NO. 859455

COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON

JOHN L. DOUGLAS, JR.,

Appellant,

v.

THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON,

Respondent.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

John L. Douglas, Jr. Appellant below and Petitioner here, is a Washington State injured worker who seeks discretionary review of the Court of Appeals Division One's unpublished decision issued on April 14, 2025.

II. COURT OF APPEALS DECISION

Division 1 of the Court of Appeals issued an unpublished decision in Cause No. 85945-5-I on April 14, 2025. A copy of the decision is attached to this petition A – 001 through 020.

III. ISSUES PRESENTED FOR REVIEW

1. Whether a special verdict form in a workers' compensation jury trial was misleading and confusing where, instead of asking whether the claimant had an occupational disease, it asked whether the Board was correct in finding that five specific conditions were not work related, and then fragmented the claim into separate questions about each diagnosis—causing jury confusion that the trial court failed to correct.

2. Whether the trial court abused its discretion by refusing to clarify the form when jurors expressed confusion.

IV. STATEMENT OF THE CASE

A. Procedural Facts

On August 20, 2019 The Department of Labor and Industries rejected Mr. Douglas's occupational disease claim. On October 14, 2021, The Board of Industrial Insurance Appeals affirmed finding that his conditions did not arise naturally and proximately from his employment. Mr. Douglas appealed to King County Superior Court. At trial, the court rejected his proposed jury instruction on compensable consequences and adopted the Department's special verdict form, which required the jury to evaluate the correctness of the Board's findings verbatim, which was poorly written, rather than assessing whether Mr. Douglas had proven his claim for occupational disease. Despite jury confusion expressed through two sets of questions, the trial court declined to modify the verdict form. The jury returned a verdict upholding the Board's decision. The Court of Appeals affirmed in an unpublished opinion issued April 14, 2025. This timely petition follows.

B. Substantive Facts

John L. Douglas, Jr. worked for over 40 years in physically demanding jobs. *See* CP at 1068.[1] He has a congenital condition, cleidocranial dysostosis, which affects skeletal development and can cause clavicle abnormalities. *See* CP at 1045. However, despite this condition, Mr. Douglas had never experienced disabling symptoms or limitations prior to his industrial exposures. *Id.* His decades of heavy labor cumulatively caused and aggravated degenerative changes in his right shoulder, including glenohumeral osteoarthritis, a degenerative labral tear, rotator cuff atrophy, disarticulation of the biceps tendon, and shoulder strain. Imaging revealed due to the physical demands of his work history and the aggravation of his preexisting condition of osteoarthritis ultimately led to the diagnosis of an occupational disease in 2019 by an occupational medicine physician. CP at 1055.

[1] Citations to "CP" refers to Clerk's Papers.

V. ARGUMENT

RAP 13.4(b) states that a petition for review will be accepted if the petition involves 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 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, 759, P.2d 1206 (1988)).

This case presents an issue of substantial public interest warranting review under RAP 13.4(b). The proper framing of special verdict forms in BIIA appeals affects not only individual claimants but also the administration of workers compensation cases statewide. The issue here is not simply about the causation of individual diagnosed conditions, but the threshold legal

question of whether there is a claim allowance for an occupational disease at all. The verdict form's structure risked misleading juries into believing that every diagnosed condition must be proven work-related to allow a claim, rather than any one condition sufficing. Clear authority from this Court is necessary to guide trial courts, administration bodies, and litigants on how to frame verdict forms in occupational disease claims. This confusion is likely to recur absent guidance, making the issue one of both public and private significant.

A. The verdict form misstated Mr. Douglas's burden of proof by asking whether the Board was correct, rather than focusing on whether any occupational disease was established.

Washington law provides that in an appeal from a Board decision, the Board's decision is prima facie correct, and a party attacking the decision must support its challenge by a preponderance of the evidence. *Ruse v. Dep't of Lab. & Indus.*, 138 Wash. 2d 1, 5, 977 P.2d 570, 572 (1999). In other words, the claimant, here Mr. Douglas, has the burden to prove, by a

preponderance, that the Board's denial of his claim was wrong. That is the legal standard of review for the court. But the manner in which this standard is conveyed to the jury in the verdict was misleading, especially when the presumption is explained in a jury instruction. CP at 1486. The jury was asked in Question No. 1: "Was the Board of industrial Insurance Appeals correct in deciding that [Mr. Douglas's five shoulder conditions] did not arise naturally and proximately out of his employment?". This phrasing 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.

RCW 51.52.115 requires that the jury be informed of the Board's findings, and the burden is on the appealing party to prove the Board wrong. However, there is a critical distinction between informing the jury of the posture of the case versus structuring the verdict question in a way that frames the Board as presumptively "correct." The verdict form here arguably

magnified the Board's presumed correctness beyond what the law requires. Moreover, the Board findings were provided to the jury through an instruction. CP at 1487-88. By verbatim asking "Was the Board... correct" the form is skewing the jury's perspective. *See* CP at 1545-46. It invited jurors to give deference to the Board's conclusion, rather than independently weighing the evidence industrial causation. The jury's role was to decide whether Mr. Douglas met his burden of proving an occupational disease by preponderance of the evidence. Yet the verdict form never directly posed that question. It did not ask, for example, "Has Mr. Douglas proven that he has occupational disease arising from his employment?" Additionally, no legal authority requires the verdict form to start with "Was the Board correct [...]."

The error of this approach is illuminated by *Ruse*. In *Ruse* the court emphasized that a court may reverse the Board's decision only if it finds "from a fair preponderance of credible evidence, that the Board's findings and decision are incorrect."

