NO. 104168-3

SUPREME COURT OF THE STATE OF WASHINGTON

ZBIGNIEW M. LASKOWSKI,

Petitioner,

v.

DEPARTMENT OF LABOR & INDUSTRIES,

Respondent.

DEPARTMENT OF LABOR AND INDUSTRIES ANSWER TO PETITION FOR REVIEW

NICHOLAS W. BROWN
Attorney General

Paul Weideman
Assistant Attorney General
WSBA No. 42254
Office Id. No. 91018
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 389–3820

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Rules

Other Authorities

I. INTRODUCTION

The Court of Appeals correctly resolved this case under decades-old precedent, statutes, and rules applying the claim reopening statute. There is no reason for this Court to review.

Zbigniew Laskowski applied to reopen his claim while his appeal of the order closing his claim was pending in the courts. But, under well-established law applying RCW 51.32.160, the Department of Labor and Industries (L&I) cannot reopen a claim unless it is closed and final. *Reid v. Dep't of Lab. & Indus.*, 1 Wn.2d 430, 436, 96 P.2d 492 (1939). That is because L&I must determine whether there has been an "aggravation of disability" subsequent to closure of the claim. *Id.*; RCW 51.32.160(1)(a).

L&I abided by this precedent, and the Board, superior court, and Court of Appeals all affirmed. L&I waited until the appellate court issued the mandate in Laskowski's closing order appeal—making claim closure final—and then denied his reopening application six days later. Because L&I needed to

wait to see if the closing order appeal would succeed, which would keep the claim open, the Court of Appeals correctly held that Laskowski's application to reopen was not "deemed granted" under RCW 51.32.160(1)(d)'s requirement that an application is "deemed granted" if L&I does not deny the application within 90 days.

The Court should deny review.

II. ISSUE

Did L&I timely deny Laskowski's application to reopen when it denied the application six days after the Court of Appeals issued the mandate in his closing order appeal, which finally closed his claim?

III. STATEMENT OF THE CASE

A. Background on Reopening a Workers' Compensation Claim

When workers experience an industrial injury or occupational disease, they may apply for workers' compensation benefits. *See* RCW 51.32.010. Once treatment has concluded and the worker has reached maximum medical

improvement, the worker is evaluated for permanent disability, and the claim closes with a permanent partial disability (PPD) award or a permanent total disability award, if appropriate. RCW 51.32.055; WAC 296-20-01002 (definition of "proper and necessary"), -19000; *Shafer v. Dep't of Lab. & Indus.*, 166 Wn.2d 710, 716, 213 P.3d 591 (2009); *Franks v. Dep't of Lab. & Indus.*, 35 Wn.2d 763, 766-67, 215 P.2d 416 (1950).

After a workers' compensation claim has closed, workers may file an "application to reopen" if an "aggravation . . . of disability takes place." RCW 51.32.160(1)(a), (1)(d). The standards for reopening a claim all turn on the status of the disability on the date of closure. *See* RCW 51.32.160(1)(a). Thus, to reopen a claim, the worker must provide: (1) medical testimony that establishes the causal relationship between the industrial injury and the later disability; (2) "medical testimony, some of it based on objective symptoms, that an aggravation of the injury resulted in increased disability"; (3) medical testimony that the increased aggravation occurred between the

first and second terminal dates; and (4) "medical testimony, some of it based on objective symptoms" that existed on or before the closing date, that the worker's "disability on the date of the closing order was greater than the supervisor found it to be." *Phillips v. Dep't of Lab. & Indus.*, 49 Wn.2d 195, 197, 298 P.2d 1117 (1956) (citations omitted).

