i>Energy Norwest v. Hartje</i> , 148 Wash. App. 454, 199 P.3d 1043 (2009).....	9, 17, 18
<i>Frost v. Dep't of Labor & Indus.</i> , 90 Wash. App. 627, 954 P.2d 1340 (1998).....	8
<i>Gold Star Resorts, Inc v. Futurewise</i> , 167 Wash.2d 723, 222 P.3d 791 (2009).....	16
<i>Kustura v. Dep't of Labor & Indus.</i> , 142 Wash. App. 655, 175 P.3d 1117 (2008).....	11
<i>Loveridge v. Fred Meyer</i> , 125 Wash.2d 759, 887 P.2d 898 (1995).....	16
<i>Lynn v. Dep't of Labor & Indus.</i> , 130 Wash. App. 829, 125 P.3d 202 (2005).....	16, 19
<i>Matthews v. Eldridge</i> , 424 U.S. 319, 96 S.Ct 893, 47 L.Ed.2d (1976).....	10, 15
<i>Ochoa v. Dep't of Labor & Indus.</i> , 100 Wash. App 879, 999 P.2d 633 (2000).....	12
<i>Olympic Forest Products, Inc. v. Chausse Corp.</i> , 82 Wash.2d 418, 511 P.2d 1002 (1973).....	11
<i>Overton v. Consol. Ins. Co.</i> , 145 Wash.2d 417, 28 P.3d 322 (2002).....	9

Shafer v. Dep't of Labor and Indus.,
166 Wash.2d 710, 213 P.3d 591 (2009).....7, 9, 12

Sherman v. State,
128 Wash.2d 164, 905 P.2d 355 (1995).....10, 15

Singletary v. Manor Healthcare Corp. and the Dep't of Labor & Indus.,
166 Wash. App. 774, P.3d 356 (2012).....*Passim*

Somsak v. Criton Technologies/Heath Tecna, Inc.,
113 Wash. App. 84, 52 P.3d 43 (2002).....19

Willoughby v. Dep't of Labor & Indus.,
147 Wash.2d 725, 57 P.3d 611 (2002).....10, 11

Statutes

RCW 51.12.010.....8

RCW 51.52.050.....6, 11, 15

Administrative Code

WAC 296-14-400.....18

I. ASSIGNMENT OF ERROR

A. *Assignments of Error*

1. The Board of Industrial Insurance Appeals erred in its Finding of Fact #5, "[t]he February 28, 2002 order reopening Mr. Thomas' claim effective May 11, 2001 is final and binding." CABR at 20. Fact #6, "Mr. Thomas' claim first closed before February 28, 2002." CABR at 20. Fact #7, "Mr. Thomas' Application to Reopen Claim which was received by the Department of Labor and Industries on November 21, 2012 was filed beyond seven years of first claim closure." CABR at 21. Similarly, the Superior Court erred in its finding of fact that "Mr. Thomas' application to reopen his claim which was received by the Department on November 21, 2012 was filed beyond seven years from the date of the first claim closure." CP at 26.

2. The Board of Industrial Insurance Appeals erred in its Conclusion of Law #3, "[t]he failure of Mr. Thomas to protest and/or appeal the February 28, 2002 reopening order rendered it final and binding on him. There are no facts or circumstances that justify relieve him from the res judicata effect of that order." CABR at 20. Conclusion #4, "[b]ecause Mr. Thomas did not appeal the Department's February 28, 2002 order, it is res judicata that his claim was first closed sometime before the February 29, 2002 reopening order." *Id.* Conclusion #5, the

Department of Labor and Industries is entitled to a decision as a matter of law contemplated by CR 56. *Id.* And Conclusion #6, “Mr. Thomas’ claim first closed sometime before February 28, 2002.” *Id.*

3. Similarly, the Superior Court erred in finding “the closing order became final and binding when Mr. Thomas failed to protest or appeal the February 28, 2002 order reopening his claims within 60 days of that order being issued.” CP at 26. And “because Mr. Thomas did not protest or appeal the Department's February 28, 2002 order, it is res judicata that his claim was closed some time before February 28, 2002.” *Id.* It also erred in granting the Department’s motion for summary judgment. CP at 27.

