NO. 104141-1

SUPREME COURT OF THE STATE OF WASHINGTON

JOHN L. DOUGLAS, JR.,

Petitioner,

v.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON,

Respondent.

DEPARTMENT OF LABOR AND INDUSTRIES ANSWER TO PETITION FOR REVIEW

NICHOLAS W. BROWN
Attorney General

Anastasia Sandstrom
Senior Counsel
WSBA No. 24163
Office Id. No. 91108
800 Fifth Ave., Ste. 2000
Seattle, WA" 98104
(206) 464-6993

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I. INTRODUCTION

The superior court issued a standard verdict form in this workers' compensation case that closely tracked the requirements of RCW 51.52.115 governing review of decisions by the Board of Industrial Insurance Appeals. RCW 51.52.115 provides that the Board's findings and decision "shall be prima facie correct" and that a court or jury shall affirm the Board's decision if it determines the Board "has correctly . . . found the facts." The verdict form here followed these statutory requirements and mirrored Washington's pattern verdict form in workers' compensation cases. Specifically, the verdict form here asked the jury to decide whether the Board's material finding—that Douglas's contended conditions did not arise naturally and proximately out of distinctive conditions of his employment—was correct. This language properly followed the law, was not misleading, and provided ample opportunity for Douglas to argue his theory of the case, which he did at length.

This case raises no issue of substantial public interest, and this Court should deny review.

II. ISSUE

Does a trial court err when it recites the Board's lone contested finding verbatim and asks the jury to determine whether that finding was correct?

III. STATEMENT OF THE CASE

A. The Department and Board Found that Douglas's Five Claimed Conditions Did Not Result from His Employment

This case arose out a claim for an occupational disease. In May 2019, Douglas saw an occupational medicine physician and filed the workers' compensation claim at issue here. CP 1022-24, 1054, 1420. Douglas sought coverage for five right-shoulder conditions as an "occupational disease." CP 1054, 1315.[1]

[1] The five contended conditions were: (1) right shoulder glenohumeral osteoarthritis, (2) degenerative right labral tear, (3) atrophy of the right rotator cuff, (4) disarticulation of the longhead biceps tendon of the right arm, shoulder, and (5) right shoulder sprain or strain. CP 1043, 1076-77.

The Department rejected the claim on the grounds that Douglas' conditions did not result from the distinctive conditions of his employment. CP 217-18. The Department based its decision on an independent medical examination by William Volk, MD, a board-certified orthopedic surgeon who examined Douglas, reviewed his available medical records, and issued a report concluding that Douglas did not have an occupational disease. *See* CP 1193-94, 1210-12, 1231-32.

Douglas thereafter appealed the Department's rejection order to the Board. The Board found that his five claimed conditions did not arise from his employment. Specifically, the Board found:

> Mr. Douglas's conditions diagnosed as right shoulder glenohumeral osteoarthritis; degenerative right labral tear, atrophy of the right rotator cuff, disarticulation of the long head biceps tendon of the right arm/shoulder and right shoulder strain did not arise naturally and proximately out of the distinctive conditions of his employment.

CP 55 (Finding of Fact No. 5); CP 8. Accordingly, the Board concluded: "John Douglas's condition is not an occupational

disease within the meaning of RCW 51.08.140." CP 56 (Conclusion of Law No. 2); CP 8.

B. The Trial Court Followed Statutory Requirements in Framing the Verdict Form

Douglas appealed the Board's decision to superior court. CP 1. The Department proposed a verdict form that posed six questions to the jury. *See* CP 1545-47; RP 589-90; 6A *Wash. Prac.: Wash. Pattern Jury Instructions—Civil*, § 155.14 (7th ed 2022) (WPI). Question 1 included a verbatim recitation of the Board's Finding of Fact No. 5 and asked the jury to determine whether that finding was correct:

> **QUESTION 1:** Was the Board of Industrial Insurance appeals correct in deciding that: Mr. Douglas' conditions diagnosed as right shoulder glenohumeral osteoarthritis, degenerative right labral tear, atrophy of the right rotator cuff, disarticulation of the long head biceps tendon of the right arm/shoulder, and right shoulder strain did not arise naturally and proximately out of distinctive conditions of his employment?
>
> **ANSWER:** ____ (Write "yes" or "no")

CP 1545.