"[T]he first terminal date is the date of the last previous [claim] closure or denial of" an application to reopen a claim for aggravation. *Grimes v. Lakeside Indus.*, 78 Wn. App. 554, 561, 897 P.2d 431 (1995). "The second terminal date is the date of the most recent closure or denial of an application to reopen a claim . . . ." *Id.*

L&I must act on "an application to reopen" "within ninety days of receipt of such application," plus an optional 60 days for good cause; if L&I does not deny the application within that period, it is "deemed granted." RCW 51.32.160(1)(d). L&I has adopted a rule stating, "The 90 day

limitation will not apply in instances where the previous closing order has not become final." WAC 296-14-400.

When a worker disagrees with an L&I decision, including an order closing a claim, they may file a protest with L&I or an appeal to the Board of Industrial Insurance Appeals. RCW 51.52.050(2)(a), .060. Following an adverse Board decision, a worker may appeal to superior court for de novo review and then to the appellate courts. RCW 51.52.110, .115.

When appellate review is final, the appellate court issues the mandate, a written notification to the parties and the trial court about an appellate court decision terminating review. RAP 12.5(a). "[U]ntil the Court of Appeals issues its mandate pursuant to RAP 12.5, a decision of the Court of Appeals does not take effect." *Obert v. Env't Rsch. & Dev. Corp.*, 112 Wn.2d 323, 340, 771 P.2d 340 (1989) (citing RAP 12.2).

B. Laskowski Filed an Application to Reopen His Claim While His Appeal to the Closing Order Was Pending in the Courts

In 2006, L&I allowed Laskowski's claim. AR 111. In 2008, L&I closed the claim with a category 3 PPD award for lumbar impairment. AR 112; *see* WAC 296-20-280.

In 2010, L&I reopened the claim. CP 25; AR 113-14. In May 2015, L&I issued an order closing the claim with no additional PPD award. CP 25; AR 118. Laskowski appealed that order to the Board. CP 27-29, 31-32; AR 118.

At the Board, Laskowski and L&I agreed to resolve disputed issues through a binding medical examination. CP 55; *Laskowski v. Dep't of Lab. & Indus.*, 12 Wn. App. 2d 806, 808, 460 P.3d 697 (2019); *see also* WAC 263-12-093(4). The binding examiner addressed whether further treatment was warranted for Laskowski and whether L&I's denial of an additional PPD award was correct. *Laskowski*, 12 Wn. App. 2d at 809. The binding examiner determined that there was no additional recommended treatment for Laskowski's conditions

but that he should receive a higher PPD award—category 4—so the Board issued an order of agreement of parties (OAP) reversing the closing order and remanding the claim to L&I to pay a category 4 PPD award and to close the claim. AR 53; *Laskowski*, 12 Wn. App. 2d at 809.

But, in October 2016, despite having agreed to the binding exam, Laskowski appealed the Board's OAP to superior court. CP 41-45.

In March 2018—while his appeal was pending in superior court—Laskowski applied to reopen his claim. CP 49-50, 52. In April 2018, L&I acknowledged receipt of the application but informed Laskowski that it lacked jurisdiction to act on the application until the superior court resolved his appeal. CP 52.

In May 2018, the superior court affirmed the Board's OAP. CP 54-57. In June 2018, Laskowski petitioned for direct review to this Court. CP 59-68.

While Laskowski's petition was pending in this Court, L&I initially denied the application to reopen but then issued an order in October 2018 stating that its denial of the application was null and void.[1] AR 122.

In January 2019, this Court denied direct review and transferred the case to the Court of Appeals. CP 70. The Court of Appeals affirmed, holding that Laskowski had agreed to the binding examination and so could not dispute the binding examiner's findings and conclusions. *Laskowski*, 12 Wn. App. 2d at 810-11. This Court denied Laskowski's petition for review. *Laskowski*, 12 Wn. App. 2d at 814; *Laskowski v. Dep't of Lab. & Indus.*, 195 Wn.2d 1024, 466 P.3d 779 (2020).