B. Issues Pertaining to Assignment of Error

1. Whether the Industrial Appeals Board and Superior Court erred by ignoring the due process notice requirement?

2. Whether the Industrial Appeals Board and Superior Court erred in their application of res judicata?

3. Whether the Industrial Appeals Board and Superior Court misapplied *Singletary* to Mr. Thomas when rights and liabilities are fixed on the date of injury?

II. STATEMENT OF THE CASE

On October 17, 1995, Lorenzo Thomas was injured while working as an employee for Brandrud Furniture. *See* Certified Appeal Board Record (hereinafter “CABR”) at 80. Immediately after his injury he filed an application for benefits with the Department of Labor and Industries (hereinafter the “Department”). CABR at 56-59. The claim was approved and on December 18, 1996, the Department closed Mr. Thomas’ claim and awarded him a Category 2 permanent lumbo-sacral impairment for \$3,128.94. CABR at 61. The closure notice with the check for \$3,128.94 was mailed to Mr. Thomas. The check was returned and mailed a second time to a different address. *See* CABR at 90.

Mr. Thomas was incarcerated with the Snohomish County Corrections Bureau between December 12, 1996 and February 25, 1997. Due to his incarceration it would have been impossible for Mr. Thomas to receive either notice of the closure or the benefits check. Due to limitations in the Department’s records, the Department cannot determine who, if, or when the benefits were cashed. *See* CABR at 57, 90. Mr. Thomas did not receive the benefits check or the notice of the closure. CABR at 80, 15-19.

On May 11, 2001, Mr. Thomas reapplied for benefits due to aggravated injury. CABR at 62. Based on the status of his case, he was

required to file a reopen application in order to receive benefits. The claim was reopened on February 28, 2002. CABR at 29, 63. Mr. Thomas was awarded a Category 4, permanent dorso-lumbar and/or lumbosacral impairment and on March 24, 2006 Mr. Thomas' claim was closed. CABR at 64-67.

In November 2012, Mr. Thomas filed an application to reopen his claim based on aggravation. CABR at 71. The Department opened the claim for medical treatment only, stating that Mr. Thomas was not entitled to time loss or permanent disability benefits but only entitled to medical treatment. CABR at 23. Using the uncommunicated 1996 notice as the closure date, the Department denied the application based on the "over seven" year rule of RCW 51.32.160. CABR at 23.

Mr. Thomas appealed the decision to limit his benefits to only medical treatment and deny time loss compensation benefits on the basis that his claim was first closed in March 2006 and the "seven rule" did not apply to his 2012 application. *See* CABR at 25. The Department moved for Summary Judgment on the basis that he did not appeal the Department's 2002 reopening of his claim. CABR at 45-54. Mr. Thomas responded that he had insufficient notice, that *res judicata* was inappropriate, and that the *Singletary* decision could not be applied retroactively. CABR at 74-79. The Industrial Appeals Judge granted the

motion for Summary Judgment on the basis that Mr. Thomas applied to reopen his claim, the Department reopened his claim in 2002, he did not protest the reopening, so the reopening order was final and binding. CABR at 16-21. By failing to protest the reopening order, “his claim was first closed sometime before the February 29, 2002 reopening order.” CABR at 21. In response to Mr. Thomas’ argument that he should not have been expected to appeal a favorable reopening, the Industrial Appeals Judge declared that the 2002 order was “by implication was unfavorable to him.” CABR at 19.

Mr. Thomas filed a petition for review with the three Board Members; the Board denied Mr. Thomas’ petition. CABR at 2-7. Mr. Thomas responded by filing an appeal in the Superior Court seeking reversal and/or remand. The Department again moved for Summary Judgment. Clerk’s Paper (hereinafter “CP”) at 3. Mr. Thomas again responded that he had insufficient notice, that *res judicata* was inappropriate, and that the *Singletary* decision could not be applied retroactively. CP at 12-18. Relying on *Singletary*, the Superior Court found it “immaterial whether the Department communicated the December 18, 1996 closing order to Mr. Thomas” and granted the motion. *See* CP at 26.

