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SUPREME COURT OF THE STATE OF WASHINGTON

ANDRIY SKRINNIK,

Petitioner,

v.

DEPARTMENT OF LABOR AND INDUSTRIES,

Respondent.

ANSWER TO PETITION FOR REVIEW

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Appendix A: RCW 51.08.178

I. INTRODUCTION

The Court of Appeals properly dismissed Andriy Skrinnik's appeal regarding his wage rate for workers' compensation benefits because he failed to timely perfect the appellate record. The court granted Skrinnik a two-month extension to file a designation of clerk's papers and statement of arrangements, but he disregarded this deadline. In a late motion to modify the court's dismissal, Skrinnik provided no reasons that explained his several-months delay. His failure to timely arrange for an appellate record does not involve a significant constitutional question warranting this Court's review.

Further, the underlying case does not involve a matter of substantial public interest. The sole issue is the calculation of Skrinnik's monthly wages for workers' compensation benefits, an issue that affects him alone. At the Board of Industrial Insurance Appeals, Skrinnik agreed with the 12-month averaging method that the Department of Labor and Industries used to calculate his wages under RCW 51.08.178. He disagreed only as to which 12 months should be used. His petition to this Court now proposes an entirely new methodology that he never argued to the Board and thus has waived.

Because Skrinnik has presented no basis under RAP 13.4 for this Court's review, the Department opposes further review.

II. COUNTERSTATEMENT OF THE ISSUES

Discretionary review is not warranted in this case, but if the Court were to grant review the following issues would be presented:

1. When a party repeatedly fails to arrange for the appellate record, is dismissal appropriate and not a due process violation?

2. Where RCW 51.08.178 gives authority to the Department to reasonably and fairly calculate a worker's wages when the worker's wages are not fixed, did the Department reasonably and fairly calculate Skrinnik's monthly wages when it determined his monthly wages to equal the monthly average of the amount of officer compensation and corporate profits that he received from his business during the last full year before his occupational diseases required treatment?

III. COUNTERSTATEMENT OF THE CASE

A. The Department Calculated Skrinnik's Monthly Wages To Be \$3,880.50, Which Was the Monthly Average of His Officer Compensation and Corporate Profits in 2001, and the Industrial Appeals Judge Affirmed This Calculation

In 1997, Skrinnik started a floor installation and construction company called Any Construction Work, a subchapter S corporation. CP 269-71, 541. Skrinnik was the company's sole owner and shareholder. CP

541. Each year, the company paid Skrinnik a fixed amount in officer compensation and all corporate profits. CP 541.¹

In 2000, the company earned gross revenues of \$90,806 and paid Skrinnik \$24,000 in officer compensation and \$31,435 in corporate profits. CP 303, 355, 541. In 2001, the company earned gross revenues of \$107,956 and paid Skrinnik \$24,000 in officer compensation and \$22,566 in corporate profits. CP 303, 367, 541. In 2002, the company earned gross revenues of \$73,542, and paid Skrinnik \$12,000 in officer compensation and \$20,019 in corporate profits. CP 303, 380, 541. Skrinnik testified that he stopped working in March 2002 and has not worked since. CP 269, 276.

In 2005, Skrinnik filed a workers' compensation claim, which the Department allowed for an occupational disease of the right knee. CP 16, 121-22. In 2009, Skrinnik filed another claim, which the Department allowed for a low back occupational disease. CP 16, 122-23. The Department determined that the dates of manifestation for both

¹ The superior court's findings characterize the amount appearing in line 21 of the company's 1120S tax returns as "corporate net income (profits)." See CP 355, 367, 380, 541. Line 21 reports "[o]rdinary income (loss) from trade or business activities" which is calculated by subtracting various business expenses, including cost of goods sold and officer compensation, from gross receipts. See CP 355, 367, 380. Although Skrinnik referred to these corporate profits as "bonuses" during his testimony at the Board, he did not argue in his petition for review to the Board that these corporate profits were bonuses under RCW 51.08.178(3). CP 275, 280-81, 283, 286-87; see also CP 90-95.

occupational diseases were in 2005, which is when these conditions first required treatment. CP 16, 122-23, 344.