[1] Laskowski says that L&I's initial denial, which L&I later declared null and void, "prov[ed] it had the capacity to act . . . ." Pet. 13. But an agency's ultra vires act is null and void. *See S. Tacoma Way, LLC v. State*, 169 Wn.2d 118, 123, 233 P.3d 871 (2010). L&I's initial denial was ultra vires because L&I cannot act on a reopening application before the claim has closed. *See infra* Section IV.A.

C. L&I Denied the Reopening Application Six Days After the Court of Appeals Issued the Mandate in Laskowski's Appeal to the Closing Order

On September 18, 2020, the Court of Appeals issued its mandate in the closing order appeal. CP 81-82. Six days later, on September 24, 2020, L&I issued an order denying the March 2018 application to reopen. CP 84.

Laskowski appealed the denial of reopening to the Board, arguing that his May 2018 application to reopen was deemed granted under RCW 51.32.160 because L&I did not act within 90 days of receiving it. AR 4; CP 86.

The Board, superior court, and Court of Appeals all affirmed, concluding that L&I had timely denied the application and it was not deemed granted. AR 4-10; CP 100-02; *Laskowski v. Dep't of Lab. & Indus.*, No. 40069-7-III, slip op. (Wash. Ct. App. Apr. 10, 2025).

Laskowski petitions for review. Pet. 1-17.

IV. ARGUMENT

A workers' compensation claim cannot be reopened if L&I has not yet closed the claim. *Reid*, 1 Wn.2d at 436. "A 'reopening' of a claim connotes a former closing . . . ." *State ex rel. Stone v. Olinger*, 6 Wn.2d 643, 647, 108 P.2d 630 (1940). Under this authority, Laskowski cannot establish any of the RAP 13.4(b) criteria for review. No substantial public interest is presented by a case resolved by decades-old precedent and a regulation.

The applicable L&I regulation states, "The 90 day limitation will not apply in instances where the previous closing order has not become final." WAC 296-14-400. As the Court of Appeals determined, the regulation clarifies that, under *Reid*, L&I could not act until the mandate issued in the closing order appeal. *Laskowski*, slip op. at 9-10. L&I's rule is consistent with RCW 51.32.160 and *Reid*.

The Court should deny review.

A. Well-Settled Law Resolved This Case, so Laskowski Shows No Issue of Substantial Public Interest Under RAP 13.4(b)(4)

Reopening a workers' compensation claim is governed by RCW 51.32.160, which authorizes reopening only "[i]f aggravation . . . of disability" occurs. RCW 51.32.160(1)(a). An application to reopen is "deemed granted" if a denial is not issued within 90 days, plus an additional 60 days for good cause. RCW 51.32.160. But the "deemed granted" provision of RCW 51.32.160(1)(d) is predicated on there being a closed claim in the first place. *See Reid*, 1 Wn.2d at 436.

Here, the Court of Appeals correctly applied this Court's decision in *Reid*, a case interpreting RCW 51.32.160's predecessor[2] and held that L&I cannot reopen a claim until it is closed. *See Laskowski* slip op. at 8-10. In *Reid*, L&I denied a reopening application, mistakenly believing that the previous

[2] At the time of *Reid*, the statute required, as it does today, that there be an "aggravation, diminution, or termination of disability" for L&I to readjust the rate of compensation. *See Reid*, 1 Wn.2d at 430, 437 (citing Laws of 1929, ch. 132, § 2).

closing order was final (it was not). 1 Wn.2d at 435. The superior court then decided *both* the worker's appeal of the closing order and the worker's appeal of the order denying reopening. *Id.* This Court held it that it was error to consider the appeal of the order denying reopening because the closing order was still on appeal. *Id.* at 435-36. According to the Court, a "condition pre-requisite" to reopening a claim is a final determination of disability in the previous closing order and, until that final determination has occurred, a claim for aggravation "can not be entertained." *Id.* at 437. So the *Reid* Court held that, until the disposition of the appeal of the closing order, "there was no basis for a claim for aggravation of disability." *Id.* It therefore affirmed L&I's closing order but dismissed the worker's appeal of the denial of the reopening application. *Id.* at 438.