III. SUMMARY OF THE ARGUMENT

The Board of Industrial Insurance Appeals and the Superior Court erred when they determined that Mr. Thomas' case was closed for the first time "sometime" before 2002. As a result, the Department erroneously concluded that Mr. Thomas' 2012 reopening application was limited to medical benefits only pursuant to the "over seven" year rule. His case was not closed until 2006, which was the first time he received notice of the closure and declined to protest and he is eligible for time loss and permanent disability benefits in addition to medical treatment.

Mr. Thomas has a vested interest in his disability payment. That interest triggers the due process protection of notice, as required by the Fourteenth Amendment of the U.S. Constitution, Article I, §3 of the Constitution of the State of Washington, and RCW 51.52.050. Under the Industrial Insurance Act ("IIA"), notice is required to close a claim. But the Department's application of Division II's *Singletary* decision, a case that focused on jurisdiction and did not consider due process, creates a situation where notice is no longer required. We ask this Court to confirm the Department's obligations to follow due process under the law and not follow Division II in the application of *Singletary*.

Even if this Court follows the *Singletary* decision, Mr. Thomas' claim is not barred by res judicata. For res judicata to apply, there must be

identity in the causes of action. The cause of action of a closing order is the condition of the worker at the time of the closing order, while the cause of action of a reopening application is the worsening of the worker's condition. As established by the Court of Appeals, these are simply not identical causes of action. Moreover, res judicata does not apply when the claimant is not clearly advised of the issues. Mr. Thomas was never advised of the closing date that the Board and Superior Court found.

Finally, even if this Court follows *Singletary* and finds that res judicata would apply, it still cannot bar Mr. Thomas' claim because under the IIA, rights and liabilities are fixed on the date of injury. Mr. Thomas was injured in 1996 while *Singletary* was decided in 2012.

IV. ARGUMENT

Mr. Thomas seeks reversal of the Department's 2012 decision to reopen his claim for medical treatment benefits only. His case is not barred by the "over seven" year rule of RCW 51.32.160 because he first received notice of his claim closure in 2006. If an affected party does not receive a Department order, the order does not become final, the claim is not closed and is subject to direct protest or appeal. *Shafer v. Dep't of Labor & Indus.*, 166 Wash.2d 710, 213 P.3d 591 (2009).

Mr. Thomas brings his claim under the Industrial Insurance Act (“IIA”), RCW Title 51. The IIA is in place to provide an injured worker with sure and certain relief. *Frost v. Dep’t of Labor & Indus.*, 90 Wash. App. 627, 954 P.2d 1340 (1998). Under the IIA, workers’ compensation benefits are the exclusive remedy against an employer for a worker injured in the course of employment. *Clark v. Pacificorp*, 18 Wash.2d 167, 174, 882 P.2d 162 (1991). As observed by the Washington State Supreme Court,

[t]he 1971 Legislature codified a principle long recognized by our courts: ‘This Title shall 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.’

Cockle v. Dep’t of Labor & Indus., 142 Wash.2d 801, 811, 15 P.3d 583 (2001), *citing* RCW 51.12.010. *See also* *Dennis v. Dep’t of Labor & Indus.*, 109 Wash.2d 467, 470, 745 P.2d 1295 (1987) (citing cases both predating and postdating the 1971 codification of this principle).

Mr. Thomas is not asking this court for a liberal construction of the IIA, but to recognize basic due process. We ask this Court to not follow Division II’s decision in *Singletary v. Manor Healthcare Corp. and the Dep’t of Labor & Indus.*, 166 Wash. App. 774, P.3d 356 (2012), which did not consider notice requirements, and instead uphold the due process protections guaranteed by the IIA, the Fourteenth Amendment of the U.S.

Constitution, and Article I, § 3 of Constitution of the State of Washington. In the alternative, even if this Court finds notice is not necessary, res judicata is inappropriate to bar Mr. Thomas' claim because he was never clearly advised of his closing date and the 2012 *Singletary* decision does not apply to his case because the applicable law is fixed by the date of his 1996 injury.