A worker's wages on the date of manifestation determines the worker's monthly wage rate. *See* CP 342. Because Skrinnik had no wages on the dates of manifestation in 2005 since he had not worked since 2002, the Department decided to determine his wage rate by using the wages he earned during 2001, the most recent full year that he worked. *See* CP 327-38, 342-43.

The Department originally issued wage orders on both claims setting Skrinnik's wages at \$968.66 per month. CP 16, 335. The Department calculated this amount by using the taxable income listed on Skrinnik's 1040 joint tax return from 2001. CP 325, 335-36, 541. Skrinnik appealed these wage orders to the Board. CP 11-12, 541.²

At the Board, Sheryl Whitcomb, the Department's claims consultant, testified that Skrinnik's wage rate should be \$3,880.50 per month, not \$968.66 per month. CP 325-26, 336. She testified that because the 2001 joint tax return potentially included income from Skrinnik's wife, the taxable income figure should not have been used. CP 325-27. Whitcomb calculated the monthly wage rate as \$3,880.50 by adding officer compensation (\$24,000) to corporate profits (\$22,566) and dividing

² Skrinnik also appealed two orders related to the amount of social security offset that the Department applied to his workers' compensation benefits. *See* CP 11-12.

by 12. CP 329-30, 336, 367. The industrial appeals judge agreed with the Department's calculation and remanded to the Department to issue an order with the new wage rate. CP 120, 126-27.

B. When Skrinnik Petitioned for Review to the Board, He Agreed That the Department Should Use a 12-Month Average, but Argued That His Monthly Wages Should Be Set at \$5,578.63

Through counsel, Skrinnik petitioned for review of the judge's decision to the three-member Board. CP 90-95. He argued that the correct monthly wage rate was \$5,578.63. CP 95. He agreed that his wages should be calculated by using a 12-month average of officer compensation and corporate profits. *See* CP 93. But he argued that the Department should have used a different 12-month period. CP 93. In his view, the Department should have calculated a monthly average using the last 3 quarters of 2001 and the first quarter of 2002, instead of the four quarters of 2001. CP 93-94.

Significantly, he did not argue in his petition for review that his monthly wages were \$7,078. *See* CP 90-95; *see also* CP 19-23. Nor did he argue that he earned a fixed monthly wage of \$4,000 or that his corporate profits should be treated as bonuses under RCW 51.08.178(3). *See* CP 90-95.

The Board reversed the industrial appeals judge because it believed that Skrinnik's wages could not be reasonably and fairly determined. *See*

CP 14-15. In such cases, the Department must compute a worker's monthly wages based on the usual wage paid to other employees in similar occupations where the wages are fixed. *See* RCW 51.08.178(4). The Board remanded to the Department to re-calculate Skrinnik's gross monthly wages using an hourly wage paid to other employees in similar occupations where the wages are fixed. CP 15-16, 542.

C. The Superior Court Agreed that Skrinnik's Monthly Wages Were \$3,880.50 Per Month

Both Skrinnik and the Department appealed to superior court because they believed that Skrinnik's wages could be reasonably and fairly determined. *See* CP 542. Through new counsel, Skrinnik filed a motion for summary judgment, arguing for the first time on appeal that his monthly wages were \$7,078.63, not \$5,578.63. CP 504. He calculated the \$7,078.63 figure by arguing, for the first time on appeal, that he had a fixed monthly wage of \$4,000 because he had earned \$12,000 in officer compensation in 2002. CP 496-98. He also argued for the first time on appeal that his corporate profit distributions should be treated as bonuses under RCW 51.08.178(3), and that he had an average monthly bonus of \$3,078.63 that should be included in his wage rate.³ CP 498-504. The

³ He calculated the average monthly bonus of \$3,078.63 by dividing the 2001 profits of \$22,566 by twelve in order to determine a monthly bonus average of \$1,880.50 in 2001. CP 503. He then multiplied this by nine to arrive at \$16,924.50. CP 503. He then added this to the three months of profits of \$20,019 in 2002 to arrive at \$36,943.50. *See*

Department objected as these were new arguments not raised in the petition for review at the Board. *See* CP 532-33.

The superior court found that Skrinnik's monthly wages were \$3,880.50. CP 542. The court found that his average earnings in the 12-month period in 2001 was consistent with his employment and compensation pattern and best reflected his earning power at the time his occupational diseases became manifest. CP 542-43. The court found that the record contained insufficient information about his 2002 income to permit a fair and reasonable determination of his daily wage rate that year. CP 542.