As the Court of Appeals explained, under *Reid*, L&I "could not act on Laskowski's reopening application until the Court of Appeals issued its mandate affirming the closing

order." *Laskowski*, slip op. at 9. That was because, "[b]efore the mandate, there was still the possibility that the closing order could be reversed, which would leave the claim open." *Laskowski*, slip op. at 9. "Consequently, the 90-day clock on the 'deemed granted' provision [in RCW 51.32.160(1)(d)] did not begin until the mandate was issued . . . ." *Id.*

Appellate courts are in accord. For decades, Washington courts have cited and consistently followed *Reid*. *See Larson v. Dep't of Lab. & Indus.*, 24 Wn.2d 461, 465-66, 166 P.2d 159 (1946); *Hastings v. Dep't of Lab. & Indus.*, 24 Wn.2d 1, 5, 163 P.2d 142 (1945); *Stone*, 6 Wn.2d at 647-48; *Hutchins v. Dep't of Lab. & Indus.*, 44 Wn. App. 571, 575, 723 P.2d 18 (1986). L&I "errs if it reopens a workers' compensation claim for further treatment based on worsening of the injury before there is a final order closing the worker's claim." *Singletary v. Manor Healthcare Corp.*, 166 Wn. App. 774, 782, 271 P.3d 356 (2012) (citing *Reid*, 1 Wn.2d at 436-38). Instead, "a reopening application . . . is filed *after a workers' compensation claim has*

closed." *Langhorst v. Dep't of Lab. & Indus.*, 25 Wn. App. 2d 1, 7, 522 P.3d 60 (2022) (emphasis added). "To reopen a claim, a worker must demonstrate that a condition caused by the injury objectively worsened *after the claim was closed*." *Id.* (emphasis added). The Court of Appeals' straightforward application of this Court's decision in *Reid* does not warrant review.

B. The Court of Appeals' Correct Interpretation of WAC 296-14-400 Presents No Reason for Review

WAC 296-14-400 states, "The 90 day limitation will not apply in instances where the previous closing order has not become final." Here, the previous closing order did not become final until the mandate issued, so L&I timely denied the application to reopen under the 90-day limitation when it denied the application six days after the mandate issued. *See* CP 81-82, 84. L&I took prompt action once the closing order was final, contrary to Laskowski's suggestion that L&I did not act promptly. *Contra* Pet. 5.

The Court of Appeals correctly observed that WAC 296-14-400 clarifies that the 90-day clock in RCW 51.32.160(1)(d)

did not begin to run in this case until the mandate was issued. *Laskowski*, slip op. at 9-10. As the Court stated, Laskowski's proposed interpretation of WAC 296-14-400 would render the regulation meaningless. *Laskowski*, slip op. at 12. The Court of Appeals' interpretation of WAC 296-14-400 presents no reason for review where its interpretation gives meaning to the regulation and Laskowski's interpretation does not.

Laskowski interprets "final" in WAC 296-14-400 to mean "appealable," but that makes no sense, as the Court of Appeals agreed. *Laskowski*, slip op. at 12. Every closing order is appealable to the Board and courts, so if "final" in WAC 296-14-400 meant "appealable," there would be no instance in which a closing order would not be "final," rendering WAC 296-14-400 meaningless. *See Laskowski*, slip op. at 12. A construction that would render a portion of the regulation "meaningless or superfluous" should be avoided. *Ford Motor Co. v. City of Seattle*, 160 Wn.2d 32, 41, 156 P.3d 185 (2007)

(quoting *State v. Keller*, 143 Wn.2d 267, 277, 19 P.3d 1030 (2001)).