The Court of Appeals reviews a grant of summary judgment de novo, engaging in the same inquiry as the trial court and viewing the facts and the reasonable inferences from those facts in the light most favorable to the nonmoving party. *Overton v. Consol. Ins. Co.*, 145 Wash.2d 417, 429, 28 P.3d 322 (2002). The Department's interpretation of the IIA is subject to review de novo. *Shafer v. Dep't of Labor and Indus.*, 166 Wash.2d 710, 213 P.3d 591 (2009) (citing RCW 34.05.570(3)(d) and RCW 51.52.115). Where the underlying challenge is to the Department's order, the appellate court reviews the Board's decision, not the Superior Court's ruling. *Energy Northwest v. Hartje*, 148 Wash. App. 454, 199 P.3d 1043 (2009). An agency's legal determinations are reviewed under an error of law standard, which permits the reviewing court to substitute its judgment for that of the agency. *Id.*

A. The Industrial Appeals Board and Superior Court erred by ignoring the due process notice requirement.

Due process requires “such procedural protections as the particular situation demands.” *Sherman v. State*, 128 Wash.2d 164, 905 P.2d 355 (1995) (quoting *Matthews v. Eldridge*, 424 U.S. 319, 96 S.Ct 893, 47 L.Ed.2d (1976)). In accordance with *Matthews v. Eldridge*, the following factors are weighed to determine what process is due in a particular situation: (1) the private interest at stake in the governmental action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any of additional or substitute procedural safeguards; and (3) the government interest, including the additional burdens that added procedural safeguards would entail. *Sherman v. State*, 128 Wash.2d 164.

1. Mr. Thomas has a vested interest in his disability payment.

For the first factor, a claimant alleging deprivation of due process must first establish a legitimate claim of entitlement to life, liberty or property at issue. *Willoughby v. Dep’t of Labor & Indus.*, 147 Wash.2d 725, 57 P.3d 611 (2002) (citing U.S. Const. Amend 14 and *Meyer v. Univ. of Wash.*, 105 Wash.2d 847, 853, 719 P.2d 98 (1986)). All workers who suffer an industrial injury covered by the IIA, Title 51 RCW, have a vested interest in disability payments upon determination of an

industrial injury. *Willoughby*, 147 Wash.2d at 733. After injuring his back while working, Mr. Thomas had a vested right to his disability award that the Department failed to insure he received. That right was affirmed when the Department accepted and allowed his industrial injury claim.

2. The IIA and Due Process require notice, a requirement not met in Mr. Thomas' case.

For the second factor, due process requires notice “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Kustura v. Dep’t of Labor & Indus.*, 142 Wash. App. 655, 175 P.3d 1117 (2008) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)). Over forty years ago, the Supreme Court of Washington noted that for “over a century it has been recognized that parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.” *Olympic Forest Products, Inc. v. Chausse Corp.*, 82 Wash.2d 418, 422, 511 P.2d 1002 (1973). Under the IIA, the notice is met when the Department follows RCW 51.52.050(1), which reads in part:

Whenever the department has made any order, decision, or award, it shall promptly serve the worker, beneficiary, employer, or other person affected thereby, with a copy thereof by mail, or if the worker, beneficiary, employer, or other person affected thereby chooses, the department may send correspondence and other legal notices by secure

electronic means except for orders communicating the closure of a claim.

According to the Washington State Supreme Court, the term “communicated” means that the order, decision, or award is received by the respective party. *Shafer v. Dep’t of Labor & Indus.*, 166 Wash.2d 710, 213 P.3d 591 (2009) (citing *Rodriguez v. Dep’t of Labor & Indus.*, 85 Wash.2d 949 (1975)). If an affected party does not receive a Department order, the order does not become final. *Shafer*, 166 Wash.2d 710 (citing *Ochoa v. Dep’t of Labor & Indus.*, 100 Wash. App. 879, 999 P.2d 633 (2000), *rev’d on other grounds*, 143 Wash.2d 422, 20 P.3d 939 (2001)). Without becoming final, a workers’ compensation claim is not closed for purposes of triggering the 60-day appeal period, and the claim is therefore subject to direct protest or appeal. *Shafer*, 166 Wash.2d 710.¹ The Department’s 1996 order was never communicated to Mr. Thomas; his case was not closed until he received a notice of the closure on March 24, 2006. Because his case was closed in 2006, the “over seven” rule does not bar his 2012 reopening application for full benefits.