D. The Court of Appeals Gave Skrinnik Two Additional Months To File the Designation of Clerk's Papers and Statement of Arrangements, But He Failed To Do So and The Court Dismissed His Appeal

On October 22, 2014, Skrinnik appealed to the Court of Appeals. *See* Letter (Nov. 13, 2014). On November 13, the Court of Appeals sent a perfection letter to the parties stating that the designation of clerk's papers and statement of arrangements should be filed by November 21, 2014. *See id.*

Skrinnik did not comply with the November 21 deadline. Instead, on November 24, he filed a late motion for a three-month extension of

CP 503-04. He then divided this by 12 to arrive at \$3,078.63. CP 504. This is the same calculation he includes in his petition. Pet. at 17-18.

time to February 26, 2015 “due to holyday[sic] season and as I look for the attorney to represent me in this matter.” *See* Mot. for Ext. of Time (Nov. 21, 2014).⁴

On December 5, the Court of Appeals granted Skrinnik a two-month extension to January 16, 2015, to file the designation of clerk’s papers and the statement of arrangements. *See* Clerk’s Ruling (Dec. 5, 2014). The court ruled that an extension to February 26 was excessive and that it would dismiss the appeal if Skrinnik did not file the designation of clerk’s papers and statement of arrangements by January 16. *See id.*

Skrinnik did not comply with the January 16 deadline even though he knew noncompliance would result in dismissal. Instead, on January 9, he filed a second motion for a three-month extension of time to April 20 “due to absence of attorney to represent me in this matter.” *See* Mot. for Ext. of Time (Jan. 9, 2015). He explained that a law firm “took time to review the case; therefore used up the allotted time.” *See id.*

On January 16, the court denied the second extension request and dismissed the appeal:

A two month extension of time to file the designation of clerk’s papers and statement of arrangements was previously granted. At that time, the Court indicated that the case would be dismissed if the documents were not filed by January 16, 2015. The appellant moves for an

⁴ This section relies on information in ACORDS, the appellate court system database, with regard to filing dates.

additional three month extension. The motion is denied. In accordance with the December 5, 2014 ruling, the appeal is dismissed.

See Clerk's Ruling (Jan. 16, 2015). The ruling noted that Skrinnik could move to modify under RAP 17.7 within 30 days. *See id.* The 30-day deadline was February 17.

E. Skrinnik's Late Motion to Modify Provided No Explanation For Why He Had Not Filed the Designation of Clerk's Papers and Statement of Arrangements On Time

Skrinnik did not comply with the February 17 deadline to move to modify the court's ruling. Instead, on February 12, he filed a third motion for an extension of time, asking for a continuance of unspecified duration to file the motion to modify. *See* Mot. for Extension Re Modification of Ruling (Feb. 10, 2015). He stated that "my physical condition did not allow me prolonged seating in order to prepare documents to respond to this matter." *See id.* He also noted that he "attempted to obtain legal counsel a few times, and the attorneys procrastinated in getting back to me and virtually used all of the 30-day extension time allowed herein." *See id.* He stated that he needed more time to respond and that he had obtained legal help. *See id.* On February 18, the court denied the extension request, without prejudice upon filing the motion to modify. *See* Clerk's Ruling (Feb. 18, 2015).

On March 12, Skrinnik filed a motion to modify over three weeks after the original February 17 deadline. *See* Mot. for Modification of Ruling (Mar. 12, 2015).⁵ Nowhere in the motion did Skrinnik address why he had not filed the designation of clerk's papers or statement of arrangements before the extended January 16 deadline, which was the basis for the court's dismissal of his appeal. *See id.* Most of the motion addressed the case's merits, not the delay. *See* Mot. for Modification of Ruling (Mar. 12, 2015). The motion explained that the counsel who wrote the petition for review at the Board withdrew at superior court "when it was only two months from trial" and he "had major difficulties in trying to secure a replacement attorney with so little time to prepare." *Id.* at 6. The order of withdrawal that Skrinnik filed with his motion shows that counsel withdrew in September 2013. *Id.* at Ex. D p. 14. Skrinnik did not mention in his motion that he obtained new counsel at superior court after the withdrawal, and that his new counsel filed and argued the motion for summary judgment in March 2014. CP 486-520; RP 1-41. Skrinnik provided no other details about his attempts to obtain an attorney between March 2014 and January 16, 2015. *See id.*

⁵ Skrinnik also filed another extension request with the motion to modify, which the court denied. *See* Order Denying Motion to Enlarge Time and Denying Motion to Modify (Apr. 28, 2015).