Instead, "final" in WAC 296-14-400 means "final and binding," under the ordinary dictionary definition of "final" as "a court finding that is conclusive as to jurisdiction and precluding the right to appeal or continue the case in any other court upon the merit." *Laskowski*, slip op. at 12 (citing *Webster's Third New Int'l Dictionary* 851 (2002)). In the context of the regulatory scheme involving reopening applications, "final" unambiguously means "final and binding"—otherwise, WAC 296-14-400 would have no effect.

C. Laskowski Shows No Conflict with *Devine* Under RAP 13.4(b)(2)

Laskowski claims, incorrectly, that the Court of Appeals' opinion conflicts with *Devine v. Department of Licensing*, 126 Wn. App. 941, 956, 110 P.3d 237 (2005), because "administrative rules cannot override statutory mandates." Pet. 5. Because there is no conflict between L&I's rule, WAC 296-14-400, and any statute, there is no conflict with *Devine*.

In *Devine*, the Court invalidated an agency regulation that modified a statute's clear timeline for requesting a hearing. 126 Wn. App. 941, 956. Because the regulation conflicted with the statute, the regulation was invalid. *Id.*

There is no such conflict here. When citing *Devine*, Laskowski does not identify what specific statute he believes conflicts with WAC 296-14-400, so the Court need not consider this undeveloped argument. *See* Pet. 5, 12; *Peters v. Vinatieri*, 102 Wn. App. 641, 655, 9 P.3d 909 (2000).

Even if the Court considers the argument, WAC 296-14-400 does not conflict with the "deemed granted" provision in RCW 51.32.160(1)(d). Instead, it clarifies how to apply that provision to situations when a closing order is on appeal, as here. That approach is appropriate as "agencies may adopt rules to fill in gaps in legislation where doing so is necessary to the effectuation of a general statutory scheme." *Lenander v. Dep't of Ret. Sys.*, 186 Wn.2d 393, 411, 377 P.3d 199 (2016) (citing *Hama Hama Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441,

448, 536 P.2d 157 (1975)). That is what L&I has done here—it did not "elevate[]" its rule over the statute. *Contra* Pet. 5.

D. Laskowski's Approach Would Cause Confusion and Harm Workers

While Laskowski's approach would aid him in this case, it would put most workers in a worse position. If L&I denied a reopening application while an appeal of the closing order was still pending, a worker would have to timely appeal the denial of reopening within 60 days potentially forcing the worker to litigate on two fronts. *See* RCW 51.52.050(1), .060(1). It would be confusing because one of the elements that a worker must prove in a case for aggravation is what the condition was like at the time of the closing order in order to show worsening. *Phillips*, 49 Wn.2d at 197. But if this fact is not established yet in the closing order litigation, it leaves the worker at a loss to prove their case.

And the worker could face additional costs by paying an expert witness to support reopening whereas just by waiting to have the closing order work its way through the courts, the

worker could prevail without incurring additional costs to challenge a denial of reopening.

Litigation on multiple fronts undermines, rather than enhances, "judicial economy and efficiency in workers[']compensation appeals." *Contra* Pet. 9. Providing only one front to litigate the case provides "sure and certain relief" to workers. RCW 51.04.010.

E. None of Laskowski's Remaining Arguments Offer a Basis for Review Under RAP 13.4

Laskowski rehashes several additional arguments that the Court of Appeals rejected. None of these four arguments supports review.

First, L&I did not need to seek a stay under RCW 51.52.110 in order not to act on the reopening application. Pet. 4-5, 8, 11. The Court of Appeals was correct that RCW 51.52.110's language that "an appeal shall not be a stay" is inapplicable here because that statute governs appeals of Board decisions to superior court, not L&I's claim administration activities. *Laskowski*, slip op. at 13. Because RCW 51.52.110's

stay provision does not apply, there is no "legal conflict with statewide implications" to resolve. *Contra* Pet. 8.

