

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
10/31/2024  
BY ERIN L. LENNON  
CLERK

FILED  
Court of Appeals  
Division I  
State of Washington  
10/30/2024 1:00 PM

Case #: 1035900

NO. 85972-2-I

---

**COURT OF APPEALS FOR DIVISION ONE  
STATE OF WASHINGTON**

---

EDWARD HARTNETT,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF LABOR AND  
INDUSTRIES,

Respondent.

---

**PETITION FOR REVIEW**

---

Jonathan S. Burr, WSBA No. 43615  
Attorney for Appellant, Edward Hartnett

Washington Law Center  
651 Strander Blvd.  
Bldg. B, Suite 215  
Tukwila, WA 98188  
Ph: (206) 596-7888  
Fax: (206) 457-4900  
jburr@washingtonlawcenter.com

## **TABLE OF CONTENTS**

<b>I.</b>	<b>IDENTITY OF PETITIONER .....</b>	<b>1</b>
<b>II.</b>	<b>COURT OF APPEALS DECISION .....</b>	<b>1</b>
<b>III.</b>	<b>ISSUES PRESENTED FOR REVIEW.....</b>	<b>1</b>
<b>IV.</b>	<b>STATEMENT OF CASE .....</b>	<b>2</b>
	<b>A. Procedural History.....</b>	<b>2</b>
	<b>B. Substantive Facts .....</b>	<b>2</b>
<b>V.</b>	<b>ARGUMENT.....</b>	<b>3</b>
	<b>A. Protecting injured workers’ rights and pursuing the purpose of the Industrial Insurance Act are issues of a public nature.....</b>	<b>5</b>
	<b>B. Civil Rule 60(c) allows the Court to vacate judgments under an independent action, and does not require a motion to vacate be filed within a reasonable time.....</b>	<b>6</b>
<b>VI.</b>	<b>CONCLUSION .....</b>	<b>7</b>

## **TABLE OF AUTHORITIES**

### **Cases**

<i>Cockle v. Dep't of Labor &amp; Indus.</i> , 1442 Wn.2d 801, 16 P.3d 583 (2001).....	5
<i>Dennis v. Dep't of Labor &amp; Indus.</i> , 109 Wn.2d 467, 470, 475 P.2d 1295 (1987).....	5
<i>Dep't of Labor &amp; Indus. v. Granger</i> , 159 Wn.2d 752, 757, 153 P.3d 839 (2007).....	5
<i>Hart v. Dep't of Social &amp; Health Servs.</i> , 111 Wn.2d 445, 445, 759 P.2d 1206 (1988).....	4
<i>Street v. Weyerhaeuser</i> , 189 Wn.2d 187, 195, 399 P.3d 1156 (2017).....	5
<i>Westerman v. Cary</i> , 125 Wn.2d 277, 286, 892 P.2d 1067 (1994).....	4

### **Civil Rules and Statutes**

Civil Rule 60.....	1, 2, 5, 6
RAP 13.4.....	4
RCW 51.12.010 .....	5
RCW 51.32.160 .....	3

## **I. IDENTITY OF PETITIONER**

Edward Hartnett is a Washington State injured worker who asks this Court to accept review of the Court of Appeals decision, and shall be designated henceforth as the Petitioner.

## **II. COURT OF APPEALS DECISION**

Division I of the Court of Appeals issued an unpublished decision in Cause No. 85972-2-I on September 30, 2024. A copy of the decision is attached to this petition at A – 001 through 008.

## **III. ISSUES PRESENTED FOR REVIEW**

Does the language on a Department of Labor and Industries (“Department”) Notice of Decision, requiring a written appeal to be filed with the Board of Industrial Insurance Appeals (“Board”), mislead a worker to pursue an appeal in an improper venue, when instead a Civil Rule (“CR”) 60 motion in Superior Court was required to vacate a misunderstood settlement agreement?

Does a worker knowingly sit on his hands for years by not filing a motion to vacate under CR 60 when he is simply following the directions written on the Department Notice of Decision to appeal to the Board?

Does public policy favor the Court taking independent action in a matter pursuant to CR 60(c), regardless of time, when a worker has pursued an appeal, albeit in an improper venue, in accordance with the directions on a Department Notice of Decision?

#### **IV. STATEMENT OF CASE**

##### **A. Procedural History**

On October 25, 2016, the Snohomish County Superior Court issued a judgment and order. On November 23, 2016, the Department issued an order closing Mr. Hartnett's claim. This order was challenged by Mr. Hartnett's doctor. On February 14, 2017, the Department issued an order reopening the claim effective December 6, 2016. On March 7, 2017, the Department affirmed the February order, and on March 23, 2017 Mr. Hartnett appealed this order to the Board. Mr. Hartnett continued litigation before the Board in his case until he hired Washington Law Center October 4, 2022.

