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

6 In re: LILIA LACY) Docket No.: 18 19397
7)
8 vs.) CLAIMANT'S MOTION FOR
9) SUMMARY JUDGMENT
10 DEPARTMENT OF LABOR &)
11 INDUSTRIES)
Claim No.: AS-31430)
_____)

12 COMES NOW, Claimant, Lilia Lacy, by and through her attorney of record, Spencer D.
13 Parr, of Washington Law Center, and submits this Motion for Summary Judgment.

14
15 **I. RELIEF REQUESTED**

16 This motion requests that the Board of Industrial Insurance Appeals find that Drake
17 Alexander Latson Lacy (hereafter "Drake Lacy") continues to be a minor dependent child of
18 Lilia Lacy, living legally in her de facto legal custody and control. For that reason, the
19 Department's 7/20/18 order changing the dependent status upon which Ms. Lacy's pension
20 benefits are paid must now be reversed. The Board should order the Department to consider
21 Drake Lacy as a dependent child of Lilia Lacy for purposes of calculating and paying Ms. Lacy's
22 ongoing pension benefits. Ms. Lacy is entitled to this relief as a matter of law.

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1 **II. STATEMENT OF FACTS**

2 As is indicated in her supporting Affidavit, Lilia Lacy is the biological grandmother of
3 Drake Lacy. Drake is a legal minor, 16 years old. For reasons which need not be explained in
4 detail but are set forth in her supporting affidavit, Drake has lived in Ms. Lacy's household, as
5 her financial dependent and under her de facto legal custody for more than 15 years. Ms. Lacy
6 has never adopted Drake through any formal legal process, but she cares for Drake and treats him
7 as nothing less than her own biological child. Meanwhile, Drake's biological mother and father
8 are absentee parents who provide no regular or substantial ongoing financial support for Drake's
9 living expenses, housing, medical care, clothing, education, entertainment or other costs
10 associated with his upbringing.

11 Ms. Lacy estimates that she has paid approximately 95% of all costs of care and financial
12 support for Drake for the past 15+ years, and she continues to do so. In addition, Drake's schools,
13 teachers, physicians and all other community members have always readily accepted Ms. Lacy's
14 role as Drake's guardian and de facto legal custodian. No legal authority has ever objected to
15 her provision of care for Drake, challenged her fitness to act as Drake's custodial grandparent,
16 nor instituted legal proceedings against her in relation to that custody. Ms. Lacy also intends to
17 continue acting in her custodial and financially-responsible role until Drake reaches an
18 appropriate age of both legal majority and actual maturity. Ms. Lacy has no expectation that
19 Drake's biological parents will suddenly take over her solemn parenting duties.

20 In L&I Claim AS-31430 it is established that Ms. Lacy suffered an occupational disease
21 of bilateral carpal tunnel syndrome ("CTS"). This disease manifested on 10/12/2012. The
22 Department of Labor & Industries ("Department") issued an order on 6/1/17 establishing Ms.
23 Lacy's gross wage from all employment at \$1,148.03, as well as indicating that on the date of
24 manifestation, Ms. Lacy was considered single with 1 dependent child. The Department's wage
25 order of 6/1/17 was neither protested, appealed, nor administratively reversed during the time

1 allowable for such actions. The Department began paying compensation benefits to Ms. Lacy
2 on 6/1/17 as if she had a dependent child.

3 Just more than one year later, on 6/20/18, the Department found Ms. Lacy to be
4 permanently and totally disabled as a result of her occupational CTS. The Department's 6/20/18
5 order placed Ms. Lacy upon the Department's pension rolls effective 8/16/18. While processing
6 pension-related information during the interim, the Department issued an order dated 7/06/18,
7 explaining that it was now "changing the dependent status upon which compensation is
8 established to 0 dependent(s)." The Department's 7/06/18 order claimed to be taking this action
9 "in accordance with RCW 51.32.240(1)." Finally, on 7/20/18, the Department issued an order
10 correcting and superseding its 7/06/18 order. The Department's 7/20/18 order stated that "The
11 department established this worker's compensation rate based upon having a dependent on the
12 date of injury or disease manifestation....Effective 8/16/2018, the department is changing the
13 dependent status upon which compensation is established to 0 dependent(s). This action is taken
14 in accordance with RCW 51.32.240(1)."

15 The Department has at no time requested that Ms. Lacy pay back the additional 2% in
16 time loss payments that she received as a result of Drake Lacy's dependency while she was
17 considered temporarily totally disabled under her L&I claim. The Department has only just acted
18 by its 7/20/18 order to change Ms. Lacy's compensation rate during her pension period. In
19 Docket 18 19397, Ms. Lacy now challenges the legal propriety of the Department's attempt to
20 remove Drake Lacy as her legal dependent in her L&I claim. The Department's action is contrary
21 to both fact and law.

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III. ISSUE PRESENTED

Is Drake Lacy a qualified beneficiary such that the Department must keep paying an additional 2% entitlement to Ms. Lacy now that she has been placed on the Department's pension rolls?

ANSWER: "Yes."