Second, Laskowski is wrong that "[p]rocedurally there is no reason not to process a reopening application if another closing order is on appeal." Pet. 15. Besides being contrary to case law that L&I cannot reopen a claim when a closing order is not final, reopening a claim requires assessing medical evidence to compare a worker's disability at the time of the prior closing to the worker's disability at the time of reopening to determine whether there has been an "aggravation of disability." *See* RCW 51.32.160(1)(a). *Phillips*, 49 Wn.2d at 197. Without a final closing order establishing the level of disability, L&I cannot make that determination, so procedurally it lacks necessary facts to consider a reopening application.

Third, the doctrine of liberal construction does not apply. Laskowski cites the doctrine, which comes from RCW 51.12.010, but liberal construction does not apply to unambiguous statutes or rules, as in this case. Pet. 9, 15; *see*

Harris v. Dep't of Lab. & Indus., 120 Wn.2d 461, 474, 843 P.2d 1056 (1993); *Laskowski*, slip op. at 11 (stating that WAC 296-14-400 is unambiguous).

Finally, Laskowski cites the Board's decision in *Spitzner* for the proposition that L&I "may further adjudicate claim matters when there is an appeal pending at the Board or superior court." Pet. 13 (citing *In re David Spitzner*, No. 17 24346, 17 24347, 17 24346-A & 17 25343, 2018 WL 6111425 (Wash. Bd. Indus. Ins. App. Oct. 29, 2018)). But that case is easily distinguishable, as *Spitzner* did not involve a reopening application but the worker's appeal of orders segregating a specific condition and closing the claim. *See id.* at *1. The Board in *Spitzner* noted that, "[u]nlike the situation in *Reid*," it was not "logically impossible" to consider these orders on appeal. 2018 WL 6111425, at *3. In contrast, under *Reid*, 1 Wn.2d at 436, and *Singletary*, 166 Wn. App. at 782, L&I cannot act on a reopening application when there is no final closing order.

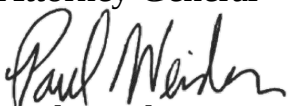
V. CONCLUSION

The Court should deny review.

This document contains 3,507 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 3rd day of July, 2025.

NICHOLAS W. BROWN
Attorney General



Paul Weideman
Assistant Attorney General
WSBA No. 42254
Office Id. No. 91018
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 389–3820

No. 104168-3

SUPREME COURT
STATE OF WASHINGTON

ZBIGNIEW LASKOWSKI, Appellant, v. WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES, Respondent.	CERTIFICATE OF SERVICE

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

E-Filing via Washington State Appellate Courts Portal:

Sarah R. Pendleton, Supreme Court Clerk
Supreme Court of the State of Washington

//
//

E-Mail via Washington State Appellate Courts Portal:

Drew D. Dalton
We Care Legal, PLLC
drew@wcspokanelaw.com

DATED this 3rd day of July, 2025.

ERLYN C. REYES
Paralegal
Erlyn.Reyes@atg.wa.gov

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

July 03, 2025 - 11:36 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	104,168-3
Appellate Court Case Title:	Zbigniew M. Laskowski v. Department of Labor & Industries
Superior Court Case Number:	22-2-02618-3

The following documents have been uploaded:

- 1041683_Answer_Reply_Plus_20250703113128SC304957_3186.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  Certificate of Service
  The Original File Name was 250703DeptAns_COS.pdf

A copy of the uploaded files will be sent to:

- drew@wcspokanelaw.com
- lniseaeservice@atg.wa.gov

Comments:

Department of Labor and Industries Answer to Petition for Review Certificate of Service

---

Sender Name: Erlyn Reyes - Email: Erlyn.Reyes@atg.wa.gov
Filing on Behalf of: Paul Michael Weideman - Email: Paul.Weideman@atg.wa.gov (Alternate Email:)

Address:
800 Fifth Avenue, Ste. 2000
Seattle, WA, 98104
Phone: (206) 464-7740

Note: The Filing Id is 20250703113128SC304957