On May 15, 2023, Mr. Hartnett filed his first motion to vacate pursuant to CR60. On July 10, 2023, Mr. Hartnett's motion was denied without prejudice. On August 8, 2023, Mr. Hartnett filed his second motion to vacate. On October 12, 2023, Mr. Hartnett's second motion was denied. On November 1, 2023, Mr. Hartnett appealed to the Court of Appeals, Division One.

##### **B. Substantive Facts**

Mr. Hartnett contends the Department misrepresented the terms of his settlement in 2016. He was not advised that he would lose financial

compensation in his work injury claim under RCW 51.32.160, and was told by the Department representative he would still receive financial benefits in the future. *See* CP at 205.<sup>1</sup>

However, as a result of the October 25, 2016 order, Mr. Hartnett's claim was directed to be closed. *Id.* Given that his claim began in 2001 and closed in 2008, this caused the claim to become "over seven" thus eliminating financial benefits under the claim. CP at 204-05. The Department's November 23, 2016 order closed the claim, and contained language stating that the decision should be appealed to the Board, not Snohomish County Superior Court. CP at 205, 210. Until 2022, when Mr. Hartnett hired the Washington Law Center, he has continued to take his challenges to the Board, as had been directed by the Department. CP at 48-50.

---

<sup>1</sup> Citations to "CP" refers to the Clerk's Papers.

## V. ARGUMENT

RAP 13.4(b) states that a petition for review will be accepted if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. When determining whether the petition involves an issue of substantial public interest, the Court looks at three factors: “(1) whether the issue is of public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur.” *Westerman v. Cary*, 125 Wn.2d 277, 286, 892 P.2d 1067 (1994)(quoting *Hart v. Dep’t of Social & Health Servs.*, 111 Wn.2d 445, 445, 759 P.2d 1206 (1988)).

The issue before this Court involves proper notice to a worker, and the misleading language on a Department order issued pursuant to a Superior Court settlement agreement. This case presents a situation in which, objectively, an injured worker would reasonably believe the proper venue would be the Board instead of filing a motion to vacate in Superior Court. Although there is a time and place for boilerplate language by the Department in order to comply with run-of-the-mill notices and decision appeal rights, a distinction should be made for Department orders issued pursuant to Superior Court involvement. Such issues are likely to recur in many workers’ compensation claims whenever a higher-level court is

brought into play. The Court of Appeals simply ignored, or inadvertently bypassed, this issue.

**A. Protecting injured workers' rights and pursuing the purpose of the Industrial Insurance Act are issues of a public nature.**

The courts have consistently held that the Industrial Insurance Act (“IIA”) is broadly interpreted in favor of workers; and because the IIA “is remedial in nature,” it must be “liberally construed in order to achieve its purpose of providing compensation to all covered employees injured in their employment, with doubts resolved in favor of the worker.” *Street v. Weyerhaeuser*, 189 Wn.2d 187, 195, 399 P.3d 1156 (2017); *Dennis v. Dep’t of Labor & Indus.*, 109 Wn.2d 467, 470, 475 P.2d 1295 (1987); *Cockle v. Dep’t of Labor & Indus.*, 1442 Wn.2d 801, 16 P.3d 583 (2001); *Dep’t of Labor & Indus. v. Granger*, 159 Wn.2d 752, 757, 153 P.3d 839 (2007) (citing RCW 51.12.010). The “overarching objective” of the Act is to reduce to a minimum “the suffering and economic loss arising from injuries and/or death occurring in the course of employment.” *Cockle*, 142 Wn.2d at 822. With this liberal remediation principle in mind, both the legislature and the courts have traditionally expanded, not restricted or prohibited, coverage under the IIA. *Street*, 189 Wn.2d at 195.

The language in Civil Rule 60(b) authorizes Courts to vacate judgments for misrepresentations and for any other reasons that would



justify relief within a reasonable time. Civil Rule 60(c) allows the Court to take action to vacate independently, regardless of time. The Department order from November 2016, clearly stated that the worker's appeals or challenges should be filed with the Board, not Superior Court – thus Petitioner received improper notice excusing any time lapse. CP at 210.

If this Court maintains and expands the “overarching objective” of the Act by expanding and not restricting coverage, then this Court should interpret the language on the Department closing order as a misrepresentation for purposes of notifying Petitioner of the proper venue in which to seek relief within a reasonable time. *Id.* Instead, Petitioner should have been directed by the Department to go back to Superior Court in order to vacate the judgment, not to inappropriately pursue his relief with the Board as he did for several years. CP at 49.