In the event the jury answered "No" to Question 1, the Department's proposed verdict form included Questions 2 through 6, which separately addressed each of the conditions claimed by Douglas. *See* CP 1545-47. For example, Question 2 asked:

> **QUESTION 2:** Was the Board of Industrial Insurance Appeals correct in deciding that: Mr. Douglas' condition diagnosed as *right shoulder glenohumeral osteoarthritis* did not arise naturally and proximately out of the distinctive conditions of his employment?
>
> **ANSWER:** ____ (Write "yes" or "no")

CP 1546.

The Department explained to the trial court that Questions 2 through 6 were important because the jury only had to conclude the Board was wrong about one of five conditions to answer "No" to Question 1 and return a verdict in Douglas's favor. RP 588-89, 611-12. Without any follow-up questions, it would not be possible to determine which condition or

conditions the jury had concluded the Board had incorrectly decided. RP 588-92, 607.

Before ruling, the trial court asked Douglas's attorney if she had any objections to the Department's proposed verdict form. RP 590. Counsel said: "I don't mind using [the] Department's, but I want to change the first question." RP 590. Counsel proposed reframing Question 1 to simply ask the jury: "does [Douglas] have an occupational disease claim?" RP 590.

The trial court rejected Douglas's proposed approach, agreeing with the Department that the verdict form must recite the Board's actual finding of fact under RCW 51.52.115. *See* RP 591-93.

After the jury's deliberations began, the jury asked the following question:

> The existence of questions two through six have led to some confusion about how to read question number one. Are we to read question number one as if the five conditions/ailments go together as a group and must be read as a whole? In other words, is the question did the Board find correctly that one or more of the following conditions was

> not an occupational disease. Or is the question, did the Board find correctly that none of these five conditions is an occupational disease?

RP 664; CP 1552.

The trial court instructed the jury to "[p]lease re-read Question # 1 carefully." CP 1553. After receiving the trial court's instruction, the jury asked no further questions and returned a verdict about one hour later. *See* RP 680-81. In response to Question 1, the jury answered "Yes." CP 1545. And consistent with the verdict form's directions, the jury left all the remaining questions blank. CP 1546-47; RP 684. The trial court entered judgment for the Department accordingly. CP 1556-58.

Douglas appealed to the Court of Appeals, which affirmed in an unpublished opinion. *See Douglas v. Dep't of Lab. & Indus.*, No. 85945-5-I (Wash. Ct. App. Apr. 14, 2025).

IV. ARGUMENT

A. The Verdict Form Followed the Requirements of RCW 51.52.115 and Presents No Issue of Substantial Public Interest

Douglas attempts to create an issue of substantial public interest by framing this case as seeking guidance on drafting verdict forms in occupational disease claims. Pet. 5. But the verdict form here correctly recited the Board's finding as required by RCW 51.52.115. This case presents no issue meriting review.

Verdict forms, like jury instructions, are sufficient "if they allow the parties to argue their theories of the case, do not mislead the jury and, when taken as a whole, properly inform the jury of the law to be applied." *Hue v. Farmboy Spray Co*., 127 Wn. 2d 67, 92, 896 P.2d 682, 695 (1995). Moreover, because superior courts 'serve a purely appellate function' in workers' compensation cases, *Kingery v. Department of Labor & Industries*, 132 Wn.2d 162, 171, 937 P.2d 565 (1997), jury instructions and verdict forms in such cases include unique

requirements. While each party is entitled to a trial by jury to resolve disputes of material fact in such cases, the superior court's authority is limited by statute to: (a) considering the evidence contained in the certified appeal board record; and (b) deciding whether the Board's findings and decision are correct. RCW 51.52.115; *Romo v. Dep't of Lab. & Indus.*, 92 Wn. App. 348, 353, 962 P.2d 844 (1998); *Ruse v. Dep't of Lab & Indus.*, 138 Wn.2d 1, 5, 977 P.2d 570 (1999).

