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**BOARD OF INDUSTRIAL INSURANCE APPEALS
OF THE STATE OF WASHINGTON**

In Re: LILIA LACY

Docket No. 18 19397

Claim No. AS-31430

DEPARTMENT'S RESPONSE TO
CLAIMANT'S MOTION FOR
SUMMARY JUDGMENT AND
CROSS MOTION FOR SUMMARY
JUDGMENT

I. INTRODUCTION & RELIEF REQUESTED

COMES NOW, Washington State Department of Labor and Industries (Department) by and through ROBERT W. FERGUSON, Attorney General, and LESLIE V. JOHNSON, Assistant Attorney General, and responds to the Motion for Summary Judgment brought by Lilia Lacy, the claimant. The Department agrees that there are no material issues of fact in contention regarding the resolution of the issue on appeal. Drake Lacy does not meet the legal definition of "child" in RCW 51.08.030, and the Department properly issued an order which established Ms. Lacy's pension rate based on marital status on the date of injury as single with 0 children. The Department therefore moves for Summary Judgment for a determination that the order on appeal is correct as a matter of law.

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II. STATEMENT OF FACTS

A. Statement of Material Facts

Ms. Lacy was diagnosed with carpal tunnel syndrome related to her work activities in December of 2012 (*See Ex. A, Affidavit of Tyler Gruhn in Support of Department's Cross Motion for Summary Judgment*). When Ms. Lacy filed her report of accident for this occupational disease, she indicated on her application for benefits that she was married to Howard Lacy. *Id.* She did not list Drake Lacy as a dependent child in this application. *Id.* The Department paid provisional time loss, and closed the claim on May 31, 2013. *See Ex. B, Affidavit of Tyler Gruhn in Support of Department's Cross Motion for Summary Judgment and the Department.* The Claim was eventually reopened in 2016, effective December, 2014. *See Ex. C, Affidavit of Tyler Gruhn in Support of Department's Cross Motion for Summary Judgment .* Shortly thereafter, the Department issued the first wage order on this claim, on October 27, 2016. *See Ex. D, Affidavit of Tyler Gruhn in Support of Department's Cross Motion for Summary Judgment.* In that order, the Department established time loss benefits based on married with 0 children. *Id.* Ms. Lacy protested through her legal representative, who indicated that Ms. Lacy was married under common law, and that she had a dependent who lived with her, named Drake Lacy, and she wanted the child included in her wage rate. Her representative also indicated that Howard and Lilia Lacy had undergone a civil ceremony on May 1, 2016 to further document their marriage. There was no indication how, or in what jurisdiction the common law marriage had been established. *See Ex. E, Affidavit of Tyler Gruhn in Support of Department's Cross Motion for Summary Judgment.* There is no provision in Washington State statutes for the establishment of a common law marriage in this state.

The Department corrected the time loss calculation by order dated June 1, 2017. The Department based the wage order Ms. Lacy being single with 1 child on the date of injury. *See*

1 Ex. A, Declaration of Attorney Spencer D. Parr. The parties agree that this order was not
2 appealed or protested.

3 Ms. Lacy was placed on pension effective August 16, 2018, by order dated June 20,
4 2018. *See* Ex. B, Declaration of Attorney Spencer D. Parr. As part of filling out the pension
5 benefits information for the Department, Ms. Lacy provided the Department with a marriage
6 certificate for her marriage to Howard E. Lacy, and a copy of the Birth Certificate of Drake
7 Alexander Latson-Lacy, whom she had indicated was her child for purposes of establishing
8 her time loss compensation rate. *See* Exs. F and G, Affidavit of Tyler Gruhn in Support of
9 Department's Cross Motion for Summary Judgment. Ms. Lacy's civil marriage to Howard E.
10 Lacy took place in 2015, considerably after the date of injury (2012) on her Report of Injury
11 (Ex. A, Declaration of Leslie V. Johnson in Support of Department's Cross Motion for
12 Summary Judgment) Drake Lacy's parents as listed on his Birth Certificate, are Nicole Jean
13 Latson and Joshua Howard Lacy. *See* Ex. G, Declaration of Leslie V. Johnson in Support of
14 Department's Cross Motion for Summary Judgment. Ms. Lacy states in her affidavit that
15 Joshua Howard Lacy is her son, but provides no birth certificate verifying that he is, in fact,
16 her biological son. It is not clear from the affidavit whether at the time of injury, Ms. Lacy
17 was related to Drake Lacy by either blood or marriage, as Ms. Lacy appears to take a loose
18 definition of legal relationships. Since that time, Ms. Lacy indicates she has made no attempt
19 to formally adopt Drake Lacy. *See* Affidavit of Lilia Lacy. She has provided no documentation
20 that she has been awarded either temporary or permanent custody of Drake Lacy by a court,
21 although she refers to herself as his legal guardian. In fact, she provides no indication that she
22 has even filed for legal custody of Drake Lacy pursuant to Chapter 26.10 RCW. There is no
23 indication that she has attempted to secure an order for child support for Drake Lacy from
24 either of his biological parents. *See* Affidavit of Lilia Lacy.
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III. STATEMENT OF ISSUES

1. **Is a child who would not otherwise qualify as a "child" under RCW 51.08.030 for purposes of calculating a worker's time loss payments "a dependent child in the legal custody or control of the worker", where there has been no attempt to obtain a court order to establish legal custody, and no attempt to establish the biological parents's financial or other responsibility for the child under Chapter 26.10 RCW? NO.**

2. **Was the Department correct under the *Birrueta v. Department of Labor and Industries* Supreme Court Decision to adjust the claimant's pension payments to reflect single and no children when it became aware that the dependent child claimed by the worker did not meet the requirements of the statute that the child be in the "legal" custody and control of the worker. YES.**

IV. EVIDENCE RELIED UPON

The Department relies upon the Affidavit of Tyler Gruhn , and the documents attached thereto, the jurisdictional history and other pleadings contained within this tribunal's file, as well as the Affidavit of Lilia Lacy and the Declaration of Attorney Spencer Parr and the documents attached thereto..

V. AUTHORITY & ARGUMENT

A. Summary Judgment Appropriate Where No Genuine Issue of Material Fact Exists, and The Moving Party Is Entitled to Judgment as a Matter of Law.

The purpose of summary judgment is to examine the sufficiency of the evidence in hopes of avoiding unnecessary trials where no genuine issue of material fact exists. *Mark v. Seattle Times*, 96 Wn.2d 473, 484, 635 P.2d 1081 (1981). Summary judgment is appropriate:

. . . if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

CR 56(c).

1 A summary judgment motion will be granted if (1) there is no genuine issue as to any
2 material fact, (2) all reasonable persons could reach only one conclusion, and (3) the moving
3 party is entitled to judgment as a matter of law. *Peterick v. State*, 22 Wn. App. 163, 181, 589
4 P.2d 250 (1977). The Board must view all facts and reasonable inferences in a light most
5 favorable to the non-moving party. *Simpson Tacoma Kraft Co. v. Ecology*, 119 Wn.2d 640, 646,
6 835 P.2d 1030 (1992); *Davis v. Niagara Mach. Co.*, 90 Wn.2d 342, 348, 581 P.2d 1344 (1978).
7

8 Lilia Lacy has not been granted temporary or permanent legal custody of Drake Lacy
9 by a court, and Drake Lacey would not otherwise be considered her “child” under the definition
10 in RCW 51.08.030 which applies to all proceedings under Title 51 RCW. Under the *Birrueta*
11 decision, the Department was correct to use its inherent authority under RCW 51.32.240(1)(a)
12 to correct an order, whether final or temporary, when the order was based on innocent
13 misrepresentation, and resulted in ongoing overpayment to the worker. Department’s Cross
14 Motion for Summary Judgment should be granted, and the Department order setting Ms. Lacy’s
15 pension rate as single with no children should be affirmed.
16

17 B. Statutory Construction

18 The goal of statutory interpretation is to discern and implement the Legislature’s intent.
19 *Ellensburg Cement Prods., Inc. v. Kittitas Cnty.*, 179 Wn.2d 737, 743, 317 P.3d 1037 (2014).
20 If the plain language of the statute is unambiguous, the Court’s inquiry is at an end. *Manary v.*
21 *Anderson*, 176 Wn.2d 342, 352, 292 P.3d 96 (2013). The language of 51.08.030, that a child
22 not otherwise eligible to be considered the worker’s child be “a dependent child in the custody
23 or control of the worker” is plain. It requires legal custody, not just uncontested physical
24 custody.
25
26

1 The rule of 'liberal construction' does not apply to questions of fact. *Ehman v. Dep't of*
2 *Labor & Indus.*, 33 Wn.2d 584, 595, 206 P.2d 787 (1949). While the court should liberally construe
3 the Industrial Insurance Act in favor of "those who come within its terms, persons who claim rights
4 thereunder should be held to *strict proof* of their right to receive benefits provided by the act." *Cyr*,
5 47 Wn.2d at 97 (emphasis added). Ms. Lacy has presented evidence of ongoing uncontested
6 physical custody, but no evidence of legal custody. The court should not use liberal construction
7 to imply legal custody from physical custody, when the plain language of the statute requires actual
8 legal custody, and the facts do not support a finding of legal custody.