On March 30, over four months after the original filing deadline and over two months after the extended filing deadline, Skrinnik filed a designation of clerk's papers and statement of arrangements while his motion to modify was still pending. *See* Design. of Clerk's Papers (Mar. 27, 2015); Statement of Arrangements (Mar. 27, 2015). He also filed an appellant's brief. *See* App. Br.

On April 28, a panel of the Court of Appeals denied Skrinnik's motion to modify. *See* Order Denying Motion to Enlarge Time and Denying Motion to Modify (Apr. 28, 2015). The court stated that the appeal remained dismissed. *See id.* Skrinnik now petitions to this Court.

IV. ARGUMENT

This Court should decline review because Skrinnik's repeated failure to comply with the Court of Appeals' rulings about providing the designation of clerk's papers and statement of arrangements does not involve a significant question of constitutional law under RAP 13.4(b)(3). That Skrinnik elected to disregard the rules of appellate procedure is not a constitutional issue. Nor is the amount of Skrinnik's wage rate for workers' compensation benefits a matter of substantial public interest under RAP 13.4(b)(4). Rather, it is an issue that affects him alone. Skrinnik has waived all the arguments that he makes to this Court about his wage rate because he did not raise these arguments in his petition for

review at the Board, which could have addressed these arguments. The Department's wage calculation is correct. This Court should deny review.

A. Skrinnik's Failure to Comply with the Court of Appeals' Deadlines to Arrange for an Appellate Record Does Not Involve A Significant Question of Constitutional Law

Skrinnik's failure to arrange for an appellate record regarding his wage rate in his workers' compensation case does not warrant this Court's review under RAP 13.4(b)(3). *Contra* Pet. 7. The Court of Appeals properly dismissed this case when Skrinnik failed to comply with its extended deadline to provide a designation of clerk's papers and statement of arrangements. Skrinnik's failure to arrange for an appellate record in a timely manner prevented the court from reviewing the merits of his claim.

Skrinnik, like all appellants, had to provide a statement of arrangements and designation of clerk's papers within 30 days after filing the notice of appeal. RAP 9.2(a), 9.6(a); *see also State v. Drum*, 168 Wn.2d 23, 38 n.3, 225 P.3d 237 (2010). The court gave Skrinnik two additional months to file these documents, and it explicitly notified him that it would dismiss his appeal if he did not comply with this deadline. *See Clerk's Ruling* (Dec. 5, 2014). Skrinnik missed this deadline, and he missed a later deadline to move to modify the court's subsequent dismissal.

In his late motion to modify, Skrinnik provided no explanation for his delay, focusing his argument instead about the efforts of counsel at superior court who withdrew from his case nearly two years ago and who, in any event, he later replaced at superior court. That his previous counsel withdrew in September 2013 has no bearing on his inability to designate an appellate record before January 16, 2015. As a pro se appellant, Skrinnik is held to the same standard as an attorney. *Holder v. City of Vancouver*, 136 Wn. App. 104, 106, 147 P.3d 641 (2006). He bears the burden of perfecting the appellate record, and he bears the consequences of the court's inability to conduct a full review. *Nelson v. Schubert*, 98 Wn. App. 754, 764, 994 P.2d 225 (2000). His choice to disregard the court's deadlines despite a two-month extension involves no significant constitutional question and is not a basis for this Court's review.

The court's dismissal of Skrinnik's case for failing to comply with the rules of appellate procedure does not involve a significant constitutional question. Skrinnik mentions "constitutional due process of law" in passing but he provides no analysis or authority as to why the court's application of the rules of appellate procedure violates due process. Pet. 2, 7. "[N]aked castings into the constitutional sea are not sufficient to command judicial consideration[.]" *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970), *quoted in In re Rosier*, 105 Wn.2d 606, 616,

717 P.2d 1353 (1986). To adequately present a constitutional argument, a party must cite to authority and present argument. RAP 10.3(a)(6); *Havens v. C & D Plastics, Inc.*, 124 Wn.2d 158, 169, 876 P.2d 435 (1994).