**B. Civil Rule 60(c) allows the Court to vacate judgments under an independent action, and does not require a motion to vacate be filed within a reasonable time.**

The motion to vacate judgment was brought before Superior Court pursuant to CR60. This Court has the jurisdiction and power to independently vacate the judgment, regardless of the findings at Superior Court. Public policy should guide the Court in this case to create a distinction in boilerplate language applied to Department orders issued

pursuant to higher-level Court directives, thereby informing workers and giving them proper notice of the venue in which they should seek remedies.

## **VI. CONCLUSION**

This Court should accept review, reverse the Court of Appeals decision, and vacate the order dated October 25, 2016. For the reasons stated herein, the Superior Court abused its discretion by not recognizing the mistaken information relied upon by Mr. Hartnett. Additionally, the Court of Appeals failed to address the issue of language directing venue to the Board instead of Superior Court. A decision in petitioner's favor serves the public policy of preventing other injured workers' from inadvertently pursuing their challenges to Department orders in improper venues.

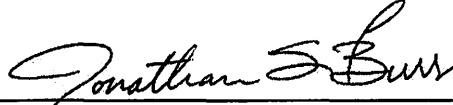
The undersigned certifies the word count for this document, exclusive of words contained in the appendices, title sheet, table of contents, table of authorities, certificate of service, and certificate of compliance, as 1,340.

///

///

///

RESPECTFULLY SUBMITTED this 30th day of October, 2024.

A handwritten signature in black ink, reading "Jonathan S. Burr". The signature is fluid and cursive, with the first name "Jonathan" and last name "Burr" clearly legible. The middle initial "S." is written in a smaller, more compact script.

---

Jonathan S. Burr, WSBA No. 43615  
Attorney for Appellant, Edward Hartnett  
Washington Law Center  
651 Strander Blvd.  
Bldg. B, Suite 215  
Tukwila, WA 98188  
Ph: (206) 596-7888  
Fax: (206) 457-4900  
jburr@washingtonlawcenter.com

A - 001

FILED  
9/30/2024  
Court of Appeals  
Division I  
State of Washington

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

EDWARD HARTNETT,

Appellant,

v.

WASHINGTON STATE,  
DEPARTMENT OF LABOR &  
INDUSTRIES,

Respondent.

No. 85972-2-I

DIVISION ONE

UNPUBLISHED OPINION

BIRK, J. — Edward Hartnett challenges the superior court's decision to deny his CR 60 motion to vacate final judgment. The court denied his motion for being untimely. Because the superior court did not abuse its discretion in reaching its decision, we affirm.

**I**

In 2001, Hartnett suffered an industrial injury while working as a journeyman carpenter. The Department of Labor & Industries (L&I) allowed the injury claim and provided treatment until the claim was first closed in May 2009. L&I awarded Hartnett a 22 percent permanent partial disability (PPD) of his left arm. Hartnett unsuccessfully appealed the order and it became final with an effective closing date of May 21, 2009. In November 2011, Hartnett successfully applied to have his claim reopened by L&I. On July 14, 2014, L&I issued an order closing

Hartnett's claim with a category 2 PPD award for injury-related mental health impairment, in addition to the earlier PPD award for his left arm.

Hartnett appealed the order, which had denied him time loss benefits for the period between March 17, 2014 to July 14, 2014, to the Snohomish County Superior Court. While represented by counsel, Hartnett agreed to settle with L&I by agreeing to keep his claim closed effective July 14, 2014, in exchange for paid time loss benefits for the March to July period, and an increase in his mental health PPD award from category 2 to category 3. The court issued an agreed order remanding the case to L&I to implement the settlement agreement (2016 Settlement). L&I implemented the settlement agreement through a further order, which the parties agreed would not be appealable.

Four months later, in February 2017, Hartnett requested to reopen the claim and received a written response from L&I stating that the claim could be reopened for medical treatment but that any other benefits would only be granted at the discretion of L&I's director (Director). Under RCW 51.32.160(1)(a), claims brought by a worker more than seven years after the first closing order for the claim are considered "over seven." Dep't of Lab. & Indus. v. Higgins, 21 Wn. App. 2d 268, 274-75 n.2, 505 P.3d 579 (2022). An over seven claim is still eligible for medical benefits, but other benefits are available only subject to the discretion of the Director. Id. at 274-75. Hartnett appealed L&I's decision that his claim was over seven.