Ruse, 977 P.2d at 572. That standard presumes the Board is initially correct as a matter of procedure, but it does not mean the jury should be asked point blank if the Board was right. Rather, the jury must be convinced by the evidence that the claimant's condition is work related; if so, the Board's decision is by definition not supported by the evidence and must be reversed. The verdict question in Mr. Douglas's trial blurred this subtlety. By its plain language, if shifted the jury's attention to judging the Board's determination itself, which is at best an awkward proxy for the statutory question, and at worst a source of confusion about burdens.

Indeed, the Department's own argument in favor of this working reveals the mis-focus: the Department insisted its Mr. Douglas burden to show that the Board's findings and decision [...] are incorrect. RP at 591.[2] That is correct statement of the law in the abstract, but it does not logically follow the verdict form

[2] Citations to "RP" refers to Report of Proceedings.

to be framed as "Was the Board correct?" if the jury is properly instructed on the elements of an occupational disease and the burden of proof, a straightforward interrogatory on whether the claimant's condition is an occupational disease will suffice. Here, the jury was instructed on the definitions of occupational disease and proximate cause but the verdict form's wording may have undermined those instructions. See CP at 1500. There was no interrogatory explicitly asking, for example, "Did Mr. Douglas's work conditions proximately cause or aggravate a disease or condition in his right shoulder?" Such a question would have squarely put the required factual determination to the jury. Instead, the given Question No. 1 folded the legal burden into the question in a confusing manner, effectively asking jurors to decide a mixed question of law and fact without clarity that only a preponderance was required to answer "No".

This misstatement is subtle but significant. It is analogous to instructing a jury in a civil case, "Is the defendant's denial of liability correct?" rather than simply asking "Whether the

defendant is liable under the legal standards." While jurors are laypeople and may not be able to parse the difference in phrasing, which is precisely why clarity in the verdict form is crucial. The form here failed that test. It placed the Board's front and center, effectively doubling down on the prima facie weight of the Board's decision, rather than concentrating the jury on the essential question of industrial causation. The result was elevated risk of confusion— a risk that, as discussed in the next section, materialized in the jurors' actual confusion about what needed to be proven.

This Court should grant review because the Court of Appeals sanctioned a verdict form that materially misrepresents the governing legal standard and burden of proof in workers' compensation appeals, an issue of substantial public interest for administration of justice of these cases.

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B. The verdict form improperly fragmented a single occupational disease claim into five separate conditions, misleading the jury to think all conditions must be work-related for the claim to succeed, then continued to break each condition down into separate questions.

Even apart from the "Whether the Board was correct" phrasing, the structure of the verdict form was independently erroneous. Mr. Douglas's claim was that his right shoulder condition, encompassing several interrelated diagnosis, was an occupational disease caused or aggravated by this work. Legally, this was one claim of occupational disease, and proving it required showing that at least one of the diagnosed conditions, or the overall shoulder pathology arose naturally and proximately from employment. See *Dennis v. Dep't of Lab. & Indus. of State of Wash.*, 109 Wash. 2d 467, 745 P.2d 1295 (1987).The special verdict form, however, sliced his claim into five individual sub-questions (Question 2-6), one for each medical diagnosis. *See* CP at 1545-46. This approach gave the clear impression that Mr. Douglas needed to establish work causation for each diagnosed condition in order to have occupational disease at all. That is not

the law. A worker need not show that every aspect of a multi-faceted medical condition is industrially related, only that the worker has, as a result of his employment, a disease or condition meeting the statutory definition. *Dennis,* 745 P.2d at 1295.

By breaking the inquiry into parts, the verdict form invited the jury to evaluate each shoulder condition in isolation, rather than considering the occupational disease claim as a whole. This mistake is furthered because neither doctor's specifically testified about majority of the conditions. This was misleading and prejudicial because a juror could believe that Mr. Douglas's rotator cuff atrophy was degenerative and not related to the work, but simultaneously believe that his labral tear or osteoarthritis was largely work related. Another issue is that it was prejudicial error to require the jury to determine whether certain conditions were related to the occupational disease when no medical testimony or evidence was presented regarding the case of the condition, thereby inviting speculation. The trial court feared the same yet failed to remedy. *See* RP at 603-05. Nevertheless, under

the verdict form's design, that juror might answer "Yes" to some of Questions 2-6 and "No" to others. But what outcome does that yield for the claim? Especially when Question No. 1 does not allow the separation of either conditions. The form provided no clear guidance on how a mix answers would translate into a verdict on the claim. The jury believed consistency was required, or that if any one condition was not proven occupational, Mr. Douglas must lose. *See* CP at 1552, 1554. This effectively raises the bar far beyond the statutory requirement. It would require the worker to disentangle multiple related medical problems and prove industrial causation of each one to win, an unrealistic and unjust burden especially in occupational disease cases where multiple overlapping conditions often result from the same work exposure.

Washington law holds that the propriety of a special verdict form is reviewing under the same standards as jury instructions. *See Capers v. Bon Marche, Div. of Allied Stores*, 91 Wash. App. 138, 955 P.2d 822 (1998). A Jury instructions (and

by extension verdict forms) are sufficient only if they are not misleading and allow the party to argument his theory of the case. *Id.* at 825. A verdict form that misleads the jury on a fundamental issue is reversible error. *Id.* Here, the fragmentation of the verdict form after already presenting the question in Question No. 1 was inherently misleading, as evidenced by the juror's own reaction their second question to the court explicitly highlighted the confusion: they could not tell whether Question No. 1 required them to find "one or more" conditions occupational or "none" occupational. See CP 1552-54. In other words, the jurors were unsure if one work related condition would be enough for Mr. Douglas to prevail, or if he had to prove all five were work related. This confusion arose directly from the special verdict form's segmented structure. Had the verdict form simply asked, "Did Mr. Douglas have an occupational disease arising out of his employment?" There would have been no such ambiguity. But the form instead emphasized each diagnosis separately after reading the confusing first question, as their inquiry shows.