IV. EVIDENCE RELIED UPON

Ms. Lacy relies upon her own Declaration and that of her undersigned attorney, Spencer D. Parr, as well as the attached exhibits included therewith.

V. SUMMARY JUDGMENT STANDARD

"The function of a summary judgment is to determine whether there is a genuine issue of material fact requiring a formal trial." *Chase v. Daily Record, Inc.*, 83 Wn.2d 37, 42 (1973) quoting *Leland v. Frogge*, 71 Wn.2d 197, 200-01, 427 (1967). "The evidence before the judge is that contained in the pleadings, affidavits, admissions and other material properly presented." *Chase*, 83 Wn.2d at 42, quoting *Leland*, 71 Wn.2d at 200. Courts may not consider inadmissible evidence when ruling on motions for summary judgment. *Cano-Garcia v. King County*, 168 Wn. App. 223, 249, 277 P.3d 34 (2012). "A genuine issue of material fact exists where reasonable minds could differ on the facts controlling the outcome of the litigation." *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). Summary judgment is properly granted where there remains no issue as to any material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c); *Hutchins v. 1001 Fourth Ave. Assocs.*, 116 Wn.2d 217, 220, 802 P.2d 1360 (1991); *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986). In considering a summary judgment motion, all facts and reasonable inferences are considered in the light most favorable to the nonmoving party. *Mountain Park*

1 *Homeowners Ass'n, Inc. v. Tydings*, 125 Wn.2d 337 (1994).

2 Summary judgment is subject to a burden-shifting scheme. *Ranger*, 164 Wn.2d at 552.
3 The initial burden to show the nonexistence of a genuine issue of material fact is on the moving
4 party. *Ranger*, 164 Wn.2d at 552; *see also Vallandigham v. Clover Park Sch. Dist. No. 400*, 154
5 Wn.2d 16, 26, 109 P.3d 805 (2005). Nonexistence of a genuine issue of material fact can be
6 demonstrated by showing an absence of evidence to support an essential element of the opposing
7 party's case. *Sligar v. Odell*, 156 Wn. App. 720, 725, 233 P.3d 914 (2010)(*internal citations*
8 *omitted*). Once the moving party meets this initial burden, the nonmoving party is then under a
9 burden to establish the existence of the essential elements to his/her case. *Id.* The nonmoving
10 party must set forth specific facts showing a genuine issue for trial and may not rely on
11 speculation. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225-226, 770 P.2d 182
12 (1989)(emphasis added). When reasonable minds could reach but one factual conclusion, any
13 remaining dispute may be resolved as a matter of law. *Ruffer v. St. Frances Cabrini Hosp.*, 56
14 Wn. App. 625, 628, 784 P.2d 1288, *review denied*, 114 Wn.2d 1023, 792 P.2d 535 (1990).

15 VI. LEGAL AUTHORITIES

16 FINALITY OF DEPARTMENT ORDERS:

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18 RCW 51.52.050 provides that if a Department order is not protested or appealed within
19 60 days of communication, the order "shall" become final and binding on all parties upon
20 expiration of that 60 day period. This statute covers "any order, decision, or award" made by the
21 Department, including wage orders. It contains no exception to its finality provision. Our
22 Supreme Court has explained that "[a]n order of judgment resting upon a finding, or findings, of
23 fact becomes a complete and final adjudication, binding on both the department and the claimant
24 unless such action...is set aside upon appeal or is vacated for fraud or something of like nature."

25 *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 537-38 (1994). Further, a Department order

1 "is void only when the Department lacks personal or subject matter jurisdiction." *Id.* Finally,
2 these principles are true even if the Department order is based on a clear error of law." *Id.* at
3 538.

4 DEFINITION OF ADJUDICATOR ERROR

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6 "Adjudicator error" is expressly and repeatedly defined by the Industrial Insurance Act
7 to include "the failure to consider information in the claim file, failure to secure adequate
8 information, or an error in judgment." RCW 51.32.240(1)(b) and RCW
9 51.32.240(2)(b)(emphasis added). An "adjudicator error" is an error made in any determination
10 requiring judgment. *In re Flora Lacy*, BIIA Dec., 08 21768 (2009) (pp. 3-4) (because adjudicator
11 oversight is required in order to determine a correct wage amount, failure to include healthcare
12 benefits in a wage order is "adjudicator error"). "Failure to secure adequate information" is a
13 form of adjudicator error predicated upon "insufficient evidence." *Birrueta v. Dep't of Labor &*
14 *Indus.*, 186 Wn.2d 537, 546, 379 P.3d 120 (2016).

15 DEFINITION OF MISREPRESENTATION:

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17 To "misrepresent" has been defined as "to make an assertion or give an impression not in
18 accord with the facts." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1445
19 (1993). Black's defines it, in part, as "an incorrect, unfair, or false statement; an assertion that
20 does not accord with the facts." BLACK'S LAW DICTIONARY 1152 (10th ed. 2014).

21 DEFINITION OF "BENEFICIARY":

22
23 RCW 51.08.020 provides that a "beneficiary" includes "a husband, wife, child, or
24 dependent of a worker in whom shall vest a right to receive payment under this title." (emphasis
25 added).