10 **C. RCW 51.08.030 Requires That a Child Be in the Legal Custody of a Worker**
11 **to Qualify the Worker For A 2% increase in Time Loss Benefits.**

12 For purposes of the Industrial Insurance Act, Title 51 RCW, the definitions of terms used in the
13 Act are contained in RCW Chapter 51.08. (See RCW 51.08.010) RCW 51.08.030 defines
14 "child" as:

15 "Child" means every natural born child, posthumous child, stepchild, child
16 legally adopted prior to the injury, child born after the injury where conception
17 occurred prior to the injury, and dependent child in the legal custody and control of the
18 worker, all while under the age of eighteen years, or under the age of twenty-three
19 years while permanently enrolled at a full time course in an accredited school, and over
20 the age of eighteen years if the child is a dependent as a result of a physical, mental, or
21 sensory handicap.

22 Drake Lacey was, at best, Lilia Lacy's grandchild on the date of manifestation of her
23 occupational disease. Ms. Lacy attempts to argue that she was Drake's legal custodian because
24 everyone has let her act as if she were. There is a difference between uncontested custody, and
25 legal custody. The statute plainly states that the dependent child must be in the legal custody
26 of the worker on the date of injury (or here, on the date of manifestation of the occupational
disease). The legislature could have just said custody, but it did not. It specifically directed
that the child must be both dependent, and in the *legal* custody of the worker.

1 Washington State Domestic Relations law (RCW Chapter 26.10) specifically lays out
2 the process by which a third party who is not a parent can obtain legal custody of a child.
3 Obtaining legal custody does not mean that the child is adopted by the third party. But
4 obtaining a custody order includes consideration of parental visitation, orders for support and
5 the provision of health care from the child's parents, and a determination about who has
6 decision making authority regarding the child (RCW 26.10.040 - .060, and .170). Ms. Lacy's
7 Affidavit indicates that she has done nothing to even initiate the process of obtaining legal
8 custody of Drake Lacy, and apparently does not want to do so. If Ms. Lacy were to obtain
9 legal custody of her grandson Drake, under RCW Chapter 26.10 RCW the custody order would
10 include provision for child support from one or both parents. Unless Drake's parents were
11 incapable of contributing to his support, Drake would be dependent upon his parents, not his
12 grandmother, regardless of where his physical custody were vested. The argument that Drake
13 is dependent upon his grandmother, with or without legal custody, shifts the burden for
14 Drake's support from his parents to the Department. It seems unlikely that the Legislature had
15 this in mind when drafting RCW 51.08.030.

16 Claimant attempts to argue that because Drake would qualify as a beneficiary under
17 51.08.020, he should qualify as a child under 51.08.030. The definitions serve different
18 purposes. A worker may elect which beneficiaries to provide benefits to under some
19 circumstances, for example a pension benefit option. The statute establishing how to calculate
20 time loss benefits (RCW 51.32.060) states that increases in compensation rates are based on a
21 "child" or "children", not based on a worker having beneficiaries.

22 Under RCW 51.08.030, Drake does not qualify as Lilia Lacy's child for the purposes of
23 calculating her monthly time loss or pension benefits. On the date of manifestation of her
24 occupational disease, she had not established legal custody, regardless of how long she had
25 been caring for Drake Lacy in her home. Without a court order establishing legal custody, Ms.
26 Lacy attempts to bypass the requirement that Drake be a dependent child in her legal custody.

1 She has also foregone the opportunity to obtain financial support from the parties who would
2 actually be financially responsible for Drake until such time as Ms. Lacy did adopt him.
3 Drake's parents should be legally responsible for his support, not the Department of Labor and
4 Industries. For whatever reasons, this is a choice that Ms. Lacy has made.

5
6 **D. Under the *Birrueta* decision, the Department May Correct a Time Loss or
7 Pension Rate Order that Was Incorrectly Set Due to Innocent
Misrepresentation.**

8 The issue in this case is nearly identical to the issue in the 2016 unanimous decision of
9 the Washington Supreme Court in *Birrueta v. Department of Labor and Industries of the State
10 of Washington*, 186 Wash.2d 537. In *Birrueta*, the Department had been overpaying Mr.
11 Birrueta's time loss compensation for years, based on innocent misrepresentations on his report
12 of accident that he was married with one child. He was not married, and had no children on the
13 date of his injury. It was not until he was determined to be permanently and totally disabled
14 and the Department required marriage and birth certificates to place the worker on pension that
15 the Department discovered that Mr. Birrueta's time loss calculations were incorrect.

16 Noting that when interpreting a statute, the Supreme Court's ultimate task is to ascertain
17 and carry out the legislature's intent, the Court found that the plain language of RCW
18 51.32.240(1)(a) permitted the Department to order repayment of workers' compensation
19 benefits erroneously paid due to an innocent misrepresentation by or on behalf of a worker,
20 whether the order paying benefits was temporary or final. *Birrueta* at 544. The Court also found
21 that the Department order changing Birrueta's marital status for compensation purposes was
22 within the "Department's implied authority as a necessary incident to recoupment pursuant to
23 subsection (1)(a) [of RCW 51.32.240]. To hold otherwise would mean that in order to ensure
24 that Birrueta receives only the compensation he is statutorily entitled to, the Department would
25 have to continuously overpay and then recoup Birrueta's benefits for the rest of his life. *Id* at
26 553-54.

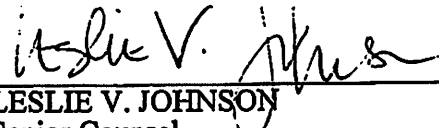
1 In this case, Ms. Lacy represented that Drake Lacy was her dependent child. As in
2 *Birrueta*, the Department had no conflicting information on which to base a decision, therefore
3 it issued an order, and paid time loss compensation based on Drake Lacy being Ms. Lacy's
4 "child". As in *Birrueta*, it does not appear that this was willful misrepresentation, but rather a
5 misunderstanding of the requirements of "legal custody". When the Department became aware
6 that Drake was neither Ms. Lacy's natural born child, nor did she have legal custody of Drake,
7 it reassessed the order setting Ms. Lacy's time loss rate pursuant to RCW 51.32.240(1)(a), and
8 adjusted it to show the correct status of her dependent, and to avoid a monthly overpayment and
9 recoupment cycle, as it did in *Birrueta*. The *Birrueta* decision is both compelling, and on point
10 to the matter at hand.

11 **A. CONCLUSION**

12 Drake Lacey does not meet the requirements of RCW 51.08.030 to be considered Ms.
13 Lacy's "child" for purposes of calculating monthly time loss or pension benefits. Under the
14 *Birrueta* decision, the Department was correct to use its inherent authority under RCW
15 51.32.240(1)(a) to correct an order, whether final or temporary, when the order was based on
16 innocent misrepresentation, and resulted in ongoing overpayment to the worker. Claimant's
17 Motion for Summary Judgment should be denied. The Department's Cross Motion for
18 Summary Judgment should be granted.

19 DATED this February 6th, 2019.

20 ROBERT W. FERGUSON
21 Attorney General

22 
23 _____
24 LESLIE V. JOHNSON
25 Senior Counsel
26 WSBA No. 19245

1 **PROOF OF SERVICE**

2 I certify that I served a copy of this document on all parties or their counsel of record
3 on the date below as follows:

4 US Mail Postage Prepaid via Consolidated Mail Service

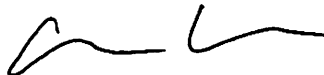
5 Spencer Parr
6 Washington Law Center
7 651 Strander Blvd. Ste. 215
8 Tukwila, WA98188

9 E-file to

10 Anna Wood
11 Board of Industrial Insurance Appeals
12 2430 Chandler Court SW
13 Olympia, WA 98504-2401

14 I certify under penalty of perjury under the laws of the state of Washington that the
15 foregoing is true and correct.

16 DATED this 6th day of February, 2019, at Tumwater, Washington.

17 
18 _____
19 ALENA VASQUEZ
20 Legal Assistant
21
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23
24
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186 Wash.2d 537
Supreme Court of Washington,
EN BANC.

Jose L. BIRRUETA, Respondent,
v.