The Court of Appeals in this case downplayed the problem, effectively ruling that because the jury instructions correctly stated the law, the verdict form's format did no harm. That conclusion cannot be reconciled with the record when jurors explicitly state that the verdict form has caused confusion about the central legal standard, the form is by definition misleading. Washington precedents such as in *Capers*. The court in *Capers* recognize that even a technically correct instruction or verdict form is erroneous if it is misleading when read as a whole with the entire charge. *Capers*, 955 P.2d at 825. The Court of Appeals also noted that special verdict form need not restate every legal element so long as the accompanying instructions do so accurately, but crucially, the form must not sow confusion or prejudice. *Id.* Here, the verdict over included and overemphasized the various medical conditions, thereby obscuring the ultimate issue. The jurors' inability to discern whether "one or more" versus "none" of the conditions needed to be occupational is proof of positive that the form was

misleading on a material issue. As a result, Mr. Douglas's theory, that his long history or arduous work contributed to at least one of the shoulder pathologies, making his resulting shoulder disability an occupational disease, was not fairly presented to the jury in the verdict framework.

Had the jury been clearly told that the finding even a single work related condition would warrant a verdict for Mr. Douglas, the deliberations and outcome could be been different. Instead, the jury's last communication suggests they have erred on the side of saying the Board was correct because they were unsure about the threshold. This is precisely the kind of prejudice that a flawed verdict form can inflict. As the Court of Appeals observed in *Capers*, when a special verdict form misleads the jury and results in a misunderstanding of the law, prejudice is established and new trial is required. *See Capers v. Bon Marche, Div. of Allied Stores*, 91 Wash. App. 138, 955 P.2d 822 (1998). By granting review, this Court can clarify that occupational disease claims are not to be atomized in special verdict forms in a way

that increases the claimant's burden. The question is whether work caused a disease or condition, singular or collective, in the worker, not an exam on each diagnosis in isolation. Fragmenting the claim as done here conflicts with the established principle that jury charges must be considered as a whole and not mislead on the law. This Court's intervention is needed to correct that error and prevent future recurrence.

C. The jury's demonstrated confusion, and the trial court's refusal to provide a clarifying instruction, deprived Mr. Douglas of a fair trial.

By the time the jury sent its questions to the judge, it was evident that the verdict form had sown serious confusion. The trial court had an opportunity at the point to correct course by either reformulating the verdict form or giving a clarifying instruction to dispel the misunderstanding. Initially, the judge showed a willingness to do so, floating the idea of issuing a new, simplified Question No. 1 and striking the rest. See CP at 664-67.This proposal aligned with what Mr. Douglas had requested all along and would have directly answers the jury's "one or

more versus none" inquiry. However, after the Department's objected, the court retreated from its inclination to clarify. The court ultimately responded to the jury with a non-answer: "Please reread question one carefully." CP at 1553. Mr. Douglas explicitly objected that this response failed to answer the jurors' query. RP at 680. The trial court nonetheless refused any further clarification. The jury was left to puzzle through the ambiguity on its own, with no additional guidance.

This refusal to meaningfully answer the jury's question was a clear abuse of discretion in the context of this case. Trial courts certainly have discretion in how to respond to jury questions, but that discretion must be exercised to promote clarity and justice, not to perpetuate confusion. Here, the jurors were confused about a central legal issue: how to interpret the key question on the verdict form. When a jury signals such confusion, as anticipated by Mr. Douglas's counsel, the court has a duty to respond in a way that clears up the legal misunderstanding. Simply telling them to reread the very

language that confused them is, as Mr. Douglas argued at trial, no answer at all. The court's refusal to clarify effectively left the jury misinformed at the critical moment of reaching a verdict. This was manifestly unreasonable and thus an abuse of discretion.

The prejudice to Mr. Douglas is apparent. The jury's confusion centered on whether they needed to find all conditions work related to say the Board was wrong. Lacking clarification, the jury returned a verdict that the Board was correct without ever reach the subsidiary questions about the individual conditions. We cannot known exactly what happened in the deliberations, but the timeline and outcome, and length of deliberation strongly suggest that jurors, uncertain about the standard, defaulted to a conservative answer rather than risk an incorrect application of the law. Additionally, during deliberation a juror suddenly felt like she did not agree with the law. RP at 656-63. Notably, when polled, the verdict was 11-1, indicating at least one juror may have disagreed. RP at 687. It is

entirely possible that some jurors believed one or more of Mr. Douglas's shoulder conditions were related to his work but, thinking that was not enough to grant the claim, acquiesced in a "Yes" answer to Question No. 1. The trial court's rigid insistence on the flawed verdict form, even when faced with jury's explicit plea for guidance twice, prejudiced Mr. Douglas's ability to fairly present his case and confused the trier of fact on a material issue.

This Court should grant review to hold that when a jury in a workers' compensation appeal expressed confusion about whether claimant must prove every medical condition versus any one condition, the trial court must dispel that confusion. The failure to do so in this case was an abuse of discretion requiring reversal. If left standing, the decision below signals that trial courts may leave juries in the dark on critical questions, so long as the initial instructions were correct on paper. That is not and should not be the law. Washington workers and employers both deserve clarity in the trial of these cases. A simple clarifying

instruction or change in Question No. 1 could have ensured the jury applied the proper legal standard. Denying Mr. Douglas that clarification warrants a new trial so that his claim can be decided under the correct understanding of the law.

In Mr. Douglas's case, the verdict form misstated the legal inquiry and misled the jury in two key respects. First, by asking whether the Board's findings were "correct," the form implied a presumption in favor of the Department's decision, undermining the worker's statutory right to *de novo* review. Second, and more significantly, the structure of the verdict form fragmented Mr. Douglas's claim into multiple specific medical conditions. This created the appearance that the jury needed to find all of the diagnosed conditions arose naturally and proximately from employment before allowing the claim, rather than determining whether Mr. Douglas had a claim for occupational disease— a work related injury. This confusion created a legal

misunderstanding that was not only prejudicial but directly inconsistent with Washington law.

