NO. 103590-0

SUPREME COURT OF THE STATE OF WASHINGTON

EDWARD HARTNETT,

Petitioner,

v.

WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES,

Respondent.

DEPARTMENT OF LABOR AND INDUSTRIES ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This case involves the unremarkable situation of a party failing to act promptly to argue for CR 60 relief. After notification in February 2017, January 2019, and January 2020 that his workers' compensation claim would be treated as an "over seven" claim, Edward Hartnett waited until 2023 to seek CR 60 relief from a judgment memorializing a settlement agreement that caused his claim to become "over seven." The trial court did not abuse its discretion to decline CR 60 relief given the gap in time, and nothing warrants review of the Court of Appeals' decision affirming the trial court.

II. ISSUE PRESENTED

Did the superior court abuse its discretion when it denied Hartnett's 2023 motion to vacate the 2016 superior court order when Hartnett knew in 2017 that a consequence to his settlement was that he could only receive "over seven" benefits?

III. STATEMENT OF THE CASE

A. Hartnett's Claim Was an "Over Seven" Claim

In 2001, Hartnett suffered an industrial injury while working as a journeyman carpenter. CP 204. L&I allowed Hartnett's workers' compensation claim and provided treatment until it first closed his claim in May 2009. CP 139, 141–43, 204, 207.

After L&I closes a worker's claim, RCW 51.32.160 allows the worker to apply to reopen the claim. If more than seven years have passed since the first closing order on a worker's claim became final, the worker is normally only eligible for medical treatment if the claim is reopened. *See* RCW 51.32.160(1)(a).

Such claims are known as "over seven" claims. But L&I's Director may, on a purely discretionary basis, find the worker eligible for disability benefits (e.g., time loss) despite the claim's status as an "over seven" claim. *Dep't of Lab. &*

Indus. v. Higgins, 21 Wn. App. 2d 268, 270–71, 275, 505 P.3d 579 (2022).

In late 2011, Hartnett successfully applied to have his claim reopened and received three years of treatment. CP 146–47. At that time, his claim was not an "over seven" claim and he could claim disability benefits. L&I issued orders denying time loss benefits from March 17, 2014, through July 14, 2014, and it provided for a mental health disability award. CP 147–48. Hartnett appealed to the Board, which affirmed. CP 69–76, 148.

Hartnett appealed to superior court, where counsel represented him. CP 78, 224–25. Hartnett and L&I agreed to settle the case by keeping the claim closed in exchange for time loss benefits and an increased mental health disability award. CP 224–25. In October 2016, the superior court issued an agreed order remanding the case to L&I to implement the settlement agreement. CP 224–25. The court's order specified that L&I's "order will be considered ministerial in nature and

the parties have agreed that no appeal will be taken from that order." CP 225. Hartnett's counsel signed the order. CP 225.

In November 2016, L&I issued the ministerial order that paid the additional permanent partial disability benefits to Hartnett. CP 148, 210. The order was communicated to Hartnett's attorney, and contrary to Hartnett's claims at Pet. 4, L&I's ministerial order included a distinction identifying that it was issued pursuant to superior court involvement, stating, "[t]he following action is taken to comply with the decision of the Snohomish County Superior Court dated 10/26/16." CP 210. It also contained L&I's boilerplate appeal rights language, consistent with RCW 51.52.050(1), stating that the order would become final within 60 days if there was no request for reconsideration or appeal filed. CP 210.

The combination of the superior court order, the ministerial purpose, and the appeal language would allow Hartnett to appeal to the Board if the order did not reflect the

October 2016 superior court order, but would not allow an appeal to the Board to contest the merits of the settlement.

B. In February 2017, January 2019, and January 2020 Hartnett Was Alerted that His Claim Was "Over Seven" as a Result of the 2016 Settlement

Hartnett applied to reopen his claim in January 2017, which L&I permitted for medical treatment only. CP 86, 148. If Hartnett sought any other benefits, they would have been granted only at the discretion of L&I's director because Hartnett's claim was an "over seven" reopening. CP 86. (The first date of closure was May 2009, more than seven years before the reopening application in January 2017. CP 101, 86; *see also* CP 148.) Hartnett appealed the February 2017 reopening order to the Board. CP 148–49.

In June 2018, Hartnett moved for summary judgment with the Board, arguing that he should be relieved of the "over seven" status because he had not realized that the 2016 settlement would render his claim "over seven." CP 104.

In December 2018, the Board sent Hartnett the proposed decision on his appeal, which denied his motion. CP 104–07. Hartnett's petition for the Board to review the decisions was denied in January 2019, making the order final. CP 114. Hartnett did not appeal the administrative decision to the superior court. *See* CP 149–50.

In January 2020, L&I's director determined that discretion would not be exercised to provide nonmedical benefits. CP 149. Hartnett then engaged in litigation to compel L&I's director to exercise discretion to provide disability benefits. CP 149–50, 155–61, 169, 173–74.