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

No. 92215-2

|
Oral Argument June 21, 2016

|
Filed September 15, 2016

Synopsis

Background: Workers' compensation claimant sought review of decision of the Board of Industrial Insurance Appeals upholding the Department of Labor and Industries' assessment of overpayment for time-loss workers' compensation benefits. The Superior Court, Franklin County, Salvador Mendoza Jr., J., reversed. Department appealed. The Court of Appeals, 188 Wash.App. 831, 355 P.3d 320, affirmed. Department sought further review, which was granted.

Holdings: The Supreme Court, Yu, J., held that:

[1] on an issue of first impression, statute requiring repayment of benefits paid erroneously due to innocent misrepresentation applied to both temporary and final workers' compensation order;

[2] on an issue of first impression, statute permitting assessment of overpayment of benefits due to adjudicator error applied only to overpayments caused by adjudicator error, rather than also to errors caused by innocent misrepresentations;

[3] an adjudicator error was error attributable to adjudicator's misinterpretation of law or failure to properly apply law to facts in claim file; and

[4] overpayment of workers' compensation benefits was caused by innocent misrepresentation made by or on behalf of the claimant, rather than by adjudicator error.

Court of Appeals decision reversed.

West Headnotes (6)

[1] **Appeal and Error**

↔ Statutory or legislative law

Statutory interpretation is a question of law reviewed de novo.

Cases that cite this headnote

[2] **Statutes**

↔ Intent

When interpreting a statute, the Supreme Court's ultimate task is to ascertain and carry out the legislature's intent.

Cases that cite this headnote

[3] **Workers' Compensation**

↔ Recovery back of payments

Provision of Industrial Insurance Act (IIA) requiring repayment of workers' compensation benefits paid erroneously due to an innocent misrepresentation by or on behalf of the claimant applied to both temporary and final workers' compensation orders, rather than only to temporary, non-final orders, and provided Department of Labor and Industries with one year to seek repayment. Wash. Rev. Code Ann. § 51.32.060(1)(a).

Cases that cite this headnote

[4] **Workers' Compensation**

↔ Recovery back of payments

Provision of Industrial Insurance Act (IIA) governing repayment of workers' compensation benefits and permitting assessment of overpayment of workers' compensation benefits due to adjudicator error applied only to overpayments caused by adjudicator error, rather than also to errors

caused by innocent misrepresentations by or on behalf of the claimant, and time limit for assessing overpayment was determined in accordance with statutes governing appeals. Wash. Rev. Code Ann. § 51.32.240(1)(b).

Cases that cite this headnote

[5] Workers' Compensation

↔ Recovery back of payments

An "adjudicator error" that caused an overpayment of workers' compensation benefits pursuant to provision of Industrial Insurance Act (IIA) governing repayment of workers' compensation benefits, which could only be addressed on reconsideration or direct appeal, was an error attributable to an adjudicator's misinterpretation of the law or failure to properly apply the law to the facts in the claim file, rather than merely any error contained in an adjudication. Wash. Rev. Code Ann. § 51.32.240(1)(b).

2 Cases that cite this headnote

[6] Workers' Compensation

↔ Recovery back of payments

Overpayment of workers' compensation benefits was caused by innocent misrepresentation made by or on behalf of the claimant, rather than by adjudicator error, and therefore Department of Labor and Industries was permitted to seek repayment following entry of final workers' compensation order, where claimant's misrepresentation regarding his marital status was the sole reason for the overpayment. Wash. Rev. Code Ann. § 51.32.060(1)(a).

1 Cases that cite this headnote

**121 Appeal from Franklin County Superior Court, 12-2-50755-7, Honorable Salvador Mendoza Jr.

Attorneys and Law Firms

Paul Michael Weideman, Anastasia R. Sandstrom, Seattle Labor & Industries A.G. Office, 800 5th Ave Suite 2000 Seattle, WA, 98104-3188, for Counsel for Petitioner.

Michael V. Connell, Attorney at Law, P.O. Box 228, Yakima, WA, 98907-0228, for Counsel for Respondent.

Robert Andrew Battles, Association of Washington Business, 1414 Cherry St. Se, Olympia, WA, 98501-2341, Kristopher Ian Tefft, Washington Self-Insurers Association, 828 7th Ave Se, Olympia, WA, 98501-1509, Amicus Curiae on behalf of Association of Washington Business, Washington Self-Insurers Association.

Opinion

YU, J.

*540 ¶ 1 After the Department of Labor and Industries (Department) learned it had been overpaying respondent Jose Birrueta's industrial insurance benefits for years, it issued two orders, one assessing an overpayment and another changing Birrueta's status from married to unmarried for compensation purposes. Because Birrueta was overpaid due solely to an innocent misrepresentation about his marital status made on his behalf, we hold the Department's orders were timely and authorized in accordance with RCW 51.32.240(1)(a). We therefore reverse the Court of Appeals and reinstate the ruling of the Board of Industrial Insurance Appeals (Board) upholding the Department's orders.

FACTS AND PROCEDURAL HISTORY

¶ 2 Birrueta was injured at work on August 31, 2004, and was totally disabled by his injury. While he was receiving medical treatment immediately following his injury, "an unknown person assisted Mr. Birrueta in completing a report of industrial injury." Certified Bd. R. (CBR) at 27. Birrueta acknowledges that the report bears his signature below the statement, "I declare that these statements are true to the best of my knowledge and belief," *id.* at 84, although he does not specifically remember signing it. The report states that at the time of his injury, Birrueta was married with one child.

¶ 3 In fact, at the time of his injury, Birrueta was unmarried and had no children—the report of industrial injury inaccurately lists his sister as his wife and his niece as his child. It is undisputed that the reason for these errors was *541 a miscommunication between Birrueta and the person who filled out **122 his industrial injury report, attributable to a language barrier and the fact that Birrueta was “in and out of consciousness” at the time the report was filled out on his behalf, Tr. of Telephone Hr’g (Mar. 21, 2012) at 5; see also CBR at 80-81.

¶ 4 Between 2004 and 2008, the Department issued multiple compensation orders, each of which stated that Birrueta was married with no children at the time of his injury.¹ The last of these orders “became final on or about May 4, 2009.” CBR at 28. Birrueta raised several challenges to the Department’s orders over the years, both pro se and with the assistance of counsel, but there is no indication that he ever attempted to correct the Department’s mistaken belief that he was married at the time of his injury.

¶ 5 In early 2011, the Department determined that Birrueta was permanently and totally disabled and thus entitled to a pension. With the aid of a legal assistant in his attorney’s office, Birrueta filled out the required pension benefits questionnaire, accurately stating that he was unmarried at the time of injury. It is undisputed that the Department did not know that Birrueta was unmarried until it received his completed pension benefits questionnaire.

¶ 6 After learning Birrueta’s true marital status, the Department issued two orders, both of which are now at issue. The first order assessed an overpayment against Birrueta of \$100.86 based on the amount Birrueta was overpaid between the time Department learned his true marital status and the time he was placed on a pension. The second order changed Birrueta’s marital status for compensation purposes from married to unmarried effective the day after the Department learned Birrueta’s true marital status.

*542 ¶ 7 Birrueta appealed the Department’s orders to the Board, contending that the Department’s prior orders stating that Birrueta was married at the time of injury were “final and binding on all parties, which includes the Department.” *Id.* at 31. Both parties sought summary judgment. An Industrial Appeals Judge (IAJ) issued a proposed decision and order granting summary

judgment to the Department, finding that there were no disputed material facts, that Birrueta innocently misrepresented his marital status when he applied for industrial insurance benefits, and that the Department’s orders were authorized by RCW 51.32.240(1). The Board adopted the IAJ’s proposed decision and order as the Board’s final decision, Birrueta then sought review in superior court.

¶ 8 The superior court adopted the Board’s unchallenged factual findings but agreed with Birrueta that as a matter of law, the Department was “without authority” to issue the recoupment order or to change his marital status for compensation purposes. Clerk’s Papers at 13. The court thus ordered the Department to set aside those orders as “null and void.” *Id.* The Court of Appeals affirmed in a unanimous, published opinion, and we granted the Department’s petition for review. *Birrueta v. Dep’t of Labor & Indus.*, 188 Wash.App. 831, 355 P.3d 320 (2015), review granted, 184 Wash.2d 1033, 380 P.3d 411 (2016).

ISSUES

¶ 9 A. Was the Department statutorily authorized to issue the orders assessing an overpayment against Birrueta and changing his marital status for compensation purposes even though the Department’s binding determination setting his compensation rate was final?

¶ 10 B. Is Birrueta entitled to attorney fees on review?

STANDARD OF REVIEW

[1] [2] ¶ 11 The facts are undisputed. The resolution of this case depends entirely on statutory interpretation, a matter of *543 law which we review de novo, *Gorre v. City of Tacoma*, 184 Wash.2d 30, 36, 357 P.3d 625 (2015). “Our ultimate task, of course, is to ascertain and carry out the legislature’s intent.” *Id.* at 37, 357 P.3d 625 (citing *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 9, 43 P.3d 4 (2002)).