VI. CONCLUSION

Mr. Douglas's trial was marred by a verdict form that misstated the issues, confused the jury, and prejudiced the fair consideration of his claim. The Court of Appeals' opinion upholding the verdict form is in conflict with established Washington law requiring clear and non-misleading jury instructions and verdict forms. The decision below also effectively nullifies Mr. Douglas's statutory right to *de novo* determination of his claim by deferring unduly to the Board's phrasing. The Washington Supreme Court should accept review to correct these errors. This case presents an important issue of workers' compensation law and trial procedure: how juries are to be instructed and directed to render verdicts in appeals from the Board—especially in a simple matter such as claim allowance.

The outcome affects not only Mr. Douglas, but the clarity and fairness of many such trials statewide.

For the foregoing reasons, Petitioner John L. Douglas, Jr. respectfully asks this Court to grant review, reverse the Court of Appeals, and remand for new trial on his occupational disease claim with proper instructions and verdict form. Only by doing so can the fundamental issue— whether Mr. Douglas claim should be allowed as an occupational disease claim be fairly decided under the correct standard.

The undersigned certified the word count for this document, exclusive of words contained in this paragraph, appendices, title sheet, table of contents, table of authorities, certificate of service, and certificate of compliance, as 3,801.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Respondent, v. JOHN L. DOUGLAS, JR., Appellant.	No. 85945-5-I DIVISION ONE UNPUBLISHED OPINION

CHUNG, J. — John L. Douglas, Jr. appeals the decision from the superior court affirming his denial of benefits under the Industrial Insurance Act (IIA), Title 51 RCW, for an occupational disease. He challenges both the trial court's refusal to give a proposed jury instruction concerning the "compensable consequences" doctrine and the court's decision to use the verdict form proposed by the Department of Labor & Industries (Department). Finding no error, we affirm and deny Douglas's request for fees.

FACTS

John L. Douglas worked for over 40 years predominantly in physically demanding jobs. He has a congenital condition that affects skeletal development, and, as a result, he does not have a clavicle.[1] Around July 2015, while working

[1] The condition, cleidocranial dysostosis, affects skeletal development, and sometimes contributes to an abnormality in how the clavicle develops.

for Enservio as an on-site specialist,[2] a box of waterlogged books fell onto his outstretched right arm and injured his right shoulder. Douglas subsequently filed a workers' compensation claim for that injury, and the Department allowed the claim and corresponding treatment. After Douglas received treatment, his condition improved and he returned to his job of injury without physical limitations. On October 28, 2015, the claim was closed without an award for permanent disability.

On June 7, 2016, Douglas left Enservio because he could no longer comfortably perform the physical demands of his job due to ongoing right shoulder pain. He then went to work for one of his previous employers to do less physically demanding work. About a year after leaving Enservio, he reinjured his right shoulder outside of work. While reaching into the backseat of his car to grab a bottle of water, he felt a "pop" in his right shoulder. Douglas applied to reopen his June 2015 injury claim. The Department denied the request, and the Board dismissed Douglas's appeal. No further appeal followed.

In May 2019, Douglas saw an occupational medicine physician, Dr. Esi Nkyekyer, who diagnosed him with five conditions related to his right shoulder. Upon Dr. Nkyekyer's recommendation and with her assistance, he filed a claim asserting an occupational disease. The Department denied the claim, stating that Douglas's condition was "not an occupational disease as contemplated by section 51.08.140 RCW." Douglas appealed to the Board of Industrial Insurance

[2] Douglas's job entailed entering commercial and residential buildings that experienced a fire or flood and inventorying items not attached to the building itself.

Appeals (Board), and the Board affirmed the Department's order. Pertinent to this appeal, the industrial appeals judge (IAJ) made the following finding:

> 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.

Accordingly, the IAJ concluded, "Douglas's condition is not an occupational disease within the meaning of RCW 51.08.140." Douglas filed a petition for review, which the Board denied.

Douglas then appealed the decision to King County Superior Court, which held a jury trial. After the parties rested, they met with the trial judge to discuss and finalize jury instructions. While the parties agreed on most of the instructions, the trial court declined to offer Douglas's proposed instruction on the doctrine of compensable consequences, which stated as follows:

> The Industrial Insurance Act compensates for any condition from primary industrial injury; or, in other words, it rejects no element of disability if it has accrued in consequence of the first hurt, or as an aggravation arising from any collateral contributing cause. However, the test for determining when an alleged consequential, and therefore compensable, injury exists remains whether there is a proximate cause between the original industrial injury and the impairment or need for medical treatment that is alleged to have arisen in some consequence thereof.[3]

The parties also disagreed about whether to use the Department's proposed verdict form, which posed six questions to the jury. Question 1 asked

[3] This instruction cited to four cases, two of which were decisions from the Board of Industrial Insurance Appeals: Ross v. Erickson Constr. Co., 89 Wash. 634, 155 P. 153 (1916); McDougle v. Dep't of Labor & Indus., 64 Wn.2d 640, 644, 393 P.2d 631 (1964); In re: Iris Vandorn, BIIA Dec. 02 11466 (2003); In re: Arvid Anderson, BIIA Dec. 65 170 (1960).

the jury to determine whether the Board's finding of fact number 5 was correct, and it included a verbatim recitation of the finding below:

> **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 the distinctive conditions of his employment?
>
> **ANSWER:** __ (Write "yes" or "no")

Questions 2 through 6 asked if each of the 5 conditions identified in Question 1 individually arose naturally and proximately out of the distinctive conditions of Douglas's employment. Douglas did not agree to including the discrete conditions separately and argued that the first question should ask simply whether he had a claim for an occupational disease. The Department objected to the suggested change, arguing "[i]t's Mr. Douglas's burden to show that the findings and decisions of the Board are incorrect." The trial court decided to use the Department's proposed verdict form.