RCW 51.52.115 dictates the procedures governing such appeals. Among other things, it provides that the "decision of the board shall be prima facie correct and the burden of proof shall be upon the party attacking the same." *Id.* The statute further provides that "[w]here the court submits a case to the jury, the court shall by instruction advise the jury of the exact findings of the board on each material issue before the court." *Id.* The Court of Appeals here thus correctly observed that "[r]eview at the trial court of a Board decision is unique in that it involves, among other things, a request that the jury 'return a

special verdict form evaluating the correctness of the disputed board findings.'" *Douglas*, slip op. at 16 (quoting *Lewis v. Simpson Timber Co.*, 145 Wn. App. 302, 316, 189 P.3d 178 (2008)).

The verdict form here complied with these statutory requirements. That verdict form asked: "Was the Board of Industrial Insurance appeals correct in deciding that [the conditions did not arise naturally and proximately out employment]?" CP 1545. Framing the verdict form as a determination about the correctness of the Board's findings tracks RCW 51.52.115, which uses the word "correct" twice: first in requiring that the Board's findings and decision "shall be prima facie *correct*;" and second in directing that "[i]f the court shall determine that the board . . . *has correctly* construed the law and *found the facts*, the decision of the board shall be confirmed." (emphasis added).

Given this framework, courts agree that the court or jury's role in workers' compensation cases is to determine if the

Board was correct. In *Ruse*, for example, the Court directed that the superior court "may substitute its own findings and decision for the Board's only if it finds 'from a fair preponderance of credible evidence,' that the Board's findings and decision are incorrect." 138 Wn.2d at 5 (quoting *McClelland v. ITT Rayonier, Inc.*, 65 Wn. App. 386, 390, 828 P.2d 1138 (1992)).

The verdict form here also parallels the jury instruction required in workers' compensation cases. *Douglas*, slip op. at 16-17. Under RCW 51.52.115, "[w]here the court submits a case to the jury, the court shall by instruction advise the jury of the exact findings of the board on each material issue before the court." The jury must not only be instructed about the Board's exact material findings but must also be asked to decide whether those findings were correct. *See Ruse*, 138 Wn.2d at 5. The Court of Appeals thus correctly concluded that "Question 1 satisfied the obligation under RCW 51.52.115 to instruct the jury on the challenged Board finding, as it is a verbatim

recitation of the Board's findings in the form of a 'yes or no' question." *Douglas*, slip op. at 17.

The verdict form here also matches the Washington Pattern Verdict Form for workers' compensation cases, which likewise asks the jury to decide whether the Board's finding was correct. WPI 155.14. Although courts are not required to use pattern instructions, they "generally have the advantage of thoughtful adoption and provide some uniformity in instructions throughout the state." *State v. Bennett*, 161 Wn.2d 303, 308, 165 P.3d 1241 (2007).

And the verdict form allowed Douglas to argue his theory of the case as required by the case law. *See Hue*, 127 Wn. 2d at 92. As Douglas argued to the jury during his closing, the jury only had to find the Board was wrong about one condition to say the Board's finding was incorrect. RP 611-12, 642-43.

Douglas argues that the phrasing of Question 1 "effectively turned the jury's task into negative inquiry—focusing on whether the Board was 'correct,' rather than asking

the core factual question of whether Mr. Douglas suffered an occupational disease from his work." Pet. 6. He argues that the verdict form conflicts with RCW 51.52.115 by framing "the Board as presumptively 'correct.'" Pet. 6. But this is precisely what the statute requires, as Douglas elsewhere concedes. Pet. 8. The jury must find "that the Board's findings and decision are incorrect." *Ruse*, 138 Wn.2d at 5; RCW 51.52.115 ("[i]n all court proceedings under or pursuant to this title[,] the findings and decision of the board shall be prima facie correct and the burden of proof shall be upon the party attacking the same" and that "[i]f the court shall determine that the board . . . has correctly . . . found the facts, the decision of the board shall be confirmed."). Contrary to Douglas's argument, the focus of the superior court's review is supposed to be on whether the Board's findings are correct.