In June 2018, Hartnett filed a motion for summary judgment with the Board of Industrial Appeals (Board), arguing that he should be relieved of the over seven status because he had not realized that the 2016 Settlement would render his claims over seven. In December 2018, the Board sent Hartnett a notice of the proposed decision on his appeal. Hartnett's motion had been denied, and L&I's opposing motion for summary judgment was granted. Hartnett petitioned the Board to review the decision, which was denied in January 2019, making the order final. Hartnett did not appeal the administrative decision to the superior court.

In January 2020, the Director determined that discretion would not be exercised to provide nonmedical benefits. Starting in 2021, Hartnett engaged in litigation to compel the Director to exercise discretion to reopen his nonmedical benefits claim. .

In May 2023, Hartnett returned to superior court, filing a CR 60 motion to have the 2016 Settlement vacated. The superior court denied the motion, stating Hartnett could raise the motion again with additional evidence that the motion was being made within a reasonable time. In August 2023, Hartnett renewed his motion, citing CR 60(b)(1), (4), (11), and 60(c). 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.

The court denied his motion because it had not been brought within a reasonable time, as required by CR 60. The court ruled that Hartnett's delay was unreasonable because Hartnett first had notice his claim was over seven in February 2017, he actively litigated the issue in 2018, and the Board told Hartnett of its final decision on over seven status in January 2019. The court found waiting four to six years to bring a CR 60 motion was not reasonable. Furthermore, the court was concerned about prejudice to L&I, from the deprivation of the use of the settlement funds, but also for having had to defend years of litigation, which would be rendered invalid by the motion, and which could have been prevented by a timely CR 60 motion. The court was also skeptical as to the viability of unwinding a settlement agreement, the validity of which was an underlying assumption to years of subsequent litigation. Hartnett appeals.

## II

Hartnett claims that the superior court abused its discretion by denying his CR 60(b) motion and by refusing to grant relief under CR 60(c).

Orders on motions to vacate a judgment may be appealed under RAP 2.2(10). " 'On appeal, a trial court's disposition of a motion to vacate will not be disturbed unless it clearly appears that it abused its discretion.' 'Abuse of discretion means that the trial court exercised its discretion on untenable grounds or for untenable reasons, or that the discretionary act was manifestly unreasonable.' " Hor v. City of Seattle, 18 Wn. App. 2d 900, 911, 493 P.3d 151

(2021) (citation omitted) (quoting Lindgren v. Lindgren, 58 Wn. App. 588, 595, 794 P.2d 526 (1990)), review denied, 198 Wn.2d 1038, 501 P.3d 142 (2022).

In this court Hartnett asserts only CR 60(b)(4) (fraud) and CR 60(b)(11) (any other reason justifying relief). For these provisions, the rule requires that the motion “shall be made within a reasonable time.” CR 60(b). “What constitutes a reasonable time depends on the facts and circumstances of each case.” Luckett v. Boeing Co., 98 Wn. App. 307, 312, 989 P.2d 1144 (1999). The critical period in analyzing whether the motion to vacate was brought within a reasonable time is “the period between when the moving party became aware of the judgment and the filing of the motion.” Id. Two major considerations in determining a motion’s timeliness are “(1) prejudice to the nonmoving party due to the delay; and (2) whether the moving party has good reasons for failing to take appropriate action sooner.” Id. at 312-13 (four month delay was unreasonable, despite lack of prejudice to the nonmoving party, because the movant had no good reason to delay).

Hartnett argues that (1) he did not know that he needed to file a CR 60 motion, (2) he did not seek to vacate the judgment because L&I’s closing order invited him to appeal to the Board if he disagreed with the order, (3) he was actively fighting the over seven status through appeals and litigation with the Board, and (4) he filed his CR 60 motion as soon as he learned that it was the appropriate remedy.



“[I]t is well settled that a person is presumed to know the law such that ignorance of the law is not a defense.” Dellen Wood Prods., Inc. v. Dep’t of Lab. & Indus., 179 Wn. App. 601, 629, 319 P.3d 847 (2014). “Absent fraud, the actions of an attorney authorized to appear for a client are binding on the client at law and in equity. The ‘sins of the lawyer’ are visited upon the client.” Rivers v. Wash. State Conf. of Mason Contractors, 145 Wn.2d 674, 679, 41 P.3d 1175 (2002) (footnote omitted) (quoting Taylor v. Illinois, 484 U.S. 400, 433, 108 S. Ct. 646, 98 L. Ed. 2d 798 (1988) (Brennan, J., dissenting)).