After deliberations began, the jury asked the trial court two questions. First, the jury asked whether they had "to consider and agree on all of the conditions as a group on Question 1?" The trial court and parties agreed on the response: "Ten (10) jurors must agree to each question. It need not be that the same ten (10) jurors agree to any individual question so long as ten (10) agree to each question." The jury also asked a second question:

> The existence of questions 2-6 have led to some confusion about how to read question # 1. Are we to read question 1 as if the 5 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?"

In response, the trial court initially suggested providing a new verdict form that stated only Question 1 and omitted Questions 2 through 6. When prompted to comment on this suggestion, Douglas reiterated his position that the first question should just be very simple, but did not immediately specify in what way. The Department argued the jury should simply be instructed to reread the instructions carefully. Eventually, Douglas suggested the first question "should read as whether there was an occupational disease claim." The court proposed the response, "Please reread question one carefully." Douglas objected to this proposal, arguing this solution did not answer the jury's question. The trial court rejected Douglas's proposal and instead gave its proposed response.

After receiving the court's response, the jury asked no further questions and returned a verdict approximately one hour later. The verdict form answered "yes" to Question 1. Because the form instructed the jury, "If you answered 'yes' to Question 1, do not answer any further questions," the jury did not answer Questions 2 through 6. The court then polled the jury; eleven jurors confirmed that was their individual verdict and all twelve jurors confirmed that the verdict was the verdict of the jury. Accordingly, the trial court entered judgment for the Department.

Douglas filed a timely appeal.

DISCUSSION

Douglas asserts the trial court erred when it refused to provide his proposed jury instruction on the compensable consequences doctrine because it was relevant to his occupational disease claim and it was a correct statement of law. He further contends the trial court erred when it overruled his objection to the verdict form and refused to adjust it, especially after the jury asked two clarifying questions concerning the form.

Under the IIA, workers injured on the job are entitled to compensation for their injuries. RCW 51.32.010. The IIA includes coverage for the proximate effects of "industrial injuries" and "occupational diseases." RCW 51.08.100 ("Injury"); RCW 51.08.140 ("Occupational Disease"). " 'Injury' means a sudden and tangible happening, of a traumatic nature, producing an immediate or prompt result, and occurring from without, and such physical conditions as result therefrom." RCW 51.08.100. By contrast, RCW 51.08.140 defines an occupational disease as "such disease or infection as arises naturally and proximately out of employment."

Specifically, for an occupational disease claim, a worker is entitled to benefits under the IIA if the disease "arises naturally and proximately out of employment." RCW 51.08.140. "Arise[s] proximately" means that employment conditions "must be the proximate cause of the disease . . . so that the disease would not have been contracted but for the condition existing in the extrahazardous employment.' " Dennis v. Dep't of Labor & Indus., 109 Wn.2d 467, 477, 745 P.2d 1295 (1987) (quoting Simpson Logging Co. v. Dep't of Labor & Indus., 32 Wn.2d 472, 479, 202 P.2d 448 (1949)). The "naturally" requirement

is separate from the "proximately" requirement. Dennis, 109 Wn.2d at 481. To show their disease "arises naturally" out of employment, a worker must establish that the disease "came about as a matter of course as a natural consequence or incident of distinctive conditions of his or her particular employment." Id. at 479, 481. "The conditions need not be peculiar to, nor unique to, the worker's particular employment." Id. The Dennis court further explained,

> The worker, in attempting to satisfy the "naturally" requirement, must show that his or her particular work conditions *more probably caused his or her disease or disease-based disability than conditions in everyday life or all employments in general*; the disease or disease-based disability must be *a natural incident of conditions of that worker's particular employment*. Finally, the conditions causing the disease or disease-based disability must be conditions of *employment*, that is, conditions of the worker's particular occupation as opposed to conditions coincidentally occurring in his or her workplace.

Id. (emphasis added).

In an appeal to the superior court, the Board's decision is prima facie correct under RCW 51.52.115, and a party attacking the decision must support its challenge by a preponderance of the evidence. Ruse v. Dep't of Labor & Indus., 138 Wn.2d 1, 5, 977 P.2d 570 (1999). In such an appeal, "either party shall be entitled to a trial by jury upon demand, and the jury's verdict shall have the same force and effect as in actions at law." RCW 51.52.115. "Where 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. "Appeal shall lie from the judgment of the superior court as in other civil cases." RCW 51.52.140.

I. Proposed Instruction

Douglas argues the trial court erred by refusing to give his proposed "compensable consequences" instruction. Generally, "[w]hether to give a certain jury instruction is within a trial court's discretion and so is reviewed for abuse of discretion." Fergen v. Sestero, 182 Wn.2d 794, 802, 346 P.3d 708 (2015). "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

"If a party's theory of the case can be argued under the instructions given as a whole, then a trial court's refusal to give a requested instruction is not reversible error." Anfinson v. FedEx Ground Package Sys., Inc., 159 Wn. App. 35, 45, 244 P.3d 32 (2010). Jury instructions are sufficient if they allow each party to argue its theory of the case, are not misleading, and when read as a whole, properly inform the trier of fact of the applicable law. City of Bellevue v. Raum, 171 Wn. App. 124, 142, 286 P.3d 695 (2012). " '[A]n instruction that contains an erroneous statement of the applicable law is reversible error where it prejudices a party.' " Gosney v. Fireman's Fund Ins. Co., 3 Wn. App. 2d 828, 863, 419 P.3d 447 (2018) (quoting Cox v. Spangler, 141 Wn.2d 431, 442, 5 P.3d 1265 (2000)). "Error is not prejudicial 'unless it affects, or presumptively affects, the outcome of the trial.' " Gosney, 3 Wn. App. 2d at 863 (quoting Brown v. Spokane County Fire Prot. Dist. No. 1, 100 Wn.2d 188, 196, 668 P.2d 571 (1983)).