Skrinnik's vague mention of due process also ignores that the court provided him with clear notice of the relevant deadlines and the consequences if he did not meet them. The court notified him on December 5 that his appeal would be dismissed if he did not file the designation of clerk's papers and statement of arrangements by January 16. The court gave him two additional months to file these documents, which is more than sufficient time to identify the documents and transcripts needed for the appeal. *See* Clerk's Ruling (Dec. 5, 2014); Clerk's Ruling (Jan. 16, 2015). His protestation that he did not have a reasonable amount of time to file these documents does not withstand scrutiny. *See* Pet. 2, 7. Nor was it necessary that he "receive the underlying report of proceedings and Clerk's Papers" by the extended deadline. Pet. 2. All that the rules and the court required was that he designate the record that he wanted the court to consider. RAP 9.2(a), 9.6(a); Clerk's Ruling (Dec. 5, 2014).

That Skrinnik decided to file the designation of clerk's papers and statement of arrangements two months after the court dismissed his appeal does not convert Skrinnik's noncompliance with the rules of appellate

procedure into a significant constitutional question under RAP 13.4(b)(3). *See* Pet. 2, 7. This was more than five months after filing the notice of appeal and more than two months after the court had dismissed his appeal for failing to comply with the extended deadline. The court properly denied the motion to modify.

B. The Court of Appeals' Decision to Dismiss Skrinnik's Appeal Does Not Involve An Issue of Substantial Public Interest Because Skrinnik's Wage Rate Affects Him Alone

The determination of Skrinnik's wage rate for his workers' compensation benefits affects him alone. It is not a matter of substantial public interest warranting this Court's review. Further, his petition raises numerous arguments about the calculation of his wage rate that he has waived because he never argued them to the Board. His belated attempt to raise new issues about his wage rate is not a matter of substantial public interest.

Skrinnik has waived the arguments about his wage rate that he makes in his petition to this Court. He now argues that his correct wage rate is \$7,078.63 per month. Pet. 4, 18. But in his petition for review to the Board he argued that his correct wage rate was \$5,578.63. CP 95. A party must set forth his or her specific objections in a petition for review or waive them: "Such petition for review shall set forth in detail the grounds therefor and the party or parties filing the same shall be deemed to have

waived all objections or irregularities not specifically set forth therein.” RCW 51.52.104; *see Leuluaialii v. Dep’t of Labor & Indus.*, 169 Wn. App. 672, 684, 279 P.3d 515 (2012); *Gary Merlino Constr. Co. v. City of Seattle*, 167 Wn. App. 609, 616 n. 3, 273 P.3d 1049 (2012); *Allan v. Dep’t of Labor & Indus.*, 66 Wn. App. 415, 422, 832 P.2d 489 (1992). Because he did not argue to the Board that his wage rate was \$7,078.63 per month, he has waived that argument. He should not be allowed to raise an issue in this Court that he did not raise at the Board, especially as his individual wage rate is not a matter of substantial public interest.

Skrinnik has also waived the argument that he makes to this Court about how his wage rate should be calculated. He proposes an entirely different methodology for calculating his wage rate than he proposed through counsel at the Board. At the Board, he agreed with the Department that his monthly wage rate should be calculated using a 12-month average. *See* CP 93, 95. He disagreed with the Department only as to what 12-month period should be used. *See* CP 93-95. Skrinnik asked the Department to use the 12-month period from April 1, 2001, to March 31, 2002, not the 12 months of 2001. *See* CP 93-95.