**123 ANALYSIS

[3] ¶ 12 The purpose of the Industrial Insurance Act (IIA), Title 51 RCW, is to provide “sure and certain

relief for workers, injured in their work ... regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation,” RCW 51.04.010. To effectuate this purpose, the IIA sets forth in detail when an injured worker is entitled to compensation and the amount of compensation the worker is entitled to receive. Ch. 51.32 RCW. There is no dispute that Birrueta is statutorily entitled to compensation at a rate equal to 60 percent of his wages at the time of injury, RCW 51.32.060(1)(g). There is also no dispute that he has been receiving compensation at a rate equal to 65 percent of his wages at the time of injury because his innocent misrepresentation caused the Department to mistakenly believe he was married. RCW 51.32.060(1)(a), .090(1). The question is what action the Department may undertake given the circumstances presented.

¶13 The crucial statutory language at issue here is in RCW 51.32.240(1), which provides in relevant part,

(a) Whenever any payment of benefits under this title is made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by willful misrepresentation, the recipient thereof shall repay it and recoupment may be made from any future payments due to the recipient on any claim with the state fund or self-insurer, as the case may be. The department or self-insurer, as the case may be, must make claim for such repayment or recoupment within one year of the making of any such payment or it will be deemed any claim therefor has been waived.

*544 b) Except as provided in subsections (3), (4), and (5) of this section, the department may only assess an overpayment of benefits because of adjudicator error when the order upon which the overpayment is based is not yet final as provided in RCW 51.52.050 and 51.52.060. “Adjudicator error” includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.

The Department contends its orders were timely and authorized in accordance with RCW 51.32.240(1)(a), Birrueta contends that subsection (1)(a) applies only to temporary orders and that the Department’s orders were untimely pursuant to RCW 51.32.240(1)(b).²

[4] ¶ 14 In accordance with the statute’s plain language, we hold that subsection (1)(a) applies to any order, temporary or binding, that results in an erroneous overpayment of benefits caused by an innocent misrepresentation (or clerical error, mistake of identity, “or any other circumstance of a similar nature”). Meanwhile, subsection (1)(b) applies only to overpayments caused by adjudicator error. We further hold that “adjudicator error” means an error attributable to an adjudicator’s misinterpretation of the law or failure to properly apply the law to the facts in the claim file—the types of errors that may be addressed on reconsideration or direct appeal and not any error contained in an adjudication.

¶ 15 In this case, the overpayment to Birrueta was caused solely by an innocent misrepresentation and not by adjudicator error. The Department’s orders were thus timely and authorized in accordance with subsection (1) (a).

A. Whether subsection (1)(a) or subsection (1)(b) applies depends on the reason for the overpayment

¶ 16 RCW 51.32.240(1) sets forth procedures and time limits for the Department (and self-insured employers) to *545 recoup previously overpaid benefits. RCW 51.32.240(2) has similar provisions for a worker to seek an adjustment of previously underpaid benefits. The plain language of RCW 51.32.240 clearly shows that the applicable time limit for seeking **124 recoupment or an adjustment of benefits depends on the reason for the erroneous payment.

¶ 17 The statutory language is unambiguous on this point. If an erroneous payment is “because of” an innocent representation, the time limit is one year, RCW 51.32.240(1)(a), (2) (emphasis added); if the error is “because of” adjudicator error, the time limit is determined in accordance with the statutes governing appeals, *id.* at (1) (b), (2)(b) (emphasis added); and if the error is “induced by” willful misrepresentation, the time limit is “within three years of the discovery of the willful misrepresentation,” *id.* at (5)(a) (emphasis added). Moreover, nothing in subsection (1)(a) indicates that it applies only to temporary orders.³ It unambiguously applies to “any payment of benefits under this title.” *Id.* at (1)(a) (emphasis added). Interpreting subsection (1)(a) as

applying only to temporary orders reads a limitation into the statute that is not there.

¶ 18 If an overpayment is caused by “clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature,” then subsection (1)(a) unambiguously applies. If an overpayment is caused by “adjudicator error,” then subsection (1)(b) unambiguously applies. The question in this case is therefore what constitutes “adjudicator error” because the Department’s orders were plainly timely if subsection (1)(a) applies, and plainly untimely if subsection (1)(b) applies.

*546 B. An adjudicator error is an error that may be addressed on direct appeal based on the information in the claim file

[5] ¶ 19 The plain language of subsection (1)(b), considered in the context of the IIA as a whole, indicates that the phrase “adjudicator error” includes an error in interpreting the law or applying the law to the facts in the claim file—that is, the types of errors that may be addressed on reconsideration or direct appeal. It does not, as Birrueta contends, include every error contained in an adjudication. To the extent there is any ambiguity on this point, this plain language is further supported by legislative history and persuasive Board decisions.

1. Plain language

¶ 20 Beginning with the plain language of subsection (1)(b) itself, three types of errors are explicitly included in the definition of adjudicator error; “the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.” RCW 51.32.240(1)(b). These all indicate that “adjudicator error” contemplates the types of errors that are typically addressed on reconsideration or direct appeal—errors in applying the law to the facts (“failure to consider information in the claim file”), insufficiency of the evidence (“failure to secure adequate information”), and errors of law (“error in judgment”). *Id.*; see *Gallo v. Dep’t of Labor & Indus.*, 155 Wash.2d 470, 482, 120 P.3d 564 (2005) (noting that ejusdem generis applies to IIA provisions (citing *Cockle v. Dep’t of Labor & Indus.*, 142 Wash.2d 801, 822, 16 P.3d 583 (2001))).

¶ 21 By comparison, the types of errors listing in subsection (1)(a) more closely resemble the types of errors that may be subject to collateral attack—clerical errors, mistakes, misrepresentations, and “any other circumstance of a similar nature,” RCW 51.32.240(1)(a). Listing these two types of errors in different subsections of RCW 51.32.240(1) *547 with different applicable time limits parallels the structure of the Civil Rules.⁴ See CR 59 (reconsideration), 60 (relief from judgment or order). This context contradicts Birrueta’s expansive interpretation of the phrase “adjudicator error.”

**125 ¶ 22 Any plain language analysis of IIA provisions must also account for its provision that “[t]his title shall be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment.” RCW 51.12.010. We have previously noted that this provision means “this court is required to interpret ambiguities in the IIA in favor of the injured worker.” *Shafer v. Dep’t of Labor & Indus.*, 166 Wash.2d 710, 721, 213 P.3d 591 (2009). However, this provision does not resolve the question now presented because there is no dispute about the level of benefits Birrueta is statutorily entitled to receive. Similarly, to the extent that Birrueta contends the parallel statutory language in RCW 51.32.240(1) and (2) indicates the Department should be bound by final, binding determinations to the same extent as workers, that point is well taken but not dispositive. We have never adopted Birrueta’s interpretation of RCW 51.32.240’s current language as applied to either the Department or a worker.

¶ 23 Birrueta does raise two more persuasive points, however. First, he notes that overpayments “induced by willful misrepresentation,” RCW 51.32.240(5)(a), are specifically exempt from subsection (1)(b), even though such overpayments may not be addressable on direct appeal. Second, the statutes governing finality of binding determinations by the Department lend some credence to Birrueta’s broad reading, See RCW 51.52.060(4) (authorizing the Department to make further factual inquiries after issuing a binding determination within the time allowed for *548 a worker to appeal or within 30 days of a worker’s notice of appeal), .070 (a worker aggrieved by a Department order is “deemed to have waived *all objections or irregularities* ... other than those specifically set forth in such notice of appeal or appearing in the records of the department” (emphasis

added)). But to the extent these points support Birrueta's interpretation, they are contradicted by other appropriate sources indicative of legislative intent. *See Gorre*, 184 Wash.2d at 42–43, 357 P.3d 625 (citing *State v. A. G.S.*, 182 Wash.2d 273, 277–78, 340 P.3d 830 (2014) (the court may consult legislative history to resolve statutory ambiguity)); *Dep't of Labor & Indus. v. Shirley*, 171 Wash.App. 870, 887–88, 288 P.3d 390 (2012) (significant Board decisions may be used as persuasive, nonbinding authority).

2. Legislative history

¶ 24 The legislative history of RCW 51.32.240 makes its purpose clear: to provide the Department, self-insured employers, and workers with a procedure for correcting overpaid and underpaid benefits, without undermining the IIA's appeals process or its purpose of providing sure and certain relief for workers. This purpose supports an interpretation of "adjudicator error" as used in subsection (1)(b) as being generally analogous to grounds for direct appeal.