Here, Douglas proposed the following instruction:

> The Industrial Insurance Act compensates for any condition from primary industrial injury; or, in other words, it rejects no element of

> disability if it has accrued in consequence of the first hurt, or as an aggravation arising from any collateral contributing cause. However, the test for determining when an alleged consequential, and therefore compensable, injury exists remains whether there is a proximate cause between the original industrial injury and the impairment or need for medical treatment that is alleged to have arisen in some consequence thereof.[4]

He argues that the instruction was an accurate statement of the law, which establishes that "initial work-related injuries or aggravations of pre-existing conditions can lead to further complications," and thus are compensable under the IIA. Douglas claims this instruction was important because his theory of the case was aggravation: his "arduous work history" contributed to the wear and tear in his right shoulder, the shoulder deteriorated to the extent that he suffered an industrial injury that would not have occurred but for the wear and tear, and after healing, his shoulder popped during an expected activity.

While Douglas claims he was prevented from proposing a "compensable consequences" instruction, that doctrine was not at issue based on the facts presented at trial. "Washington has recognized the rule, referred to as the compensable consequences doctrine, which establishes that if treatment performed for an industrial injury causes complications or aggravates the injury, the claim covers *the sequelae of treatment.*" Clark County v. Maphet, 10 Wn. App. 2d 420, 438, 451 P.3d 713 (2019) (emphasis added). The covered consequences include "[w]hen a workman is hurt and removed to a hospital, or is put under the care of a surgeon." Ross v. Erickson Constr. Co., 89 Wash. 634,

[4] This instruction cited to four cases, two of which were decisions from the Board of Industrial Insurance Appeals. Ross v. Erickson Constr. Co., 89 Wash. 634, 155 P. 153 (1916); McDougle v. Dep't of Labor & Indus., 64 Wn.2d 640, 644, 393 P.2d 631 (1964); In re: Iris Vandorn, BIIA Dec. 02 11466 (2003); In re: Arvid Anderson, BIIA Dec. 65 170 (1960).

647, 155 P. 153 (1916) (reasoning such a worker "is still, within every intendment of the law, in the course of his employment and a charge upon the industry, and so continues as long as his disability continues."). Further, "*the aggravation by malpractice* of an injury does not become an intervening cause of damages, but is incidental to the original injury." Anderson v. Allison, 12 Wn.2d 487, 492, 122 P.2d 484 (1942) (emphasis added). Here, Douglas does not claim that subsequent *treatment* for an industrial injury caused complications or aggravated the injury. Rather, he argues that the "water bottle incident" was "a compensable consequence and not an intervening cause" of his shoulder problems. The compensable consequences doctrine does not apply in such circumstances.

Regardless of whether his proposed instruction was properly described as a "compensable consequences" instruction, Douglas cites to McDougle v. Dep't of Labor & Indus., 64 Wn.2d 640, 641, 393 P.2d 631 (1964), to argue it was necessary to help the jury understand that an occupational disease can manifest via a non-work-related event.[5] In McDougle, the worker filed a claim for a low-back injury while working, in which he suffered a strain and aggravation of a pre-existing osteoarthritic condition. 64 Wn.2d at 641. The Department later closed his claim, and it included an award for permanent partial disability for 30 percent. Id. He later reinjured his low back condition while lifting a load of grain to assist a relative and sought to reopen his injury claim. Id. at 641-42. The Department denied the application, based on the belief that "such aggravation was due to a

[5] Douglas v. Dep't of L&I, No. 85945-5-I (Jan. 23, 2025), at 5 min., 4 sec., through 7 min., 2 sec., video recording by TVW, Washington State's Public Affairs Network, https://tvw.org/video/division-1-court-of-appeals-2025011574/?eventID=2025011574.

new intervening independent cause, namely, lifting a sack or sacks of grain." Id. at 643. The Washington Supreme Court disagreed and remanded the claim, holding the "reasons given for not reopening the claim do not constitute a sufficient justification for that action." Id. at 646. It reasoned that a permanent partial disability based on a back injury does not automatically preclude an individual from doing any lifting and, thus, does not necessarily act as an intervening cause if reinjury occurs. Id. at 645-46. Rather, the court specified that the "test to be applied . . . is whether the activity which caused the aggravation is something that the claimant might reasonably be expected to be doing, or whether it is something that one with his disability would not reasonably be expected to be doing." Id. at 645.

But McDougle addresses "aggravation" in the context of reopening a preexisting claim. We have previously noted McDougle addressed a "claimant's attempt to reopen a closed claim for aggravation of the covered injury" and held that "McDougle should be limited" to reopening aggravation claims. Dep't of Labor & Indus. v. Shirley, 171 Wn. App. 870, 883, 288 P.3d 390 (2012). The Shirley court explained that "whether a claimant's conduct is reasonably expected is determined by whether the claimant's conduct is 'such as could reasonably be expected of a [person] with [their] [department-established] disability,' not the claimant's 'subjective personally known condition as of the date of the aggravation.' " Id. at 883 (quoting Scott Paper v. Dep't of Labor & Indus., 73 Wn.2d 840, 848, 440 P.2d 818 (1968)). And in this case, though Douglas had attempted to reopen his July 2015 injury claim, the Department denied the

request, and the Board dismissed Douglas's appeal of the denial. Douglas's current claim is for an occupational disease, not aggravation of the preexisting covered injury. Moreover, unlike in McDougle, Douglas was not assessed to have any permanent disability for the prior covered injury. McDougle does not address the "compensable consequences doctrine" and does not support the argument that the proposed instruction was improperly denied.