But according to the Department and the Attorney General, the Division II decision *Singletary v. Manor Healthcare Corp. and the Dep’t of Labor & Indus.*, 166 Wash. App. 774, P.3d 356 (2012), created an

¹ While the Board’s decisions are not binding on the Court of Appeals, the Board’s own precedent establishes that absent a final order, a claim remains open. *In re Baxan*, BIIA Dckt. No. 92 5953 (March 8, 1994).

exception to the statutory and constitutional due process requirements, under the *Singletary* regime notice is not required. The facts of *Singletary* are similar to Mr. Thomas' case. Glenda Singletary injured her shoulder in 2001 while employed by Manor and she filed for and received worker's compensation benefits from the Department. *Singletary*, 116 Wash. App. at 778. In 2002 Manor issued an order ending 'time loss' compensation benefits and closed her claim without further award for time loss or permanent partial disability; Manor incorrectly addressed its closing order and Singletary never received it. *Id.* In 2003, Singletary filed to reopen her claim for aggravation and the Department reopened for treatment. *Id.* The Department closed the claim in 2005 with time loss compensation paid to a specific date but without a further award for time loss or permanent partial disability. *Id.* When she appealed to the Board, she argued the Board did not have jurisdiction to reach the merits of her claim because she never received Manor's 2002 closing order. *Id.* at 779. Division II disagreed, finding that the Department enjoys broad subject matter jurisdiction to adjudicate all claims for workers' compensation benefits. *Id.* at 783. The Court agreed that the 2002 application was not communicated and not final, and that while the Department's reopening the claim in 2003 was erroneous, because the Department had subject matter jurisdiction when it reopened the claim, that order became final and

binding on all parties when Singletary did not appeal it. *Id.* at 784. Because she did not appeal the Department's 2003 reopening, res judicata precluded her claim "sometime before that time," and it was immaterial whether Manor communicated its 2002 closing order the Singletary. *Id.*

Mr. Thomas finds himself in a similar situation. As the Industrial Appeals Board informed him in 2014, under *Singletary*, the order Mr. Thomas needed to contest was the Department's 2002 Notice of Decision that reopened his case. CABR at 21. That order contained a single material sentence: "This claim is reopened effective 05/11/2001 for authorized medical treatment and benefits as appropriate under the industrial insurance laws." CABR at 63. The order to reopen was exactly what Mr. Thomas requested. CABR at 62. It was entirely favorable to Mr. Thomas and gave zero indication that by not objecting, his case would retroactively be closed "sometime before the February 29, 2002 reopening order." CABR at 21.

Unlike the appellant in *Singletary*, Mr. Thomas raises the question of notice and due process.² He has an established liberty interest in his

² The *Singletary* court addressed two issues: (1) whether the employers failure to communicate the closing order deprived the Department of jurisdiction over all future related claims and (2) whether Singletary's interlocutory appeals to an IAJ were improperly denied because they were decided quickly and they do not contain findings of fact and conclusions of law. *Singletary*, 116 Wash. App. 781, 785. Nor was the due process requirement of notice mentioned in the briefing to Division II.

benefits and lost his ability to protect that interest when the Department failed to provide him with notice that his claim would be considered. But under the *Singletary* regime, notice is not necessary. It is “immaterial” whether closing orders are communicated. *Singletary*, 116 Wash. App. at 784. Favorable orders are “by implication” unfavorable. CABR at 19. We ask this Court to not follow Division II because the *Singletary* regime does not comply with the statutory notice requirements of RCW 51.52.050, nor does it comply with the Due Process requirements of the state and federal Constitution. A '*Singletary* situation' only arises when the Department has not met its notice obligations, and retroactively excuses the Department from satisfying its Constitutional and statutory due process requirements. The *Singletary* regime inappropriately creates a space where notice and due process are not required.

3. Mr. Thomas does not seek added procedural safeguards; he asks that the Department respect safeguards currently in place.

The third factor of the *Mathews* analysis in determining what process is due is (3) the government interest, including the additional burdens that added procedural safeguards would entail. *Sherman v. State*, 128 Wash.2d 164. The process that is due to injured workers with vested interests in disability payments is the process required by RCW 51.52.050(1), i.e. communicated notice. Mr. Thomas is not asking for

additional safeguards, he is asking that the Department meet its due process obligations as established under the IIA.