¶ 25 When the IIA was first enacted in 1911, "no provision authorized the recovery of any workers' compensation benefit, already paid, for any reason." *Stuckey v. Dep't of Labor & Indus.*, 129 Wash.2d 289, 298, 916 P.2d 399 (1996). This court determined that absent such a provision, the Department had no authority to recover benefits already paid, even if they were overpaid due to a "mistake of fact on the part of the department." *State ex rel. Dunbar v. Olson*, 172 Wash. 424, 427, 20 P.2d 850 (1933). We later reaffirmed that decision, noting that "[f]or 36 years following *Dunbar*, the legislature has acceded to that decision." *Deal v. Dep't of Labor & Indus.*, 78 Wash.2d 537, 540, 477 P.2d 175 (1970). This time, however, the legislature responded,

*549 ¶ 26 At the request of the Department and in "direct response to our holding in *Deal*," the legislature enacted RCW 51.32.240. *Stuckey*, 129 Wash.2d at 298, 916 P.2d 399; *see also* 1 SENATE JOURNAL, 44th Leg., 1st Ex. Sess., at 803 (Wash. 1975). As originally enacted, the statute provided that the Department could recover overpaid benefits in three situations: (1) overpayments "made because of clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient thereof mistakenly acted upon, or any other circumstance of a similar nature, all not induced by fraud," (2) payments "made pursuant to an adjudication ... and timely appeal therefrom has been made where the final decision is that

any such **126 payment was made pursuant to an erroneous adjudication," and (3) overpayments "induced by fraud," LAWS OF 1975, 1st Ex. Sess., ch. 224, § 13. These three situations were thus clearly differentiated based on the reason for the overpayment, with each subject to different a time limit, just as in the plain language of the current statute.

¶ 27 It was not until 1999 that the legislature amended the statute to provide a means for a worker to recover underpaid benefits. LAWS OF 1999, ch. 396, § 1(2); *see also Kingery v. Dep't of Labor & Indus.*, 132 Wash.2d 162, 171, 937 P.2d 565 (1997) (noting that RCW 51.32.240 does not apply to erroneously underpaid workers "as it regards recoupment of payments made pursuant to erroneous orders under certain circumstances and only if corrected within one year of payment"). It did so in direct response to this court's holding that "[t]he failure to appeal an order, even one containing a clear error of law, turns the order into a final adjudication, precluding any reargument of the same claim." *Marley v. Dep't of Labor & Indus.*, 125 Wash.2d 533, 538, 886 P.2d 189 (1994); *see* HOUSE COMMERCE & LABOR COMM., H.B. ANALYSIS ON H.B. 1894, at 1, 56th Leg., Reg. Sess. (Wash. 1999), Testimony supporting the 1999 amendment shows that it was intended to achieve parity between a worker's rights to recover underpayments and the Department's rights to recoup overpayments:

*550 The Department of Labor and Industries is permitted to recoup benefits that are overpaid, but when workers are underpaid benefits because of errors, they have no recourse if the appeal period has expired. This is unfair and must be corrected.... This bill would provide the same one-year period for workers to recover underpaid benefits as the department has to recoup overpaid benefits.

H.B. REP. ON ENGROSSED H.B. 1894, at 2–3, 56th Leg., Reg. Sess. (Wash. 1999).

¶ 28 There is no indication the legislature intended to modify or restrict the Department's authority to recoup overpayments with the 1999 amendments; it simply sought to give the worker an equal opportunity to recover underpayments. Just like the Department, the worker seeking an adjustment of benefits "because of clerical error, mistake of identity, or innocent misrepresentation," LAWS OF 1999, ch. 396, § 1(2), was required to "request an adjustment in benefits within one year from the date

of the incorrect payment or it will be deemed any claim therefor] has been waived,” *id.* § 1(2)(a). However, the legislature provided that “[T]he recipient may not seek an adjustment of benefits because of adjudicator error. ‘Adjudicator error’ includes the failure to consider information in the claim file, failure to secure adequate information, or an error in judgment.” *Id.* § 1(2)(b). Thus, rather than explicitly stating that adjustment of benefits based on adjudicator error must be sought within the time for direct appeal, the legislature simply stated that RCW 51.32.240 could not be used to address adjudicator error, and defined adjudicator error as including the types of errors that may be addressed on direct appeal.

¶ 29 In 2004, the legislature further clarified that adjudicator errors can, and therefore must, be addressed on reconsideration or direct appeal by providing that “[a]djustments due to adjudicator error are addressed by the filing of a written request for reconsideration with the department of labor and industries or an appeal with the board of *551 industrial insurance appeals.” LAWS OF 2004, ch. 243, § 7(2)(b). To continue the parity of remedies set forth in 1999, however, the legislature made it clear that the Department’s authority to recoup overpaid benefits caused by adjudicator error was subject to the same time limit: “[T]he department may only assess an overpayment of benefits because of adjudicator error when the order upon which the overpayment is based is not yet final as provided in RCW 51.52.050 and 51.52.060” *Id.* § 7(1)(b).

¶ 30 This legislative history supports the interpretation suggested by the plain language of RCW 51.32.240 as a whole: both the Department and the worker may seek correction of erroneous payments based on clerical errors, mistakes of identity, and innocent misrepresentations within one year of the payment. However, neither the Department nor the worker is entitled to use this as a means to evade the time limits for direct **127 appeal. This strongly suggests that “adjudicator errors” within the meaning of subsection (1)(b) are limited to the types of errors that may be addressed on direct appeal based on the information in the claim file, not all errors contained in adjudications.

3. Significant Board decisions

¶ 31 While this case presents an issue of first impression in this court, the Board has encountered the issue before and held that “adjudicator error” within the meaning of subsection (1)(b) is the type of error that is addressable

on direct appeal based on the information in the claim file. It does not include errors caused exclusively by the circumstances listed in subsection (1)(a).

¶ 32 The most factually on-point significant Board decision is *In re Veliz*, No. 11 20348 (Wash. Bd. of Indus. Ins. Appeals Mar. 4, 2013). The worker, Alonso Veliz, stated he was married at the time of injury on his application for benefits. *Id.* at 2, His claim was allowed and the Department set his compensation rate *552 by binding determination based on its belief that he was married with three children. *Id.* at 4. The Department later determined that Veliz was permanently and totally disabled, and in his pension benefits questionnaire, Veliz accurately stated he was unmarried at the time of injury. *Id.* at 2. It was determined that Veliz had inaccurately stated that he was married, and the inaccuracy was due to both a language barrier and also the fact that he “and his wife always considered themselves married though they did not have a formal ceremony until” well after his industrial injury. *Id.* Consistent with its decision here, the Board held that Veliz had been overpaid due to an innocent misrepresentation and that the Department had the authority to correct that error pursuant to RCW 51.32.240(1). *Id.* at 4.

¶ 33 Other significant Board decisions are consistent with this interpretation. *See, e.g., In re Lacy*, No. 08 21768, at 4 (Wash. Bd. of Indus. Ins. Appeals Dec. 8, 2009) (when the adjudicator must “use judgment in reaching the determination,” a failure to properly exercise that judgment in light of the available information in the claim file exemplifies an adjudicator error). Birrueta, meanwhile, does not draw the court’s attention to any significant Board decisions that would support his own interpretation.

¶ 34 Because the statutory language, legislative history, and significant Board decisions all point to the same conclusion, we hold that adjudicator error does *not* mean all errors in binding adjudications. Adjudicator errors include only the types of errors that may be addressed on direct appeal based on the information in a worker’s claim file, including errors of law, insufficiency of the evidence, and errors in applying the law to the available information.

*553 C. The overpayment at issue here was caused solely by an innocent misrepresentation and not by

adjudicator error, so the Department's orders were timely and authorized pursuant to subsection (1)(a)

[6] ¶ 35 While it may be possible that an erroneous payment could have multiple, overlapping causes, there is no overlap here.⁵ The undisputed facts show that Birrueta's innocent misrepresentation about his marital status is the *only* reason Birrueta was overpaid. There was no indication in Birrueta's claim file that he was not married at the time of injury, and the Department correctly applied the law to the information before it.⁶ It is not adjudicator error for the Department to rely on information in a claim file based on the worker's undisputed assertions about facts within the worker's particular knowledge, such as marital status at the time of injury. **128 Therefore, subsection (1)(a) governs the timeliness of the Department's orders here, not subsection (1)(b).

¶ 36 The Department's order assessing an overpayment against Birrueta was made within one year of the payments it sought to recoup and was thus plainly authorized and timely pursuant to subsection (1)(a). And the Department's order changing Birrueta's marital status for compensation purposes was within its implied authority as a necessary incident to recoupment pursuant to subsection (1)(a). To hold otherwise would mean that in order to ensure that Birrueta receives only the compensation he is statutorily entitled to, the Department would have to continuously *554 overpay and then recoup Birrueta's benefits for the rest of his life.⁷ Such a result would be administratively burdensome to the Department and, more importantly, a hardship to Birrueta that would undercut his right to "sure and certain relief." RCW 51.04.010; *see Deal*, 78 Wash.2d at 541, 477 P.2d 175 (noting that recoupment, even where benefits are erroneously overpaid, may work a genuine hardship to the worker). It is implausible that the legislature intended such an outcome, particularly where it has the potential to significantly burden workers who are permanently totally disabled due to industrial injuries.⁸ A significant Board decision agrees. *Veliz*, No. 11 20348, at 3.