Hartnett does not contest that the 2016 Settlement happened, that he approved of it, or that he was represented by counsel during it. He claims both L&I misrepresented to him that he would still be eligible for benefits after settling, and his lawyer never advised him of the over seven consequences of settling. And he claims that had he known about the consequence of the 2016 Settlement, he never would have agreed to it. But Hartnett received a written response from L&I in February 2017, notifying him that his claim was over seven, and that nonmedical benefits were now at the discretion of the Director. More than six years elapsed before he first filed a CR 60 motion. In 2018 he argued that his unawareness as to the effects of the 2016 Settlement offered a basis for relief. In January 2019, the Board’s rejection of Hartnett’s over seven argument became final. In 2021 to 2023, Hartnett alternatively sought to compel the Director to exercise discretion to grant him nonmedical benefits.

Nothing in the record excuses such a lengthy delay in waiting to file a CR 60 motion. Whether counting from February 2017, June 2018, or January 2019 as the triggering event which signaled Hartnett's awareness of the effects of the 2016 Settlement, the result is the same. Hartnett's 2023 motion is untimely as to any one of them.

Hartnett's CR 60 motion, if granted, would prejudice L&I. L&I agreed to settle Hartnett's claim in 2016. It agreed to pay disability benefits in exchange for Hartnett keeping his claim closed. Since 2016, L&I has been deprived of those funds, while Hartnett has had use of them. L&I would also be prejudiced by having years of litigation, premised on the 2016 Settlement being valid, undone. If the 2016 Settlement were vacated then new litigation would presumably unfold between L&I and Hartnett. L&I would be prejudiced by Hartnett's avoidable delay.

The superior court did not abuse its discretion by denying Hartnett's CR 60(b) motion as untimely.

### III

Hartnett claims CR 60(c) provides another means of relief from the settlement order. The rule states that it "does not limit the power of a court to entertain an *independent action* to relieve a party from a judgment, order, or proceeding. CR 60(c) (emphasis added). Relief under CR 60(c) "assume[s] that a party will commence a separate action." Krueger Eng'g, Inc. v. Sessums, 26 Wn. App. 721, 724, 615 P.2d 502 (1980).

Hartnett cites no independent action that has been commenced that would permit the court to invoke CR 60(c). The only mention of CR 60(c) in Hartnett's trial motion was in a footnote without any additional explanation. The only basis for CR 60(c) cited in Hartnett's brief on appeal is RCW 51.52.130, an attorney and witness fee statute. The trial court did not abuse its discretion in denying Hartnett's motion to vacate under CR 60(c).

Affirmed.

Birk, J.

WE CONCUR:

Cohen, J.

Hylleberg, J.

NO. 859722

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

IN RE: EDWARD HARTNETT.,

Appellant,

v.

DEPARTMENT OF LABOR AND  
INDUSTRIES OF THE STATE OF  
WASHINGTON,

Respondents.

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 Petition for Review and this Certificate of Service in the below described manner:

**Original filed with:**

Lea Ennis  
Court Administrator/Clerk  
600 University St  
Seattle, WA 98101

**E-service via E-file portal:**

Kaitlin Loomis  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104

Kaitlin.Loomis@atg.wa.gov  
Melanie.Ruha@atg.wa.gov  
LNISeaEService@atg.wa.gov

DATED this 30<sup>th</sup> day of October, 2024, at Tukwila, Washington by:



---

Tori LeCause, Paralegal  
Washington Law Center  
651 Strander Blvd.  
Bldg B, suite 215  
Tukwila, WA 98188  
(206) 596-7888  
tori@washingtonlawcenter.com

# WASHINGTON LAW CENTER

**October 30, 2024 - 1:00 PM**

## Transmittal Information

**Filed with Court:** Court of Appeals Division I  
**Appellate Court Case Number:** 85972-2  
**Appellate Court Case Title:** Edward Hartnett, Appellant v. Department of Labor and Industries, Respondent  
**Superior Court Case Number:** 16-2-01953-4

### The following documents have been uploaded:

- 859722\_Petition\_for\_Review\_20241030084935D1873660\_0785.pdf

This File Contains:

Petition for Review

*The Original File Name was Hartnett Petition for Review.pdf*

### A copy of the uploaded files will be sent to:

- jburr@washingtonlawcenter.com
- kaitlin.loomis@atg.wa.gov
- lniseaeservice@atg.wa.gov
- tori@washingtonlawcenter.com

### Comments:

---

Sender Name: Rebecca Sturgis - Email: rebecca@washingtonlawcenter.com

**Filing on Behalf of:** Spencer Dion Parr - Email: spencer@washingtonlawcenter.com (Alternate Email: )

Address:

651 Strander Blvd Bldg B Suite 215

Tukwila, WA, 98188

Phone: (206) 596-7888

**Note: The Filing Id is 20241030084935D1873660**