Now, however, Skrinnik asks this Court to determine that he had a fixed monthly income under RCW 51.08.178(1) and to treat his corporate profits as bonuses under RCW 51.08.178(3). Pet. 3-4, 13, 16-18. He

calculates his fixed monthly wage as \$4,000 and calculates the average monthly value of his bonus as \$3,078.63, for a total monthly wage of \$7,078.63. Pet. 3-4, 18. But he did not argue to the Board that he had a fixed monthly wage or that his corporate profits were bonuses, and therefore he has waived these arguments. *See* CP 90-95. Notably, the Board has rejected the argument in the past that a subchapter S corporation's profits are bonuses under RCW 51.08.178(3). *In re Berg*, Nos. 02 23331 & 03 15732, 2004 WL 1900973, at *4 (Wash. Bd. Indus. Ins. Appeals May 25, 2004); *see also* CP 509. The Board did not have an opportunity to address Skrinnik's belated arguments, and he cannot assert them now.

In any case, the Department's wage calculation was correct. The default provision for calculating a worker's wages is RCW 51.08.178(1), which states that the worker's monthly wages from all employment shall be the basis for the wage rate. *See Dep't of Labor & Indus. v. Avundes*, 140 Wn.2d 282, 290, 996 P.2d 593 (2000). When a worker's wages are not fixed, RCW 51.08.178(1) establishes a statutory formula for calculating the worker's wages by multiplying the worker's daily wage by a specific number based on the number of days the worker was normally employed per week. RCW 51.08.178(1).

But under the terms of RCW 51.08.178(4), subsection (1) does not provide the exclusive means of computing wages. *Malang v. Dep't of Labor & Indus.*, 139 Wn. App. 677, 685, 162 P.3d 450 (2007). Subsection (1)'s calculation method does not apply when a worker does not receive a periodic wage. *See id.* (subsection (1) did not apply to worker who received commissions, not a periodic wage). RCW 51.08.178(4) allows the use of a comparable wage in situations where the wage "has not been fixed or cannot be reasonably and fairly determined." *Malang*, 139 Wn. App. at 685. Reading subsections (1) and (4) together, the Department (like the Board) has the authority to reasonably and fairly calculate a worker's wages. *See id.*

That is what the Department did in this case. The Department determined, and the superior court agreed, that the most fair and reasonable way to calculate Skrinnik's wages was to use an average of his earnings in 2001 because that was the most recent earnings information available for an entire year before the onset of his occupational diseases in 2005. *See* CP 327-29, 542.⁶ As the superior court found, this was the fairest and most reasonable way to calculate his wages since the record contained insufficient information to determine a daily wage rate in 2002.

⁶ In a workers' compensation appeal, the superior court is the ultimate fact-finder, reviewed by the appellate court. *Rogers v. Dep't of Labor & Indus.*, 151 Wn. App. 174, 179-81, 210 P.3d 355 (2009).

CP 542. Skrinnik's average earnings during the 2001 calendar year is consistent with his overall employment and compensation pattern and best reflects his earning power at the time that his occupational diseases became manifest. *See* CP 542-43.

Finally, this Court should reject Skrinnik's request for attorney fees and costs. Pet. 18. Pro se litigants are not entitled to attorney fees for their work representing themselves. *Mitchell v. Dep't of Corrs.*, 164 Wn. App. 597, 608, 277 P.3d 670 (2011); *In re Marriage of Brown*, 159 Wn. App. 931, 938-39, 247 P.3d 466 (2011).

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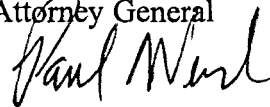
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V. CONCLUSION

The Court of Appeals properly dismissed Skrinnik's appeal when he neglected to provide an appellate record. The court granted Skrinnik a two-month extension to file the designation of clerk's papers and statement of arrangements, but he disregarded this deadline. He provided no reason in his motion to modify to explain his delay. Skrinnik's neglect does not involve a substantial constitutional issue. The underlying case is also not one of substantial public interest because the only issue is Skrinnik's wage rate for workers' compensation purposes, which is an issue that only affects him. This Court should deny review.

RESPECTFULLY SUBMITTED this 4th day of September,
2015.

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APPENDIX A

RCW 51.08.178

**“Wages” — Monthly wages as basis of compensation —
Computation thereof.**

(1) For the purposes of this title, the monthly wages the worker was receiving from all employment at the time of injury shall be the basis upon which compensation is computed unless otherwise provided specifically in the statute concerned. In cases where the worker's wages are not fixed by the month, they shall be determined by multiplying the daily wage the worker was receiving at the time of the injury:

- (a) By five, if the worker was normally employed one day a week;
- (b) By nine, if the worker was normally employed two days a week;
- (c) By thirteen, if the worker was normally employed three days a week;
- (d) By eighteen, if the worker was normally employed four days a week;
- (e) By twenty-two, if the worker was normally employed five days a week;
- (f) By twenty-six, if the worker was normally employed six days a week;
- (g) By thirty, if the worker was normally employed seven days a week.