¶ 37 We therefore hold that both of the Department's orders at issue here were timely and within the Department's statutory authority pursuant to RCW 51.32.240(1)(a).

D. Birrueta is not entitled to attorney fees

¶ 38 Because we reverse the Court of Appeals and reinstate the Board's decision and order, Birrueta is not entitled to attorney fees on review, RCW 51.52.130(1); RAP 18.1(a).

CONCLUSION

¶ 39 In resolving this case, we are mindful that the parallel structure of RCW 51.32.240(1)-(2) means that our decision is likely to affect the rights of workers to seek adjustment of underpaid benefits, in addition to the Department's authority to recoup overpaid benefits.

*555 ¶ 40 Giving effect to all the statutory language in context, considering legislative history, and giving appropriate deference to significant Board decisions, we hold that overpayments made solely for one of the reasons listed in RCW 51.32.240(1)(a) may be recouped within one year of the payment, regardless of whether the underlying order was temporary or binding. Due to practical considerations favoring both the Department and the worker, as well as the Board's interpretation in *Veliz*, we also hold the Department has the authority to correct prior orders that are erroneous only because of the reasons listed in RCW 51.32.240(1)(a). Applying these holdings to the undisputed facts presented, we reverse the Court of Appeals and reinstate the Board's decision affirming the Department's orders.

WE CONCUR:

Madsen, C.J.

Johnson, J.

Owens, J.

Fairhurst, J.

Stephens, J.

Wiggins, J.

González, J.

Gordon McCloud, J.

All Citations

186 Wash.2d 537, 379 P.3d 120

Footnotes

- 1 It is not clear how the Department determined that Birrueta had no children but continued to believe he was married. See CBR at 24 n.2,
- 2 For convenience, these statutory provisions will be referred to as "subsection (1)(a)" and "subsection (1)(b)" throughout this opinion.
- 3 The Department is required to "promptly" act on an injured worker's claim, making the first compensation payment within 14 days of receiving the claim. RCW 51.32.210. Such a payment is made pursuant to a temporary order, which does not constitute a "binding determination" of the worker's right to compensation at a particular rate. *Id.*
- 4 Civil Rules are an appropriate point for analogy because the portion of the IIA pertaining to appeals, chapter 51.52 RCW, provides that "[e]xcept as otherwise provided in this chapter, the practice in civil cases shall apply to appeals prescribed in this chapter." RCW 51.52.140.
- 5 If, for example, a worker's claim file contained conflicting information and the Department did not seek to resolve the conflict, that *might* constitute a failure to consider the information in the claim file, and thus an adjudicator error, even if some of the conflicting information was innocently misrepresented. But that situation is not presented here, and we do not consider what time limit might be applicable if it were.
- 6 To the extent Birrueta argues the Department failed to consider the information in his claim file because its orders stated he had no children, rather than the one child indicated on his industrial injury report, that is not relevant to the issue now presented because it did not result in any erroneous payments.
- 7 There is a published Court of Appeals opinion suggesting the Board might have inherent authority to modify final, binding determinations pursuant to CR 60. *Leuluaialii v. Dep't of Labor & Indus.*, 169 Wash.App. 672, 680–81, 279 P.3d 515 (2012). However, *Leuluaialii* is distinguishable because it considered a clerical error that did not cause any erroneous payments, so RCW 51.32.240 did not apply at all. *Id.* at 679, 279 P.3d 515.
- 8 And of course if the situation were reversed, a worker who was underpaid due to an innocent misrepresentation in a binding order would have to be continuously underpaid and regularly seek a readjustment of benefits pursuant to RCW 51.32.240(2), which would be a much greater hardship.

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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

Re: LILIA S. LACY
Claim No. AS-31430

Docket No. 18 19397
AFFIDAVIT OF TYLER GRUHN

I, TYLER GRUHN, being first duly sworn on oath deposes and states:

I am a resident of the State of Washington, over the age of eighteen years; and I am competent to testify as to the matters contained herein.

1. At all times relevant to this appeal I have been employed by the Department of Labor and Industries (DLI) in the Pension Benefits Section, as a Workers Compensation Adjudicator 3.

2. My job duties in the Pension Benefits Section with DLI include review of claim files to review information in the file and provided by the worker to establish pension benefits when a worker is placed on the pension rolls.

3. I have reviewed and am familiar with the records and documents in the DLI claim file of Lilia S. Lacy, Claim No. AS-31430.

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4. Records in this claim were received by DLI in the regular course of business, collected, filed, and maintained in the Department file of Lilia S. Lacy, Claim No. AS-31430, by DLI in the regular course of business.

5. The documents attached to this declaration are true and correct copies of documents maintained in the file of Lilia S. Lacy, Claim No. AS-31430 by the DLI in the regular course of business.

6. Attached Exhibit A is a true and correct copy of a one page Report of Accident for Claim AS 31430, filed by Lilia S. Lacy on December 14, 2012, as maintained in the Department file of Lilia S. Lacy, AS-31430

7. Attached Exhibit B is a true and correct copy of a May 31, 2013 Order closing claim AS-31430, as maintained in the Department file of Lilia S. Lacy, AS-31430

8. Attached Exhibit C is a true and correct copy of an August 5, 2016 reopening order as maintained in the Department file of Lilia S. Lacy, AS-31430

9. Attached Exhibit D is a true and correct copy of an October 27, 2016 Order setting Lilia Lacy's time loss rate based on married with 0 children, as maintained in the Department file of Lilia S. Lacy, AS-31430

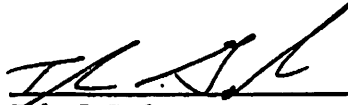
10. Attached Exhibit E is a true and correct copy of a Secure Message received by the Department, sent March 24, 2017 by Spencer Parr on behalf of Lilia Lacy as maintained in the Department file of Lilia S. Lacy, AS-31430

11. Attached Exhibit F is a true and correct copy of a marriage certificate for Howard and Lilia Lacy, provided to the Department by the Claimant, as maintained in the Department file of Lilia S. Lacy, AS-31430.

12. Attached Exhibit G is a true and correct copy of a birth certificate for Drake Alexander Latson-Lacy, provided to the Department by the Claimant, as maintained in the Department file of Lilia S. Lacy, AS-31430

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DATED this 5th day of February, 2019.



Tyler J. Gruhn
Workers Compensation Adj. 4
Pension Benefits
Department of Labor and Industries

Signed and sworn (or affirmed) before me on the 5th day of February, 2019.



NOTARY PUBLIC in and for the State of
Washington, residing at TUMWATER, WA
Commission Expires: 9/15/2022



EXHIBIT A



Report of Accident (Workplace Injury, Accident or Occupational Disease)