Most importantly, reading the instructions together, the instructions did not limit Douglas's ability to argue his theory of the case that "the arduous work history contributed to the wear and tear in his right shoulder" and the aggravation of the condition stemmed not from a new, independent cause of reaching for a water bottle, but from his occupation. First, instruction 12 defined "proximate cause," stating, "A cause of a condition or disability is a proximate cause if it is related to the condition or disability in two ways: (1) the cause produced the condition or disability in a direct sequence unbroken by any new, independent cause, and (2) the condition or disability would not have happened in the absence of the cause." Additionally, instruction 12 emphasized, among other things, that "[t]he law does not require that the work conditions be the sole

proximate cause" of the later condition or disability.[6]

Instruction 14 defined occupational disease, the basis for Douglas's current claim.[7] The instruction additionally explained how a condition of employment may proximately cause or aggravate a worker's preexisting disease: "A disease arises proximately out of employment if the conditions of the worker's employment proximately caused or aggravated the worker's disease." This instruction was an accurate statement of the law, as an IIA-covered occupational disease must "arise[] naturally and proximately out of employment." RCW 51.08.140.

Instruction 15, which the Department opposed, discussed the aggravation theory in the context of an occupational disease claim:

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[6] Instruction 12 stated,

> A cause of a condition or disability is a proximate cause if it is related to the condition or disability in two ways: (1) the cause produced the condition or disability in a direct sequence unbroken by any new, independent cause, and (2) the condition or disability would not have happened in the absence of the cause.
>
> There may be one or more proximate causes of a condition or disability. For a worker to be entitled to benefits under the Industrial Insurance Act, the work conditions must be a proximate cause of the alleged condition or disability for which entitlement to benefits is sought. The law does not require that the work conditions be the sole proximate cause of such condition or disability.

[7] Instruction 14 defined "occupational disease" as follows:

> An occupational disease is a disease or infection that arises naturally and proximately out of the worker's employment.
>
> A disease arises naturally out of employment if the disease comes about as a matter of course as a natural consequence of distinctive conditions of the worker's employment. It is not necessary that the conditions be peculiar to, or unique to, the particular employment. A disease does not arise naturally out of employment if it is caused by conditions of everyday life or of all employments in general.
>
> A disease arises proximately out of employment if the conditions of the worker's employment proximately caused or aggravated the worker's disease.

> If you find that:
>
> (1) Before the occupational disease, Mr. Douglas had a bodily condition that was not disabling or requiring treatment; and
> (2) Because of the occupational disease the pre-existing condition was lighted up or made active;[8]
>
> Then Mr. Douglas is eligible for benefits for his need for disability and/or treatment even though Mr. Douglas' disability and/or need for treatment may be greater than it would have been for a person in the same circumstances without that pre-existing condition.
>
> A worker may not be eligible for benefits, however, for any treatment or disabilities that resulted from the natural progression of the pre-existing condition independent of this occupational disease.

Instruction 15 allowed Douglas to argue that even if his occupational disease was asymptomatic prior to the water bottle incident, it was not merely the result of the natural progression of his pre-existing condition (cleidocranial dysostosis).

In closing, Douglas expressly stated that while evidence had been presented about the 2015 shoulder strain and the water bottle incident, "[w]e're not here for these two things." Instead, Douglas explained, "what we need to consider is why did his shoulder dislocate? . . . It's because the long history of work that he's done. All that wear and tear on his shoulder joint." Later in closing, he argued, "[T]he big picture here is, did [his] arduous work history worsen his right shoulder condition? That's all you have to answer." Further, he argued that "the hard work he's done coupled with the incidents that have occurred, those have further aggravated and worsened his shoulder condition." Read together,

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[8] The "lit up" doctrine recognizes that "if an injury lights up or makes active a latent or quiescent infirmity or weakened physical condition occasioned by disease, then the resulting disability is to be attributed to the injury, and not to the preexisting physical condition." Zavala v. Twin City Foods, 185 Wn. App. 838, 860, 343 P.3d 761 (2015).

the instructions allowed Douglas to argue his theory that his long work history had worn down his shoulder; the water bottle incident was not a new and intervening cause of his shoulder conditions, but rather, the incident had "lit" them up; and those conditions were covered occupational diseases. The trial court did not err by denying Douglas's proposed "compensable consequences" instruction.

II. Special Verdict Forms

Next, Douglas contends the first question on the verdict form was "inconsistent with the jury instructions" and "confused the jury when it subsequently asked the same thing in five separate questions." Thus, he argues that the trial court erred when it refused to change the special verdict form, as the contents of the form were misleading and the jury's questions during deliberations highlighted this issue. We disagree.

"Where 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." RCW 51.52.115. The Board's decision is prima facie correct, and the burden of proof is on the party attacking the decision. RCW 51.52.115;[9] Ruse, 138 Wn.2d at 5. The jury must not only be instructed about challenged findings,

[9] RCW 51.52.115 describes the process for an appeal from a Board decision:

> The hearing in the superior court shall be de novo, but the 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. . . . In 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. If the court shall determine that the board has acted within its power and has correctly construed the law and found the facts, the decision of the board shall be confirmed.

but it must also be asked to decide whether those findings were correct. RCW 51.52.115. Review 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.' " Lewis v. Simpson Timber Co., 145 Wn. App. 302, 316, 189 P.3d 178 (2008) (quoting Buffelen Woodworking Co. v. Cook, 28 Wn. App. 501, 503-04, 625 P.2d 703 (1981)).