C. Hartnett Waited Until 2023 to Ask the Superior Court to Vacate the 2016 Settlement Under CR 60(b)

In May 2023, more than six and a half years after the superior court issued its 2016 order, Hartnett filed his CR 60 motion to have the 2016 settlement vacated. CP 217–21. Hartnett renewed the motion in August 2023 with the same requests. CP 40–46. Hartnett asserted the motion was filed within a reasonable time because he was unaware of, or misled

as to, the "over seven" implications when he agreed to the 2016 settlement, he had been challenging the 2016 settlement regularly since 2017, L&I was not prejudiced by the delay, and he filed the CR 60 motion as soon as he learned that it was the proper method to challenge the order. CP 45–46.

The superior court denied Hartnett's motion, finding that he did not bring the motion within a reasonable time under CR 60(b). CP 21. The court ruled that Hartnett was on notice of the effects of the "over seven" claim, finding "he was fully aware of the legal consequences of the 2016 settlement." CP 15.

The Court of Appeals affirmed the superior court, agreeing that "[n]othing in the record excuses such a lengthy delay in waiting to file a CR 60 motion." *Hartnett v. Dep't of Lab. & Indus.*, No. 85972-2-I, slip op. at 7 (Wash. Ct. App. Sept. 30, 2024) (unpublished). The Court discussed that there were triggering events in February 2017, June 2018, and January 2019 that signaled Hartnett's awareness of the effects of the 2016 settlement, and Hartnett's CR 60 motion submitted

in 2023 "is untimely as to any one of them." *Hartnett*, slip op. at 7.

Hartnett seeks review.

IV. ARGUMENT

A. The Superior Court Did Not Abuse Its Discretion in Denying a 2023 Request Under CR 60(b) for an Event Triggered in 2017

There is no issue of substantial public interest in the denial of a CR 60(b) motion filed six years after the triggering event. CR 60(b) requires that a "motion shall be made within a reasonable time." Courts look for "a triggering event" that would cause the "moving party [to] seek[] to vacate" the order. *In re Marriage of Thurston*, 92 Wn. App. 494, 500, 963 P.2d 947 (1998). Here, there were several potential triggering dates, starting in 2017 when L&I determined that Harnett had an "over seven" claim, CP 86; in 2018 when Hartnett argued that he shouldn't have an "over seven" claim because he had not realized the 2016 settlement would render his claim "over seven," CP 104; in 2019 when he didn't appeal the Board's

rejection of this argument, CP 114, 149–50; and in January 2020 through April 2021 when L&I denied "over seven" benefits and Hartnett disputed the merits of L&I's exercise of discretion. CP 119, 149–50, 155–61. It is not an abuse of discretion to find an undue lapse from these triggering events. Nor was it an abuse of discretion to find that L&I would be prejudiced by the unwinding of a settlement, in which it had paid substantial monetary benefits to Hartnett and had proceeded to adjudicate his claim on the premise that the settlement was valid, several years after the agreement was made and benefits paid.

The trial court appropriately denied Hartnett's 2023 motion as untimely, and there is no basis for this Court to review the COA's determination that the trial court did not abuse its discretion in doing so.

B. L&I Was Under No Obligation to Advise Harnett About the Civil Rules

Harnett offers only one reason for review, claiming that a ministerial order of L&I misled him because it did not tell him

he had to move to vacate under CR 60 to get relief. Pet. 1, 5–6. Nonsense.

The superior court directed L&I to pay Harnett benefits by issuing a ministerial order, and the parties agreed that this order would not be appealed. CP 225. The ministerial order, as directed by RCW 51.52.050, included the standard Board appeal rights. These appeal rights would have allowed Harnett to argue to the Board that L&I's ministerial order did not implement the superior court order, but under the parties' agreement, it would not allow Harnett to contest the merits of the settlement in a Board appeal.

Harnett argues that L&I should have directed him "to go back to Superior Court in order to vacate the judgement." Pet. 6. But this language is not required by RCW 51.52.050. And he cites no authority obligating an administrative agency to provide notice of the ability to file a CR 60 motion under the civil rules. Indeed, unawareness of a legal remedy doesn't excuse a party from failing to act. *See, e.g.*, *Retired Pub. Emps.*

Council v. Dep't of Ret. Sys., 104 Wn. App. 147, 152, 16 P.3d 65 (2001).

Harnett also cites CR 60(c), Pet. 6–7, but this rule applies only when there is a separate action filed, which isn't the case here. *Hartnett*, slip op. at 7–8.

V. CONCLUSION

Hartnett identifies no issue meriting this Court's review. The Court should deny Hartnett's petition.

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RESPECTFULLY SUBMITTED this 31st day of December, 2024.

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SUPREME COURT
STATE OF WASHINGTON

EDWARD HARTNETT, Petitioner, v. WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES, Respondent.	CERTIFICATE OF SERVICE

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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DATED this 31st day of December, 2024.

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