The term "wages" shall include the reasonable value of board, housing, fuel, or other consideration of like nature received from the employer as part of the contract of hire, but shall not include overtime pay except in cases under subsection (2) of this section. As consideration of like nature to board, housing, and fuel, wages shall also include the employer's payment or contributions, or appropriate portions thereof, for health care benefits unless the employer continues ongoing and current payment or contributions for these benefits at the same level as provided at the time of injury. However, tips shall also be considered wages only to the extent such tips are reported to the employer for federal income tax purposes. The daily wage shall be the hourly wage multiplied by the number of

hours the worker is normally employed. The number of hours the worker is normally employed shall be determined by the department in a fair and reasonable manner, which may include averaging the number of hours worked per day.

(2) In cases where (a) the worker's employment is exclusively seasonal in nature or (b) the worker's current employment or his or her relation to his or her employment is essentially part-time or intermittent, the monthly wage shall be determined by dividing by twelve the total wages earned, including overtime, from all employment in any twelve successive calendar months preceding the injury which fairly represent the claimant's employment pattern.

(3) If, within the twelve months immediately preceding the injury, the worker has received from the employer at the time of injury a bonus as part of the contract of hire, the average monthly value of such bonus shall be included in determining the worker's monthly wages.

(4) In cases where a wage has not been fixed or cannot be reasonably and fairly determined, the monthly wage shall be computed on the basis of the usual wage paid other employees engaged in like or similar occupations where the wages are fixed.

[2007 c 297 § 1; 1988 c 161 § 12; 1980 c 14 § 5. Prior: 1977 ex.s. c 350 § 14; 1977 ex.s. c 323 § 6; 1971 ex.s. c 289 § 14.]

NO. 91759-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ANDRIY SKRINNIK,

Petitioner,

v.

DEPARTMENT OF LABOR AND
INDUSTRIES,

Respondent.

CERTIFICATE OF
SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, certifies that on September 4, 2015, she caused to be served the Department's Answer to Petition for Review and this Certificate of Service in the below described manner:

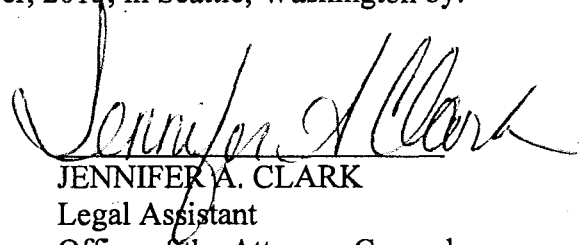
Via Email filing to:

Ronald R. Carpenter
Supreme Court Clerk
Supreme Court
Supreme@courts.wa.gov

Via First Class United States Mail, Postage Prepaid to:

Andriy Skrinnik
2246 Yew Street Road
Bellingham, WA 98229

Signed this 4th day of September, 2015, in Seattle, Washington by:

A handwritten signature in cursive script, appearing to read "Jennifer A. Clark". The signature is written in black ink and is positioned above the printed name and title.

JENNIFER A. CLARK

Legal Assistant

Office of the Attorney General

800 Fifth Avenue, Suite 2000

Seattle, WA 98104-3188

(206) 464-5388

OFFICE RECEPTIONIST, CLERK

To: Clark, Jennifer (ATG)
Cc: Weideman, Paul (ATG)
Subject: RE: 91759-1; Andriy Skrinnik v. DLI

Received on 09-04-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Weideman, Paul (ATG) <PaulW1@ATG.WA.GOV>
Subject: 91759-1; Andriy Skrinnik v. DLI

RE: ***Andriy Skrinnik v. DLI***
Case Number: 91759-1

Dear Mr. Carpenter,

Please file the Department's Answer to Petition for Review regarding the above referenced matter.

Sincerely,

Jennifer A. Clark
Legal Assistant to Attorney
Paul Weideman
Attorney's General Office
Office ID No. 91018
(206) 389-3820