The propriety of a special verdict form is reviewed under the same standards as jury instructions. Capers v. Bon Marche, Div. of Allied Stores, 91 Wn. App. 138, 142, 955 P.2d 822 (1998). "Essentially, when read as a whole and with the general charge, the special verdict must adequately present the contested issues to the jury in an unclouded, fair manner." Id. (citing Lahmann v. Sisters of St. Francis, 55 Wn. App. 716, 723, 780 P.2d 868 (1989).

Pursuant to RCW 51.52.115, the court was required to instruct the jury about the Board's challenged findings and to ask the jury to decide whether the challenged findings were correct. Accordingly, instruction 9 explained,

> The Board made the following material findings of fact: 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.

Then, Question 1 on the special verdict form asked:

> 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 the distinctive conditions of his employment?

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.

Immediately beneath Question 1, the instructions state, "DIRECTION: If you answered 'yes' to Question 1, do not answer any further questions. If you answered 'no' to Question 1, answer Questions 2, 3, 4, 5, and 6." In turn, Questions 2 through 6 likewise tracked the language from the Board's findings except each focused on only one of the five conditions. The Department contends Questions 2 through 6 were necessary to understand the scope of any verdict in Douglas's favor.[10] Based on the facts in this record, we agree.

Nevertheless, Douglas argues that the two questions the jury asked during deliberations show that the jury was confused and ultimately unable to follow instructions, and, thus, the special verdict form prejudiced the proceedings. However, "questions from the jury are not final determinations, and the decision of the jury is contained exclusively in the verdict." State v. Miller, 40 Wn. App. 483, 489, 698 P.2d 1123, rev. denied, 104 Wn.2d 1010 (1985). "The [jurors'] individual or collective thought processes leading to a verdict . . . cannot be used to impeach a jury verdict." State v. Ng, 110 Wn.2d 32, 43, 750 P.2d 632 (1988). For example, in Ng, the defendant claimed that the court's robbery instructions

[10] For example, Question 2 asks, "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?" Questions 3 through 6 similarly ask the same question, respectively substituting in and underlining each individual condition.

created ambiguity because the instruction defining robbery for felony murder purposes referred explicitly to duress, but the "to convict" robbery instruction did not. Id. at 43. In support of his "ambiguity" argument, Ng pointed to the jury's question as to whether the provided duress instruction applied to the lesser included charges, copies of the instructions marked by the jury during deliberations, and statements made by individual jurors after trial. Id. The court reasoned that "the jury's question does not create an inference that the entire jury was confused, or that any confusion was not clarified before a final verdict was reached." Id. Further, the court refused to speculate as to the meanings of jurors' markings on the instructions, and the "post-verdict statements regarding matters which inhere in the verdict" could not be used to attack the verdict. Id. at 43-44. The court ultimately recognized that "the trial court has discretion whether to give further instructions to a jury after it has begun deliberations" and concluded, "Ng has shown no abuse of discretion in the court's decision to refer the jurors to the instructions as given." Id. at 42, 44.

As in Ng, in this case, the jury's questions do not create an inference that any confusion was not clarified before the final verdict was reached. After the court answered the second question, within an hour, the jury returned a verdict; it filled out the special verdict form correctly, i.e., it answered "no" to the first question and did not answer the additional questions. And when the trial court polled the jury, each juror confirmed that the verdict was their verdict as a jury.

Douglas further argues the verdict form was misleading and inadequate because it failed to include "aggravation" language. However, Douglas did not

object to the special verdict form on this ground below. An appellate court "may still review a claimed special verdict form error when the party has properly excepted," but the party must distinctly state the matter to which they object and the ground of their objection. Raum, 171 Wn. App. at 145. "If a party is dissatisfied with a special verdict form, then that party has a duty to propose an appropriate alternative." Id.; RAP 2.5(a). Here, the record reflects that when Douglas objected, he suggested the first question "should read as whether there was an occupational disease claim," but did not suggest any alternative language about "aggravation." We decline to consider Douglas's new argument on appeal that the failure to include "aggravation" language in the special verdict form was error.[11]

Finally, Douglas asserts the trial judge was biased in favor of the Department. As Douglas did not raise this issue below, we decline to review it pursuant to RAP 2.5(a). Additionally, the issue is inadequately argued on appeal. In support of this argument, Douglas highlights only a single statement: in discussing the jury's question about how to read Question 1, the trial court stated that "listing [the conditions] . . . was going to create problems," but it would do so "[be]cause [it] wanted to help the Department" by providing it with an advisory opinion from the jurors. But other than identifying the challenged statement and quoting from State v. Solis-Diaz, 187 Wn.2d 535, 540, 387 P.3d 703 (2017),

[11] Even if we were to consider the merits, " 'a special verdict form need not recite each and every legal element necessary to a particular cause of action where there is an accurate accompanying instruction.' " Raum, 171 Wn. App. at 148 (quoting Capers, 91 Wn. App. at 144). As noted above, instruction 14 defined "occupational disease," and instruction 15 explained "aggravation" in the context of an occupational disease claim.

Douglas does not engage with the applicable legal test or explain how it applies to facts in his case.

In sum, the trial court did not err in providing the special verdict form to the jury. The special verdict form, along with the instructions, allowed the parties to argue their theories of the case, did not mislead the jury, and properly informed the jury of the law to be applied.

III. Attorney Fees

Douglas requests an award of attorney fees and costs pursuant to RAP 18.1 and RCW 51.52.130. RCW 51.52.130 allows an award of attorney fees to a worker "[i]f, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker." Because we affirm the judgment and order, we deny Douglas's request for attorney fees.

Chung, J.

WE CONCUR:

Feldman, J.

Díaz, J.

NO. 859455

COURT OF APPEALS FOR DIVISION I OF THE STATE OF WASHINGTON

IN RE: JOHN L. DOUGLAS, JR., 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:

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