ATLNI 12/18/2012 10:23:42 AM IPacific Standard Time

Language preference (check one) <input checked="" type="checkbox"/> English <input type="checkbox"/> Spanish <input type="checkbox"/> Russian <input type="checkbox"/> Korean <input type="checkbox"/> Chinese <input type="checkbox"/> Vietnamese <input type="checkbox"/> Laotian <input type="checkbox"/> Cambodian <input type="checkbox"/> Other: _____		Claim No. AS 31430	
1. Name (Print Last, First, Middle Initial) Lily S Lacy		2. <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	14. Date of injury or last occupational exposure 1/1
3. Social Security Number 516 310 43024	4. Home phone (714) 291 0971	5. Birth date (MM/DD/YY) 09/01/56	15. Time of injury: : <input type="checkbox"/> AM <input type="checkbox"/> PM <input type="checkbox"/> Day <input type="checkbox"/> Evening <input type="checkbox"/> Night
6. Home address 423 West 16th St		7. Height (inches) 5-1	16. Shift (check one) <input type="checkbox"/> Day <input type="checkbox"/> Evening <input type="checkbox"/> Night
8. City, State, ZIP Code Port Angeles WA 98362		8. Weight 205	17. Have you ever been treated for the same or similar condition? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
9. Mailing address (if different from home address) same as above		10. Family status: <input type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Separated <input type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Registered Domestic Partner	18. Is this condition due to a specific incident? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
11. Dependent children (include US born/adopted born date, birth date, and living in part of number of weekly dependent children. If you don't have legal custody, consult Box 13.)		19. Describe in detail how your injury or exposure occurred. (Include task, machinery, or material or hazard that may have been involved.) please see previous claim for an information you need is in claim # AR23322	
12. Name of Spouse or Registered Domestic Partner Howard Lacy		20. Were you doing your regular job? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
13. Name & address of children's legal guardian		21. Where did the injury or exposure occur? <input type="checkbox"/> Home <input type="checkbox"/> Employer Premises <input type="checkbox"/> Public <input type="checkbox"/> Other	
14. Name of business Rad Lion Restaurant/Hotel		22. When did the injury/exposure occur? Name of business 12/14/12	
15. Address 230 West 16th St Port Angeles WA 98362		23. Injury caused by a fault, machine, product or person other than my employer or co-worker? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> POSSIBLY	
16. City, State, ZIP Code		24. I list any witnesses:	
17. Did you report the incident to your employer? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		25. When will you return to work?	
18. Date you reported it: 1/1		26. When did you last work? 1/1	
19. Did you have employer-paid health care benefits on day injured? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		27. Signature X [Signature]	
20. Bus name of your employer		28. Note: READ LEGAL NOTICES ON THE WORKER'S COPY OF THIS FORM I declare these statements are true to the best of my knowledge and belief. In signing this form, I permit health care providers, hospitals, or clinics to release relevant medical reports, which they or others produce, to the Dept. of Labor & Industries Today's date 12/14/12	
21. Your employer's address		29. Rate of pay at this job (check one) <input type="checkbox"/> Hour <input type="checkbox"/> Week <input type="checkbox"/> Month <input type="checkbox"/> More than 1 rate of pay	
22. City, State, ZIP Code		30. Hours per day 35/40	
23. How many paying jobs do you have? 1		31. Days per week 5	
24. I am: <input type="checkbox"/> Owner <input type="checkbox"/> Corp. Shareholder <input type="checkbox"/> Corp. Director <input type="checkbox"/> Operator/Contractor <input type="checkbox"/> Self-employed		32. Additional earnings (check all that apply) <input type="checkbox"/> None <input type="checkbox"/> Tip <input type="checkbox"/> Regular overtime <input type="checkbox"/> Short-notice <input type="checkbox"/> Commission <input type="checkbox"/> Bonus in the last 12 months	
25. 1. Diagnosis (B) CTS		33. Claim No. AS 31430	
2. ICD Codes 359.0		34. Will the condition cause the patient to miss work? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
3. Diagnosis (B) Painful Lumbs		35. If yes, estimate the number of days: 12	
4. ICD Codes 79.5		36. Are there any pre-existing impairment of the injured area? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
3. Date you first saw patient for this condition 10/25/12		37. Has patient ever been treated for the same or similar condition? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
4. Is the condition due to a specific incident? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		38. Name of provider AR23322	
5. Objective findings supporting your diagnosis EMG Study from 10-30-12 shows (B) Carpal tunnel Syndrome		39. Are there any conditions that will prevent or slow recovery? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
6a. Is more treatment needed? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> POSSIBLY		40. Did you refer the patient to an L&I medical network provider for follow-up? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
6b. Treatment and diagnostic testing recommendations: Surgery		41. IMPORTANT: L&I Provider Number or NPI of provider listed in Box 13. 1821035460	
7. Name of attending health care provider (Print Name) Dr. Regina McGovern		42. This exam date 1/1	
8. Name of hospital or clinic where patient was treated: Strait of the Pacific + McGovern Hospital		43. Signature (must be signed by health care provider) X [Signature]	
9. Address 1112 Carolan		Today's date 12/18/12	
10. City, State, ZIP Code Port Angeles WA 98362			

A

EXHIBIT B

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF INDUSTRIAL INSURANCE
PO BOX 44291
OLYMPIA, WA 98504-4291

MAILING DATE 05/31/2013
CLAIM NUMBER AS31430
INJURY DATE 10/12/2012
CLAIMANT LACY LILIA S

EMPLOYER RED LION PORT A
UBI NUMBER 601 319 277
ACCOUNT ID 363, 819-15
RISK CLASS 3905
SERVICE LOC Port Angeles

LILIA LACY
423 W 16TH ST
PORT ANGELES WA 98362-7628

NOTICE OF DECISION

Time-loss benefits are ended as paid through 05/06/2013. This claim is closed effective 05/31/2013.

The medical record shows treatment is no longer necessary and there is no permanent partial disability. The Department of Labor and Industries will not pay for medical services or treatment after the closure date.

Supervisor of Industrial Insurance
By Richard J Willis
Claim Manager
(360) 902-5886

MAILED TO: WORKER - LILIA LACY
423 W 16TH ST, PORT ANGELES WA 98362-7628
EMPLOYER - RED LION PORT ANGELES
PAT STAPLETON CORP RKS MGR, 201 W NORTH RIVER DR STE 100, S
PROVIDER - MCGOVERN REGINA M MD
STRAIT ORTHOPEDIC SPECIALI, 1112 CAROLINE ST, PORT ANGELES

	THIS ORDER BECOMES FINAL 60 DAYS FROM THE DATE IT IS	
	COMMUNICATED TO YOU UNLESS YOU DO ONE OF THE FOLLOWING: FILE	
	A WRITTEN REQUEST FOR RECONSIDERATION WITH THE DEPARTMENT OR	
	FILE A WRITTEN APPEAL WITH THE BOARD OF INDUSTRIAL INSURANCE	
	APPEALS. IF YOU FILE FOR RECONSIDERATION, YOU SHOULD INCLUDE THE	
	REASONS YOU BELIEVE THIS DECISION IS WRONG AND SEND IT TO:	
	DEPARTMENT OF LABOR AND INDUSTRIES, PO BOX 44291, OLYMPIA, WA	
	98504-4291. WE WILL REVIEW YOUR REQUEST AND ISSUE A NEW ORDER.	
	IF YOU FILE AN APPEAL, SEND IT TO: BOARD OF INDUSTRIAL INSURANCE	
	APPEALS, PO BOX 42401, OLYMPIA WA 98504-2401 OR SUBMIT IT ON AN	
	ELECTRONIC FORM FOUND AT [HTTP://WWW.BIIA.WA.GOV/](http://WWW.BIIA.WA.GOV/).	

B

EXHIBIT C

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF INDUSTRIAL INSURANCE
PO BOX 44291
OLYMPIA, WA 98504-4291

MAILING DATE 08/05/2016
CLAIM NUMBER AS31430
INJURY DATE 10/12/2012
CLAIMANT LACY LILIA S
EMPLOYER RED LION PORT A
UBI NUMBER 601 319 277
ACCOUNT ID 363, 819-15
RISK CLASS 3905
SERVICE LOC Port Angeles

LILIA LACY
% WASHINGTON LAW CENTER, PLLC
651 STRANDER BLVD STE 215
TUKWILA WA 98188-2953

NOTICE OF DECISION

This claim is reopened effective 12/31/2014 for authorized treatment and action as indicated under the industrial insurance laws.

Order dated 08/14/2015 is canceled. This action is taken in accordance to Board of Industrial Insurance Appeal order dated 07/11/2016

Supervisor of Industrial Insurance
By Karina Asbach
Claim Manager
(360) 902-4414

MAILED TO: WRKER/ATTY - LILIA LACY, % WASHINGTON LAW CENTER, PLLC
651 STRANDER BLVD STE 215, TUKWILA WA 98188-2953
EMPLOYER(E) - RED LION PORT ANGELES
PAT STAPLETON CORP RKS MGR, 201 W NORTH RIVER DR STE 100, S
PROVIDER - KANTERS DAVID J ARNP
CLINICARE OF PORT ANGELES, 621 E FRONT ST, PORT ANGELES WA
EMPL GRP(E) - WA LODGING ASSOCIATION
TERAN PETRINA, 510 PLUM ST SE STE 200, OLYMPIA WA 98501-15

|| THIS ORDER BECOMES FINAL 60 DAYS FROM THE DATE IT IS
|| COMMUNICATED TO YOU UNLESS YOU DO ONE OF THE FOLLOWING: FILE
|| A WRITTEN REQUEST FOR RECONSIDERATION WITH THE DEPARTMENT OR
|| FILE A WRITTEN APPEAL WITH THE BOARD OF INDUSTRIAL INSURANCE
|| APPEALS. IF YOU FILE FOR RECONSIDERATION, YOU SHOULD INCLUDE THE
|| REASONS YOU BELIEVE THIS DECISION IS WRONG AND SEND IT TO:
|| DEPARTMENT OF LABOR AND INDUSTRIES, PO BOX 44291, OLYMPIA, WA
|| 98504-4291. WE WILL REVIEW YOUR REQUEST AND ISSUE A NEW ORDER.
|| IF YOU FILE AN APPEAL, SEND IT TO: BOARD OF INDUSTRIAL INSURANCE
|| APPEALS, PO BOX 42401, OLYMPIA WA 98504-2401 OR SUBMIT IT ON AN
|| ELECTRONIC FORM FOUND AT [HTTP://WWW.BIIA.WA.GOV/](http://www.BIIA.WA.GOV/).
||-----

C

EXHIBIT D

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF INDUSTRIAL INSURANCE
PO BOX 44291
OLYMPIA, WA 98504-4291

MAILING DATE 10/27/2016
CLAIM NUMBER AS31430
INJURY DATE 10/12/2012
CLAIMANT LACY LILIA S
EMPLOYER RED LION PORT A
UBI NUMBER 601 319 277
ACCOUNT ID 363, 819-15
RISK CLASS 3905
SERVICE LOC Port Angeles

LILIA LACY
% WASHINGTON LAW CENTER, PLLC
651 STRANDER BLVD STE 215
TUKWILA WA 98188-2953

NOTICE OF DECISION

The worker's wage is set by taking into account the following:

The wage for the job of injury is based on the monthly salary of \$1,136.74.

