

FILED
SUPREME COURT
STATE OF WASHINGTON
12/20/2022 3:53 PM
BY ERIN L. LENNON
CLERK

NO. 100888-1

SUPREME COURT OF THE STATE OF WASHINGTON

COLLEEN M. ALDRIDGE,

Petitioner,

v.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE
STATE OF WASHINGTON,

Respondent.

ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

Anastasia Sandstrom
Senior Counsel
WSBA No. 24163
Office Id. No. 91018
800 Fifth Ave., Ste. 2000
Seattle, WA 98104
(206) 464-6993

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I. INTRODUCTION

The Court of Appeals' decision to affirm the superior court presents no reason for review. Colleen Aldridge argues that the Board of Industrial Insurance Appeals violated the appearance of fairness doctrine because security was present for a hearing in a previous, unrelated case brought by her husband because he is Black. But, in this case, she offers no evidence that security was either requested or present at her hearing and thus presents no reason to review the Court of Appeals' determination that she failed to meet her burden of demonstrating a violation of the appearance of fairness here.

This Court should deny review.

II. ISSUES

1. Did the superior court abuse its discretion in deciding that there was no evidence of racial bias by the Board based on the presence of security in a prior, unrelated case brought by her husband, when no security was either requested or provided during any proceeding in Aldridge's appeal?
2. Are Mrs. Aldridge's complaints about a delay in receiving L&I's order properly before the Court when Aldridge presented no evidence of prejudice?

3. Did the superior court abuse its discretion when, consistent with RCW 51.52.115, it limited the record on review to the Board's certified record for this appeal when Aldridge didn't move to supplement the record?

III. STATEMENT OF THE CASE

A. L&I Rejected Coverage for a Surgery that Was Not Related to Aldridge's Claim, and the Board Affirmed

In January 2010, Aldridge filed an industrial insurance claim with L&I, and it allowed her claim for a cervical sprain/strain condition. *See* AR 554 (Ex 1), 559 (Ex 4). But two years before L&I ultimately allowed her claim, Aldridge had surgery on her cervical spine for a separate condition called degenerative disc disease. *See* AR 380; *see* AR 500. L&I denied payment for that surgery. Ms. Aldridge appealed the denial to the Board. AR 59, 64. At her hearing, Ms. Aldridge's only medical witness offered no opinion on whether the surgery was proper and necessary treatment under RCW 51.36.010 for a cervical sprain condition—Aldridge's allowed claim. AR 444.

Dr. Dennis Stumpp, testifying for L&I, conducted a record review of Aldridge's claim and concluded that the

degenerative disc disease and associated surgery was unrelated to the compensated cervical sprain. AR 500; *see also* AR 483. He explained that MRIs of Aldridge's spine in 2004 and 2007 showed deterioration of her C6-7 vertebrae. AR 497-98. He went on to explain that cervical sprains occur in ligaments and muscles, whereas cervical disc disease occurs in the discs between vertebrae. AR 496, 501. Aldridge's surgery occurred on her C6-7 disc. AR 500. Dr. Stumpp also testified that degenerative disc disease is not work related and is unassociated with specific professions or movements. AR 502.

The Board affirmed L&I's remittance advice denying payment for the surgery, AR 1, 19-23, and found "Ms. Aldridge suffers from degenerative disk disease in her cervical spine," but "distinctive conditions of [her] employment did not cause or aggravate this condition." AR 22. The Board also found that Aldridge's "June 10, 2010 surgery was not necessary and proper treatment for the allowed condition of cervical strain/sprain." AR 22.

B. No Security Was Present at the Board Hearing

Aldridge doesn't dispute that substantial evidence supports the Board's decision denying payment for her degenerative disc surgery, but continues to argue that because security has been provided in other cases involving her spouse, the Board was biased against her. Aldridge recites facts about a previous Court of Appeals case that led to security being called in one of her spouse's cases. Pet. 14-17; *Aldridge v. Dep't of Lab. & Indus.*, No. 49725-5-II, 2018 WL 2120572, at *4 (Wash. Ct. App. May 8, 2018) (unpublished). She argues that security was only present in that case because Mr. Aldridge was "Black and married to a Caucasian woman." Pet. 4.