In contrast, asking the jury to decide solely whether Douglas "has an occupational disease" (rather than reciting the Board's findings) would have improperly asked the jury to

render a conclusion of law. *See Romo*, 92 Wn. App. at 353 (juries "resolve factual disputes"). The focus in RCW 51.52.115 is on the correctness of the "exact findings."

Douglas also argues that trial court erred by failing to ask whether "Douglas's work conditions proximately cause[d] or aggravate[d] a disease or condition in his right shoulder." Pet. 9. But he did not object on this ground below. RP 590. As such, the Court should not consider it now. RAP 2.5(a); *State v. Grott*, 195 Wn.2d 256, 267, 458 P.3d 750 (2020). In the absence of a manifest constitutional error, the failure to object to the verdict form on this ground waives the objection. *See id.*

B. Douglas Failed to Preserve His Arguments About Questions 2 through 6

Douglas also failed to preserve any objection to Questions 2 through 6 in the verdict form. He argues that listing the five conditions confused the jury about whether they needed to find that all five conditions arose from his employment to reverse the Board. Pet. 5, 10. But Douglas did not object to including Questions 2 through 6 on the verdict form. RP 590.

Nor does he show a constitutional error. His arguments about these questions are therefore waived. RAP 2.5(a); *Grott*, 195 Wn.2d at 267.

In any event, the verdict form was correct. It properly asked the jury to decide whether the Board's finding was correct. CP 1545. As a matter of logic, and as explained by Douglas to the jury, it only had to find the Board was wrong about one condition to say the Board's finding was incorrect. RP 611, 642-43, 668. The verdict form further clarified the issue by asking the jury, if it found that the Board was not correct, to specify the Board's error. The answer to Questions 2 through 6 would inform the Department about which condition required provision of treatment. RP 607. The Court of Appeals correctly determined that Questions 2 through 6 "were necessary to understand the scope of any verdict in Douglas's favor." *Douglas*, slip op. at 17.

C. The Jury's Question Does Not Demonstrate Jury Confusion

Douglas points to a jury question during deliberations to argue jury confusion. Pet. 17. But as this Court has previously recognized, jury questions "do[] not create an inference that the entire jury was confused, or that any confusion was not clarified before a final verdict was reached." *State v. Ng*, 110 Wn.2d 32, 43, 750 P.2d 632 (1988). Moreover, "[q]uestions from the jury are not final determinations, and the decision of the jury is contained exclusively in the verdict." *Id.* (quoting *State v. Miller*, 40 Wn. App. 483, 489, 698 P.2d 1123 (1985)).

Here Douglas fails to show the jury was confused. Pet. 18-20, 22. Although the jury initially expressed "some confusion" about how to read Question 1 (CP 1552), its verdict shows it ultimately understood the verdict form. CP 1545-47. After the trial court instructed jurors to carefully re-read Question 1, the jury (a) asked no further questions, (b) returned a verdict approximately one hour later, and (c) followed the verdict form's directions by answering Question 1 "Yes" and

leaving Questions 2 through 6 blank. CP 1520-21, 1545-47, 1553. The Court of Appeals correctly concluded that these facts showed there was no juror confusion. *Douglas*, slip op. at 18.

Douglas offers no reason to believe any juror—let alone the entire jury—was confused when it rendered the verdict. *See Ng*, 110 Wn.2d at 43. Because his speculation about jury confusion demonstrates no issue of substantial public interest, the Court should deny review.

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V. CONCLUSION

The Department asks the Court to deny review.

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RESPECTFULLY SUBMITTED this 1st day of July, 2025.

NICHOLAS W. BROWN
Attorney General

ANASTASIA SANDSTROM
Senior Counsel
WSBA No. 24163
Office Id. No. 91018
800 Fifth Ave., Suite 2000
Seattle, WA 98104
206-464-7740

No. 104141-1

SUPREME COURT
STATE OF WASHINGTON

JOHN L. DOUGLAS, JR., Petitioner, v. DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, 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, they caused to be served the Department's Answer and this Certificate of Service in the below described manner:

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Sara Sheikh
sara@washingtonlawcenter.com

DATED this 1st day of July, 2025.

BRITTNEY VALANDINGHAM
Paralegal
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188

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

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