B. The Industrial Appeals Board and Superior Court erred in their application of res judicata.

The Board and the Superior Court reasoned that because Mr. Thomas did not protest the 2002 order reopening his claim, it is res judicata that his claim was closed sometime before the Department's order reopening it. Res judicata bars the relitigation of claims and issues that were litigated, or might have been litigated, in a prior action. *Loveridge v. Fred Meyer*, 125 Wash.2d 759, 887 P.2d 898 (1995). Res judicata, or claim preclusion, applies where a prior final judgment is identical to the challenged action in (1) identity as to parties, (2) identity as to subject matter, (3) a final judgment or order rendered by an entity with authority to do so, and (4) identity as to claim or cause of action. *Gold Star Resorts, Inc v. Futurewise*, 167 Wash.2d 723, 222 P.3d 791 (2009). The fourth element of res judicata is not satisfied in Mr. Thomas' case and res judicata does not apply. In addition to the four factors, "fundamental fairness requires that a claimant must be clearly advised of the issue" before the issue is barred by res judicata. *Lynn v. Dep't of Labor & Indus.*, 130 Wash. App. 829, 125 P.3d 202 (2005). Mr. Thomas was not advised of his closing date, so res judicata may not prevent his current claim.

1. The cause of action of a reopening application is the worsening of the worker's condition while the cause of action of a closing order is their condition at the time of the closing order, one does not preclude the other.

In *Energy Norwest v. Hartje*, the Court of Appeals specifically examined the appeal of a closing order and a reopening application, finding that they do not have identical causes of action, and res judicata did not apply. 148 Wash.App. 454, 464, 199 P.3d 1043 (2009). The Department closed Carolyn Hartje's claim in 1997. *Id.* at 459. She appealed the closing order, which resulted in a proposed decision and order by the Board on March 22, 1999. *Id.* at 459-60. Seeking to reopen the same claim, Ms. Hartje had also filed a reopening application on March 16, 1999 which eventually resulted in time-loss compensation. *Id.* The employer argued that res judicata precluded Ms. Hartje's claim for time-loss compensation because she had failed to appeal the March 22 order. *Id.* at 463. The Court found,

The evidence presented in the current claim concerned Ms. Hartje's injury and ability to work after her injury became aggravated, while the evidence presented in the March 22, 1999 Board decision concerned her injury and ability to work before the aggravation of her injury. Accordingly, claim preclusion does not apply.

Id. at 464. In the case of a reopening application, recovery is being sought under the circumstances of aggravation, that there has been objective worsening in the worker's condition as a proximate result of the industrial

injury. WAC 296-14-400. The focus in a reopening application is the time period from when the claim was closed to when the reopening application is filed. In the case of an appeal of a closing order, the underlying basis for recover is not aggravation but the claimant's condition at the time of closure. Reopening applications and closing orders have different causes of action, one does not preclude the other for res judicata purposes.

As applied to Mr. Thomas, the subject matter of his reopening application was the objective worsening of his condition that occurred after his initial injury and treatment. If Mr. Thomas' claim had actually been closed in 2002 by his failure to object to his own petition to reopen, the facts considered would involve evidence of his condition at the time of his claim. Instead, the facts considered in the reopening order were the facts regarding aggravation in injury.

Just as res judicata did not apply to Ms. Hartje, it does not apply to Mr. Thomas. Res judicata requires the satisfaction of all four elements. Here, identity of cause of action is not satisfied and the Board and the Superior Court erred when they reasoned Mr. Thomas' claims must have been closed at some point prior to the 2002 reopening order.

2. *Fundament fairness requires that Mr. Thomas be advised of the closing date, he was not and res judicata is not appropriate.*

“[F]undamental fairness requires that a claimant must be clearly advised of the issue" before the issue is barred by res judicata. *Lynn v. Dep't of Labor & Indus*, 130 Wash. App. 829, 125 P.3d 202 (2005)(citing *Somsak v. Criton Technologies/Heath Tecna, Inc.*, 113 Wash. App. 84, 52 P.3d 43 (2002). The res judicata issue in *Somsak* was the Department's method of calculating her time-loss benefits: Somsak received four orders regarding her time-loss benefits, did not appeal the first three, the Department closed her claim, and then issued a fourth order that explained for the first time the basis of the rate calculation. *Somsak*, 113 Wash. App. 84. When Somsak appealed the fourth order, the reviewing court held that the previous 3 orders did not bar he claim by res judicata. *Id.* at 92-93.

According to the Department, the Industrial Appeals Board, and Superior Court, res judicata bars Mr. Thomas from raising the issue that the first closing order he received was March 24, 2006 because he did not protest the 2002 reopening order, which under *Singletary* closed his case sometime before 2002. The “issue” at stake is the closing date. For res judicata to be invoked, fundamental fairness requires that Mr. Thomas be clearly advised of the closing date. But he simply was not. He did not receive the 1996 closing order. CABR at 80. As cited previously, the 2002

reopening order simply reads, “[t]his claim is reopened effective 05/11/2001 for authorized medical treatment and benefits as appropriate under the industrial insurance laws.” CABR at 63. The *Singletary* regime forgoes the advisement requirement. Mr. Thomas could not be advised on the closing date, as evidence when the Industrial Appeals Judge, with the benefit of complete hindsight, could only say that Mr. Thomas’ case was first closed, “sometime before the February 29, 2002 reopening order.” CABR at 21.

The first time Mr. Thomas was clearly advised of his closing date was on March 24, 2006. Unlike the 2002 reopening order, this order contains the phrase, in all caps, “THIS CLAIM IS CLOSED.” CABR at 65. Because the 2002 reopening order did not advise Mr. Thomas that his claim was closed, it cannot support res judicata claim preclusion.

C. The Industrial Appeals Board and Superior Court misapplied Singletary to Mr. Thomas when rights and liabilities are fixed on the date of injury.

Mr. Thomas was injured in 1996. CABR at 80. His claim was reopened in 2002. CABR at 29, 63. In 2012, Division II decided the case *Singletary v. Manor Healthcare Corp. and Dep’t of Labor & Industries*. 166 Wash. App. 774. “It has been firmly established in this state, by a consistent series of decisions of this court, that the rights of claimants under the Workmen's Compensation Act are controlled by the law in force

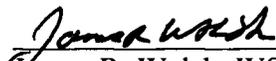
at the time of the person's injury, rather than by law which becomes effective subsequently.” *Ashenbrenner v. Dep’t of Labor and Indus.*, 62 Wash.2d 22, 380 P.2d 730 (1963) (citing *Thorpe v. Dep’t of Labor and Indus.*, 145 Wash 498, 261 P. 85 (1927)). Even if *Singletary* controlled in a situation like Mr. Thomas’ and he has no right to due process and incomplete protections from res judicata, *Singletary* is inappropriately applied to his case because it was not the controlling law at the time of his injury in 1996.

V. CONCLUSION

Mr. Thomas respectfully requests that this matter be remanded to the Superior Court with a finding that Mr. Thomas’ 2012 accepted application to reopen not be limited to medical treatment only due to the “over seven” year rule and that Mr. Thomas is entitled to any and all benefits permitted by the law and facts of this case.

Pursuant to RCW 51.52.130, should this Court reverse and/or remand this matter to the superior court, Mr. Thomas would respectfully request an award of attorney fees.

RESPECTFULLY SUBMITTED this ~~15~~¹⁶ day of April, 2015.


James R. Walsh, WSBA #11997
Attorney for Appellant
Dustin Drenguis, WSBA #48014

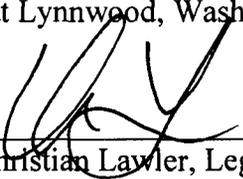
CERTIFICATE OF SERVICE

I HEARBY CERTIFY that on the 10th day of April, 2015, I provided the foregoing document to ABC Legal Messenger to serve each party or his attorney or authorized representative listed below.

ORIGINAL TO: Clerk of the Court
Court of Appeals, Division 1

COPY TO: Paul Crisalli, AAG
Office of the Attorney General
800 Fifth Ave Suite 2000
Seattle, WA 98104

SIGNED this 10th day of April, 2015, at Lynnwood, Washington.



Christian Lawler, Legal Assistant