The previous case that Aldridge refers to involved Mr. Aldridge's appeals under his own workers' compensation claim, and the Board judge ordered security in that appeal after L&I requested it and submitted briefing on the issue. *Aldridge*, 2018 WL 2120572, at *3. He had engaged in intimidating behavior, obtaining personal information about the Board

judge, who expressed some concern for her safety, and the assistant attorney general assigned to the case. *Id.*

In the present appeal (i.e., Aldridge’s appeal to L&I’s remittance advice about her treatment), Mr. Aldridge, who acted as Aldridge’s lay representative, requested, among other things, “a ruling on whether there will be armed security at [Aldridge’s] hearing.” AR 288. He made this request during the initial scheduling conference, and the hearings judge reserved ruling on the issue because no case-specific security concern had been identified. AR 288-89. As the hearings judge said in the report of proceedings:

Ms. Aldridge’s representative requested a ruling on whether there will be armed security at her hearing. He requested that his objection to such security and any ruling be preserved herein, so he can appeal it. Ruling is reserved. Requests for security (state patrol presence) are discretionary. But such requests are denied by the Board unless a case-specific security concern has been identified. To date, no case-specific security concern has been identified.

AR 288-89.

Neither L&I nor the Board made any subsequent request for security. AR 356-57. Mr. Aldridge raised the security issue again, however, during another scheduling conference in January 2018. AR 356-57. Both the hearing judge and counsel for L&I affirmed that no one had requested security:

JUDGE HANSEN: . . . Mr. Aldridge, anything else you'd like to put on the record at this time?

MR. ALDRIDGE: There's the issue of armed security. Will armed security be present . . . [colloquy about hearing location] . . . either in the actual courtroom or hearing room or on the facilities[?]

JUDGE HANSEN: I won't be requesting that. Ms. Dinan, do you know at this time whether you will be requesting it?

MS. DINAN: I have not requested it up to this point and I don't believe I'm requesting it at this time.

JUDGE HANSEN: Very good.

AR 355-57.

Mr. Aldridge asked for a hearing on the issue and for an opportunity to respond in writing, "[i]f anyone decides to

request the presence of armed security.” AR 357. The Board

judge granted that request:

MR. ALDRIDGE: If anyone decides to request the presence of armed security, I'd like an opportunity for a hearing, first off, with the person - other than, of course, the judge - requesting the presence of armed security. I'd like a pleading indicating that and an opportunity to respond to the pleading and if that's going to be the case then I'm going to request the presence of armed security to be in the courtroom sitting next to counsel as well.

JUDGE HANSEN: Ms. Dinan, if you at some point conclude that armed security, you want to request that, would you please do it in writing and--

MS. DINAN: Of course, Your Honor, I will do it in writing.

JUDGE HANSEN: --we'll see where it goes. Okay.

MS. DINAN: Any motion that I bring, I will do it in writing.

JUDGE HANSEN: Thank you. Mr. Aldridge, is there anything else?

MS. ALDRIDGE: No, sir.

AR 357-58. L&I did not file any motion for security, or otherwise request security for any proceeding in this appeal.

Mr. Aldridge again raised the issue of armed security at the May 15, 2018 hearing. He did so twice, first before he called Aldridge to testify:

MR. ALDRIDGE: All right. And then, there is the matter of armed security.

JUDGE HANSEN: I don't think -- it hasn't been requested.

MR. ALDRIDGE: Okay.

AR 369. He did so again after L&I objected to Aldridge's proposed Exhibit 6, a document titled "Party Info (SECURITY) - 1620604 ALDRIDGE, COLLEEN M.," and which she offered as proof that she could not get a fair hearing at the Board.¹ AR 395-98, 561 (Ex 6).

According to Mr. Aldridge, the security issue was before

¹ The Board rejected Exhibit 6. AR 561 (Ex 6).

the Board in Aldridge's appeal despite the fact that security had never been requested:

MS. DINAN: [After objecting to Exhibit 6 on ER 402 and ER 403 grounds] I will just represent for the record that the whole time I have been involved in this matter, which seems like quite a while, at this point, I have not requested security. I am not aware of the Board requesting security, and the only party who raises the issue of security is Mr. Aldridge. So, again, it is definitely not relevant to the issue for which we are here today.

JUDGE HANSEN: Go ahead, sir.

MR. ALDRIDGE: The issue of security is up front and foremost a matter before the Board, and has everything to do with this case. Because the department has, maybe, Ms. Dinan hasn't requested security, but I am aware that Mrs. Aldridge is aware that her department has insisted that the presence of armed security with the authority to kill be present when I appear. . . .

. . .

MS. DINAN: [After also objecting on ER 901 grounds] And I would note for the record, there is no armed security here today in this room.

JUDGE HANSEN: That is correct.

AR 395-98.

Aldridge rested her case during a July 2018 hearing. AR 480. Another hearing judge presided over that hearing, and the judge asked Mr. Aldridge whether the sole issue on appeal involved the remittance advice for Aldridge's surgery. AR 480-81. Mr. Aldridge said "Yes," but then raised the security issue yet again:

MR. ALDRIDGE: . . . The [security] issue has been raised through pleadings and motions, and at this particular point, I believe, Judge Hansen had determined that, because he had not requested the presence of armed security, and Ms. Dinan had not requested the presence of armed security, then it was no longer an issue.

AR 481-82.

Mr. Aldridge also clarified, however, that Aldridge had put on "whatever evidence" she wanted to about the security issue:

JUDGE PATRICK: Okay. And have you presented whatever evidence you wanted to present on that, I am asking, because you just said you rested.

MR. ALDRIDGE: I have, yes.

AR 482. The only evidence Aldridge submitted on that issue was her proposed Exhibit 6, and the Board rejected that exhibit. AR 561 (Ex 6).

C. The Superior Court Affirmed the Board

Aldridge appealed the Board’s decision to affirm L&I’s order to superior court. CP 8. The Board certified the record on appeal, CP 1-4, and Aldridge sent the Board a letter asking it to supplement the record with documents from various other Board appeals. *See* CP 7. The Board responded that it could not grant her request “without an order from Thurston County Superior Court.” CP 7. The Board explained, “the statute and regulation limit the documents that the Board can certify to the superior court.” CP 7.²

Aldridge never sought such an order from the superior court, however. RP 11. Indeed, when the superior court asked Aldridge if she “ever sought to add to the record by getting an

² *See, e.g.*, RCW 51.52.110, .115; WAC 263-12-135, -170.

order from this court or getting the court’s permission to [add to the record],” she told the superior court, “No. I didn’t have to,” and that the Board “should have provided it.” RP 11. Aldridge also did not ask the superior court to add documents to the record, or to take any testimony under the procedural irregularity provision in RCW 51.52.115. RP 3-28.

The superior court affirmed the Board, RP 24-25, finding “Ms. Aldridge suffers from degenerative disk disease in her cervical spine,” but “distinctive conditions of [her] employment did not cause or aggravate this condition.” CP 50 (FF 1.2.3). The court also found that her “June 10, 2010 surgery was not necessary and proper treatment for the allowed condition of cervical strain/sprain.” CP 50 (FF 1.2.5). The court thus concluded that the “remittance advice dated August 4, 2012, is correct, and is affirmed.” CP 51 (CL 2.2.3).

Aldridge appealed. CP 53-54. The Court of Appeals affirmed in an unpublished decision. *Aldridge v. Dep’t of Lab. & Indus.*, No. 55489-5-II, slip op. at 11 (Wash. Ct. App. Mar.

29, 2022). The Court of Appeals found no appearance of fairness violation because no security was requested or provided at Aldridge's hearing. *Id.* at 7. The Court of Appeals found that there was no violation regarding the record at the superior court because she did not move to have the documents admitted. *Id.* at 9. It rejected Aldridge's arguments challenging an alleged delay in L&I issuing the remittance advice because she did not provide evidence that any delay affected the medical evidence in the case. *Id.* It also held that substantial evidence supported the trial court's decision. *Aldridge*, slip op. at 10-11.

IV. ARGUMENT

A. **This Case Does Not Present an Issue of Substantial Public Interest Regarding Bias Related to Security Because No Security Was Present at Aldridge's Hearing**

Aldridge's arguments relating to a violation of the appearance of fairness doctrine relate entirely to a prior, unrelated case brought by her husband and thus do not present grounds for review in this case. Aldridge recites facts about a previous Court of Appeals case that led to security being called

for a case of her spouse. Pet. 14-17. She asks for review under RAP 13.4(b)(4), claiming a “*practice* of requiring the presence of armed police when Mr. Aldridge appears in person.” Pet. 19, 21. But as extensively detailed in the facts and in the Court of Appeals decision, her argument about security has no merit because there was no security requested or present at her hearing. And the argument about a connection with the Public Records Act is puzzling and immaterial given this case does not in any way involve a Public Records Act decision.

B. Alleged Delay in Receiving an Order Does Not Warrant Review

Aldridge’s argument about a delay in receiving L&I’s remittance advice similarly fails to warrant review. Pet. 23-24 (citing RAP 13(b)(2), (3), (4)). Aldridge failed in this argument before the Court of Appeals because she did not present any evidence that she was prejudiced by the delay. *Aldridge*, slip op. at 9. She presented no testimony that she lost evidence, and has made no showing that her doctor’s memory was impaired. AR 416-56. Parties must make a record on their claimed errors. *See*

State v. McFarland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995).

Aldridge shows no prejudice stemming from this alleged error.

Pierce v. Bill & Melinda Gates Found., 15 Wn. App. 2d 419, 424, 445-46, 475 P.3d 1011 (2020) (must show prejudice or error is harmless).

C. Aldridge’s Unsupported Allegations About Records Sent to the Superior Court Concerning Communications About Her Spouse Does Not Warrant Review

Aldridge’s unsupported assertion about the record with respect to whether the Board flagged any file regarding her spouse as hostile similarly does not warrant review here. Pet. 24-25. She cites nothing in the record for this proposition, but argues that the Board did not send all the records to the superior court about this issue. Pet. 25-26. These arguments fail to warrant review.

First, this argument once again relates to the alleged reasons that security was present in a prior, unrelated case

involving her husband. *See* Pet. 24-25. Because there was no security in Aldridge’s case, this argument is not relevant here.

Second, Aldridge’s arguments regarding alleged evidence lacking before the superior court likewise does not present a reason for review. In workers’ compensation appeals, “the [superior] court shall not receive evidence or testimony other than, or in addition to, that offered before the board or included in the record filed by the board in the superior court as provided in RCW 51.52.110.” RCW 51.52.115. Aldridge claims that the Board did not send the complete record to the superior court. Pet. 24-26. But she never asked the superior court for permission to supplement the record with these documents, as RCW 51.52.115 explicitly requires, and thus waived that issue. RP 11-12; CP 7; *see Gjerde v. Fritzsche*, 55 Wn. App. 387, 394, 777 P.2d 1072 (1989) (recognizing “silence in the face of actual

knowledge of an inconsistency at a time it could be cured
waives the issue for appeal”).

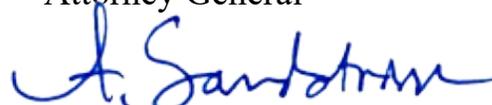
V. CONCLUSION

This Court should deny review.

This document contains 2,725 words, excluding the parts
of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 20th day of December,
2022.

ROBERT W. FERGUSON
Attorney General



ANASTASIA SANDSTROM
Senior Counsel
WSBA No. 24163
800 Fifth Ave., Ste. 2000
Seattle, WA 98104
(206) 464-6993

No. 100888-1

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The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served the Department of Labor & Industries' Answer to Petition for Review and this Certificate of Service in the below described manner:

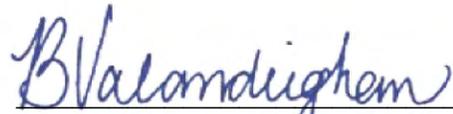
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Colleen M. Aldridge
awm9237@outlook.com

DATED this 20th day of December, 2022.


BRITTNEY VALANDINGHAM
Legal Assistant

WASHINGTON ST. ATTORNEY GENERAL - LABOR & INDUSTRIES DIVISION - SEATTLE

December 20, 2022 - 3:53 PM

Transmittal Information

Filed with Court: Supreme Court
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Appellate Court Case Title: Colleen M. Aldridge v. WA State Department of Labor and Industries
Superior Court Case Number: 18-2-06085-8

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