Additional wage for the job of injury include:

Health Care Benefits	NONE per month
Tips	\$11.29 per month
Bonuses	NONE per month
Overtime	NONE per month
Housing/Board/Fuel	NONE per month

Worker's total gross wage received from all employment at the time of injury is \$1,148.03 per month.

Worker's marital status eligibility on the date of this order is married with 0 children.

Supervisor of Industrial Insurance
By Karina Asbach
Claim Manager
(360) 902-4414

ATTACHMENT

	THIS ORDER BECOMES FINAL 60 DAYS FROM THE DATE IT IS	
	COMMUNICATED TO YOU UNLESS YOU DO ONE OF THE FOLLOWING: FILE	
	A WRITTEN REQUEST FOR RECONSIDERATION WITH THE DEPARTMENT OR	
	FILE A WRITTEN APPEAL WITH THE BOARD OF INDUSTRIAL INSURANCE	
	APPEALS. IF YOU FILE FOR RECONSIDERATION, YOU SHOULD INCLUDE THE	
	REASONS YOU BELIEVE THIS DECISION IS WRONG AND SEND IT TO:	
	DEPARTMENT OF LABOR AND INDUSTRIES, PO BOX 44291, OLYMPIA, WA	
	98504-4291. WE WILL REVIEW YOUR REQUEST AND ISSUE A NEW ORDER.	
	IF YOU FILE AN APPEAL, SEND IT TO: BOARD OF INDUSTRIAL INSURANCE	
	APPEALS, PO BOX 42401, OLYMPIA WA 98504-2401 OR SUBMIT IT ON AN	
	ELECTRONIC FORM FOUND AT [HTTP://WWW.BIIA.WA.GOV/](http://www.BIIA.WA.GOV/).	

D

EXHIBIT E

MessageID: 3318843; AS31430: CL

Secure Message

Send Date: Friday, March 24, 2017
Submitted by: Spencer Parr
Relationship: LegalRep
Phone: (206) 451-8088
Source: Claim ID - AS31430
From: Washington Law Center, PLLC
To: Claims Manager
Claim Manager: ClaimId AS31430

Subject: Information update for Wage Order

Please be advised that Ms. Lacy was married under common law. She has a Dependent who lives in her household together with her and her husband. The minor defendant's name is Drake Lacy and his date of birth is 3/25/2002. She would like this child considered for purpose of her wage order. Finally, be advised that Ms. Lacy and her husband also underwent a civil ceremony on May 1, 2016 in Port Thompson to further document their marriage. Thank you.

EXHIBIT F

AS31430



Washington State
CERTIFICATE OF MARRIAGE

COUNTY OF LICENSED	
JEFFERSON	M-014898
DATE VALID	NOT VALID AFTER
Mar 20 2015	May 16 2015

Marriage ceremonies must be performed in the State of Washington.

Please type or print clearly in permanent black ink. State File Number

COUNTY CLERK'S SIGNATURE X ROSE ANN CARROLL <i>Rose Ann Carroll</i>		DATE RECEIVED (MM/DD/YYYY) MAY - 1 2015	
LEGAL NAME BEFORE MARRIAGE (PREVIOUS/DOES/LAST) HOWARD E LACY		LEGAL NAME BEFORE MARRIAGE (PREVIOUS/DOES/LAST) LILIA Y SARAGUN	
BIRTH NAME (IF DIFFERENT) LACY	<input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE	BIRTH NAME (IF DIFFERENT) SARAGUN	<input type="checkbox"/> MALE <input checked="" type="checkbox"/> FEMALE
CURRENT RESIDENCE - STREET, CITY/TOWN 431 WEST 16TH STREET, PORT ANGELES	COUNTY OF RESIDENCE CLALLAM COUNTY	CURRENT RESIDENCE - STREET, CITY/TOWN 443 WEST 16TH STREET, PORT ANGELES	COUNTY OF RESIDENCE CLALLAM COUNTY
STATE OF RESIDENCE WA	DATE OF BIRTH (MM/DD/YYYY) Jan 21 1961	STATE OF RESIDENCE WA	DATE OF BIRTH (MM/DD/YYYY) Jun 7 1956
BIRTH STATE (IF NOT USA, PROVIDE COUNTRY) CALIFORNIA	FATHER/MOTHER BIRTH NAME ELIZABETH HOUSTON	BIRTH STATE (IF NOT USA, PROVIDE COUNTRY) MEXICO	FATHER/MOTHER BIRTH NAME MARIA DE JESUS SBRPA
BIRTH STATE (IF NOT USA, PROVIDE COUNTRY) KANSAS	FATHER/MOTHER BIRTH STATE (IF COUNTRY) KANSAS	BIRTH STATE (IF NOT USA, PROVIDE COUNTRY) MEXICO	FATHER/MOTHER BIRTH STATE (IF COUNTRY) MEXICO
I certify that the underlined, by authority of license issued by the County named above, did on this day join in lawful wedlock with their mutual consent in the presence of witnesses, in testimony whereof, witnesses our signatures:			
DATE OF MARRIAGE (MM/DD/YYYY) 05/01/2015	COUNTY OF CELEBRATION JEFFERSON	TYPE OF CELEBRATION (CHECK ONE) <input type="checkbox"/> RELIGIOUS <input checked="" type="checkbox"/> CIVIL	DATE SIGNED (MM/DD/YYYY) 05/01/2015
OFFICIAL'S ADDRESS (STREET, CITY, STATE AND ZIP CODE) PLEASE PRINT 1920 JEFFERSON ST PT WA 98368		OFFICIAL'S OFFICE PHONE 360-385	
OFFICIAL'S SIGNATURE <i>Jill Lames</i>		OFFICIAL'S SIGNATURE <i>...</i>	
WITNESS SIGNATURE X <i>Howard E Lacy</i>		WITNESS SIGNATURE X <i>...</i>	
WITNESS SIGNATURE X <i>...</i>		DATE SIGNED (MM/DD/YYYY) 05/01/2015	
WITNESS SIGNATURE X <i>...</i>		DATE SIGNED (MM/DD/YYYY) 05/01/2015	

FORM 05-005 (REV 12/2012)

FORM VALID ON OCTOBER 6, 2012

WMECA

I, ROSE ANN CARROLL, Auditor of Jefferson County, Washington, do hereby certify that this instrument is a full, true and correct copy of the record on file in my office. WITNESS my hand and official seal this 28th day of June, 2015.

ROSE ANN CARROLL
By *Jessie Chavez*
Deputy
Port Townsend, Washington

07/05/2018 10:16 #426 P.004/004

From:

F

EXHIBIT G

AA 31430

STATE OF WASHINGTON
DEPARTMENT OF HEALTH



CERTIFICATE OF LIVE BIRTH



STATE FILE NUMBER:
146-2002-015538

DATE ISSUED:
AUGUST 25, 2017

FIRST AND MIDDLE NAME(S):
DRAKE ALEXANDER

LAST NAME(S):
LATSON-LACY

DATE AND TIME OF BIRTH:
MARCH 25, 2002 02:59 PM

SEX:
MALE

PLACE OF BIRTH (CITY, COUNTY, STATE):
PORT ANGELES, CLALLAM COUNTY, WASHINGTON
FACILITY:
OLYMPIC MEDICAL CENTER

MOTHER'S NAME PRIOR TO FIRST MARRIAGE:
NICOLE JEAN LATSON
MOTHER'S PLACE OF BIRTH:
COLORADO

MOTHER'S DATE OF BIRTH:
JUNE 23, 1983

FATHER'S NAME:
JOSHUA HOWARD LACY
FATHER'S PLACE OF BIRTH:

FATHER'S DATE OF BIRTH:
SEPTEMBER 25, 1985

DATE FILED:
APRIL 01, 2002

FEE NUMBER:
120503

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE