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**SUPREME COURT OF THE STATE OF WASHINGTON**

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CHRISTOPHER FIEGENBAUM,

Petitioner,

v.

WASHINGTON STATE DEPARTMENT OF LABOR AND  
INDUSTRIES,

Respondent.

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**DEPARTMENT OF LABOR AND INDUSTRIES  
ANSWER TO PETITION FOR REVIEW**

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## **I. INTRODUCTION**

Courts do not reweigh credibility on appeal, and this case presents no basis to depart from this rule. Christopher Fiegenbaum sought crime victims' compensation benefits from the Department of Labor and Industries following a physical altercation. But he provoked the very event that prompted his application, and L&I found him ineligible for benefits.

In his appeal to the Board of Industrial Insurance Appeals, Fiegenbaum called several witnesses who testified that he incited the altercation. In later appeals, and in his petition for review to this Court, Fiegenbaum has disputed this testimony and seeks review before this Court with additional evidence "to prove that [his] side of the story makes more sense." Pet. 3.

Ultimately, his argument is that his evidence about the altercation is more credible. But seeking to reweigh the evidence of the fact-finder Board is not a basis for review.

This Court should decline review.

## **II. ISSUES PRESENTED**

1. Does substantial evidence support that Fiegenbaum provoked the altercation, such that he is not entitled to crime victims' compensation benefits?
2. Under the Administrative Procedure Act (APA), can Fiegenbaum receive relief in the form of reweighed credibility findings and adding evidence to the administrative record?

## **III. STATEMENT OF THE CASE**

### **A. Statutory Background**

L&I administers the Crime Victims' Compensation Program, which is meant to provide "benefits to innocent victims of criminal acts." RCW 7.68.030(1). A qualifying criminal act is an act that is punishable as either a felony or a gross misdemeanor, and "which can be verified by the department or which is reasonably credible." WAC 296-30-010; RCW 7.68.020(6). L&I considers a variety of evidence when verifying a claimed criminal act. WAC 296-30-010.

A victim under the Crime Victims' Compensation Act includes someone who has suffered bodily injury "as a proximate result of a criminal act of another person." RCW 7.68.020(16). Such a person will generally be eligible for benefits, but the Act places certain restrictions in circumstances that may lack an *innocent* victim. *See* RCW 7.68.030(1), .060(2). Among the ineligible individuals is one whose "injury for which benefits are sought" resulted from their own "consent, provocation, or incitement." RCW 7.68.060(2)(a).

If a claimant disputes a decision by L&I, they may appeal to the Board of Industrial Insurance Appeals, which will conduct an evidentiary hearing. RCW 7.68.110; RCW 51.52.102. If a party appeals from the Board's decision, the APA applies to any further proceedings. RCW 7.68.110.

**B. L&I Rejected Fiegenbaum's Crime Victims' Compensation Claim**

Christopher Fiegenbaum was injured in a physical altercation at the Everett Mall in March 2021. CP 475. Before the altercation, Fiegenbaum, who was 35 years old at the time,

had approached 16-year-old Margaret Vilchis-Ashby, commenting on her appearance, asking for her phone number, and physically touching her before she escaped to the restroom. CP 297, 432. Feeling unsafe but unable to find mall security, Vilchis-Ashby called her boyfriend, Sajaad Alghazali, who was also a teenager at the time and on his way to meet her. CP 378–79, 384–85, 435; *see also* CP 439. As the couple walked through the mall on the way to their car, they witnessed Fiegenbaum approaching a second minor, 15-year-old Daniela Pineda. CP 331–32, 432–33, 439.

Pineda had been working at a mall kiosk when Fiegenbaum approached her, asking for her phone number and when she got off work. CP 331–33, 345. Ignoring her attempts to rebuff him, Fiegenbaum continued to prod her with questions while moving closer into her physical space. CP 333. Pineda felt scared and harassed, insisting that she had to go and attempting to end their conversation. *See* CP 333, 346, 359,



373. Fiegenbaum persisted with both his verbal and physical intrusion. *See* CP 347.

Having come upon a repeat of a similar scene to what Vilchis-Ashby escaped, Vilchis-Ashby and Alghazali decided to intervene. CP 439. Concerned for Pineda, the two called out to ask her age as they approached. CP 333, 348, 384–85, 446. Pineda responded that she was 15 years old, but this did not end Fiegenbaum’s unwanted advance, who was by that time within one foot of her personal space. *See* CP 333–34, 352, 416–17. Alghazali inserted himself protectively in front of Pineda and told Fiegenbaum to leave. *See* CP 412, 416–17.

When Fiegenbaum did not back off, Alghazali pushed him away from Pineda. CP 333–34, 349. Fiegenbaum responded to this push by punching Alghazali. CP 350, 433; *see also* CP 502. Fiegenbaum’s punch led to a physical altercation in which Fiegenbaum also pushed and punched Vilchis-Ashby. CP 350–51, 365, 433. A bystander contacted the Everett Police Department, and Fiegenbaum was escorted from the mall. CP

263–64, 502–03. The police spoke to witnesses and investigated the incident. *See* CP 371–72, 487, 205–03, 511, 538–39. No charges were ever brought against Fiegenbaum, Alghazali, or Vilchis-Ashby. CP 539.

Fiegenbaum filed a claim for crime victims’ compensation benefits with L&I. CP 245, 537. L&I investigated Fiegenbaum’s claim, including contacting the Everett Police Department and reviewing the police report from the incident. CP 538. Based on this investigation and evidence from law enforcement, L&I found no evidence that a felony or gross misdemeanor crime had occurred. CP 538–39. L&I issued an order denying Fiegenbaum’s claim for benefits in July 2021. CP 246, 539.

**C. The Board, Superior Court, and Court of Appeals Upheld L&I’s Order**

Fiegenbaum appealed L&I’s order to the Board, where he had the opportunity to build and present his case with help from his father, Timothy Fiegenbaum. *See, e.g.*, CP 336, 369, 388. Over two days of hearing, Fiegenbaum presented the testimony

of seven witnesses: someone who saw the altercation, two medical providers, Pineda, Alghazali, Vilchis-Ashby, and himself. CP 30, 257, 324. In his testimony, Fiegenbaum denied that he was given a warning before the physical altercation and insisted that he had only defended himself after Alghazali threw what Fiegenbaum termed a punch. *See* CP 491–93.

The industrial appeals judge issued a proposed decision and order, which affirmed L&I’s denial of benefits, finding that Fiegenbaum had provoked or incited the event in which he was injured. CP 63–73. The decision included findings about the weight given to conflicting testimony and the credibility of the witnesses. CP 71–72. Specifically, the industrial appeals judge determined that “the testimony provided by Ms. Pineda and Ms. Vilchis-Ashby made Mr. Fiegenbaum’s testimony much less persuasive. In particular, *I do not find Mr. Fiegenbaum’s recollection and testimony about the circumstances of the altercation persuasive* in light of the testimony provided by Ms. Pineda.” CP 71 (emphasis added). The Board denied a petition

for review, and the proposed decision and order became the decision and order of the Board. CP 35.

Fiegenbaum appealed this decision to superior court, CP 1–4, where the matter was heard under the APA’s substantial evidence procedures, RCW 34.05.570(3)(e), RCW 7.68.110. Through his counsel, Fiegenbaum submitted a trial brief and a reply to L&I’s brief. CP 610–20, 632–39. A hearing was held in which both parties offered oral argument, after which the superior court affirmed the Board’s ruling, concluding that substantial evidence supported the Board’s finding that Fiegenbaum provoked the altercation. CP 640, 645–47.

Fiegenbaum, now pro se, moved for reconsideration, requesting oral argument and an opportunity to reenact the events of March 13, 2021. CP 652–54, 722–49. He submitted 39 exhibits, many of which he acknowledged were being offered for the first time on appeal. *See* CP 652–54, 722–49. The superior court denied the motion. CP 803–04.

Fiegenbaum appealed the superior court decision to the Court of Appeals, which affirmed the superior court. *Fiegenbaum v. Dep't of Lab. & Indus.*, No. 85925-1-I, slip. op. at 1 (Wash. Ct. App. Apr. 22, 2024) (unpublished). The Court of Appeals specifically noted that, despite Fiegenbaum disputing the testimony of Pineda, Alghazali, and Vilchis-Ashby, it does not reweigh evidence as a reviewing court. *Id.* at 6. As in his superior court appeal, Fiegenbaum sought to introduce additional evidence before the Court of Appeals. *Id.* at 6–7. Having failed to identify a qualifying reason to supplement the record, the Court of Appeals ruled that the superior court did not err in declining to admit Fiegenbaum's new evidence, and that it could not do so itself for the same reasons. *Id.* at 7.

Fiegenbaum seeks review.

#### **IV. ARGUMENT**

No review is warranted in this case. Fiegenbaum asks this Court to reweigh the credibility of the witnesses he called

to testify, and to supplement the administrative record to consider new evidence. Yet this Court is governed by the bases in RAP 13.4(b). Fiegenbaum identifies no conflict, constitutionally significant question of law, or issue of substantial public interest; rather, he once again reargues his case. But the Court of Appeals' decision correctly declined to reweigh the credibility of the witnesses and add evidence to the administrative record.

**A. The Court of Appeals Followed the Washington Courts' Refusal to Reweigh Credibility on Appeal**

The Board found that "Fiegenbaum provoked or incited the physical altercation that resulted in his injuries." CP 29. Substantial evidence supports this finding.

Asking for relief this Court cannot offer, Fiegenbaum's primary request is that this Court reweigh the credibility of the witnesses who testified at the evidentiary hearing. Pet. 1–5. Fiegenbaum references "contradictory statements," "false allegations," and "enough video and audio evidence to prove that [his] side of the story makes more sense." Pet. 2–5. But a

question of whose statements, allegations, and side of the story is believable is a question of credibility. The answer belongs solely to the trier of fact.

At the evidentiary hearing, Fiegenbaum called the very witnesses he seeks to discredit. These witnesses—Alghazali, Vilchis-Ashby, and Pineda—concurred that it was Fiegenbaum’s own actions that prompted Alghazali to come to Pineda’s defense, and Fiegenbaum’s punch that prompted the physical altercation. In reviewing this evidence, the industrial appeals judge found that Fiegenbaum’s testimony and his recollection of the circumstances of the altercation were not persuasive compared with the testimony of Pineda and Vilchis-Ashby. CP 71.

Fiegenbaum offers no basis to review the Court of Appeals’ decision, which declined to disturb the credibility determination, and none exists. Substantial evidence supports the Board’s provocation finding and this Court should decline Fiegenbaum’s invitation to review what is the “exclusive

province of the trier of fact.” *Hahn v. Dep’t of Ret. Sys.*, 137 Wn. App. 933, 942, 155 P.3d 177 (2007) (citing *Affordable Cabs, Inc. v. Emp. Sec. Dep’t*, 124 Wn. App. 361, 367, 101 P.3d 440 (2004)).

**B. The Court of Appeals Followed the Statutory Restriction on New Evidence**

Continuing his efforts to modify the administrative record, Fiegenbaum seeks to introduce new evidence that he did not offer to the Board, but with no reason or authority for this Court to accept review on this basis. And supplementing an administrative record at this stage would violate the APA, which confines judicial review to the agency record created before the Board. RCW 34.05.558.

Reviewing courts may receive new evidence beyond that contained in the agency record only where “it relates to the validity of the agency action at the time it was taken and is needed to decide” disputes about the lawfulness of the decision-making process. RCW 34.05.562(1). Yet both the superior court and Court of Appeals denied Fiegenbaum’s supplemental



evidence because he “fail[ed] to show the evidence meets any of the permissible reasons for additional evidence.”

*Fiegenbaum*, slip. op. at 7; CP 803–04. Fiegenbaum’s petition is no different.

This Court should decline Fiegenbaum’s invitation to revise the agency record on appeal.

**C. Fiegenbaum’s Remaining Argument Presents No Basis for Review**

Fiegenbaum raises a new issue in this appeal, contrary to RAP 2.5(a), which also forms no basis for review. In particular, Fiegenbaum’s petition includes a list of medical conditions, and he contends that “one of the things that . . . negatively affected” his initial appeal was that he “didn’t request accommodation for [his] disability.” Pet. 4.

Besides being a new argument, the Board record shows that any difficulty was not attributed to a disability. And Fiegenbaum received substantial support even without requesting any disability accommodation, including a list of potential questions he would be asked, the ability to call

multiple witnesses over several days, and a copy of the transcript from the first hearing day to help him prepare for the second. CP 130–32, 158, 177, 179, 241–42.

There is no basis for review on this issue.

## **V. CONCLUSION**

This Court should deny review.

This document contains 2,091 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 24th day of July, 2024.

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**CERTIFICATE OF  
SERVICE**

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

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Supreme Court of Washington

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DATED this 24<sup>th</sup> day of July, 2024.



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