1 **DEFINITION OF "CHILD":**

2
3 **RCW 51.08.030 provides that "child" means "every natural born child, posthumous child,**
4 **stepchild, child legally adopted prior to the injury, child born after the injury where conception**
5 **occurred prior to the injury, and dependent child in the legal custody and control of the**
6 **worker, all while under the age of eighteen years, or under the age of twenty-three years while**
7 **permanently enrolled at a full time course in an accredited school, and over the age of eighteen**
8 **years if the child is a dependent as a result of physical, mental, or sensory handicap. (emphasis**
9 **added).**

10 **LIBERAL CONSTRUCTION CANNON:**

11
12 **The Industrial Insurance Act, Title 51 RCW, was written to provide swift and certain**
13 **relief to injured workers. *Dennis v. Department of Labor & Industries*, 109 Wn.2d 467, 470, 745**
14 **P.2d 1295 (1987); *Cockle v. Dept. of Labor and Industries*, 142 Wn.2d 801, 16 P.3d 583**
15 **(2001)(emphasis added). The "overarching objective" of the Act is to reduce to a minimum "the**
16 **suffering and economic loss arising from injuries and/or death occurring in the course of**
17 **employment." *Cockle*, 142 Wn.2d at 822 (quoting RCW 51.12.010)(emphasis added). The Act**
18 **is remedial in nature and is therefore to be construed liberally in order to achieve its purpose.**
19 **RCW 51.12.010; *Sacred Heart Med. Ctr. V. Carrado*, 92 Wn.2d 631, 635, 600 P.2d 1015 (1979).**
20 **When interpreting the Industrial Insurance Act ("IIA"), all doubts are to be resolved in favor of**
21 **the injured worker. *Dennis*, 109 Wn.2d at 470; *Sacred Heart*, 92 Wn.2d at 635.**

22 **ADDITIONAL CANNONS OF STATUTORY INSTRUCTION:**

23 **a. Plain Meaning:**

24 **In interpreting a statute, the court's fundamental obligation is to give effect to the**
25 **legislature's intent. *Clark County Pub. Util. Dist. No. 1 v. Dep't of Revenue*, 153 Wn. App. 737,**

1 747, 222 P.3d 1232 (2009); *State v. Larson*, 184 Wn.2d 843, 848, 365 P.3d 740 (2015). “If the
2 statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an
3 expression of the Legislature’s intent.” *Larson*, 184 Wn.2d at 848. The court discerns plain
4 meaning from the ordinary meaning of the language at issue, the context of the statute in which
5 the provision is found, related provisions of the same act, and the statutory scheme as a whole.
6 *Larson*, 184 Wn.2d 848; *Dep’t of Ecology v. Campbell & Gwinn*, 146 Wn.2d 1, 12, 43 P.3d 4
7 (2002).

8 **b. Statutory Ambiguity:**

9 Again, if a statute’s meaning is plain on its face, courts give effect to that meaning as an
10 expression of legislative intent. *Blomstrom v. Tripp*, 189 Wn.2d 379, 390, 402 P.3d 831 (2017).
11 If, “after this inquiry, the statute remains ambiguous or unclear, it is appropriate to resort to
12 canons of construction and legislative history.” *Blomstrom*, 189 Wn.2d at 390. If the statute
13 “uses plain language and defines essential terms, the statute is not ambiguous.” *Regence*
14 *Blueshield v. Office of the Ins. Comm’r*, 131 Wn. App. 639, 646, 128 P.3d 640 (2006). “A statute
15 is ambiguous if ‘susceptible to two or more reasonable interpretations,’ but ‘a statute is not
16 ambiguous merely because different interpretations are conceivable.” *HomeStreet, Inc. v. Dep’t*
17 *of Revenue*, 166 Wn.2d 444, 452, 210 P.3d 297 (2009)(quoting *State v. Hahn*, 83 Wn. App. 825,
18 831, 924 P.2d 392 (1996)).

19 **c. Statutory Schemes Must Be Read As A Whole, Using Common Understandings:**

20 Words in a statute cannot be read in isolation and in disregard of the language of the
21 statute as a whole. *Burns v. City of Seattle*, 161 Wn.2d 129, 146, 164 P.3d 475 (2007). When
22 the legislature has defined a term, “the statutory definition of a term ‘controls its interpretation.’”
23 *Senate Republican Campaign Comm. V. Pub. Disclosure Comm’n*, 133 Wn.2d 229, 239, 943
24 P.2d 1358 (1997) (quoting *State v. Morris*, 77 Wn. App. 948, 950, 896 P.2d 81 (1995)). “[A]n
25 undefined term should be given its plain and ordinary meaning unless a contrary legislative intent

1 is indicated.” *In re Dependency of A.P.*, 177 Wn. App. 871, 877, 312 P.3d 1013 (2013) (quoting
2 *Ravenscroft v. Wash. Water Power Co.*, 136 Wn.2d 911, 920-21, 969 P.2d 75 (1998)). To
3 determine the plain meaning of an undefined term, courts look to the dictionary. *HomeStreet,*
4 *Inc.*, 166 Wn.2d at 451. Courts also consider how a statutory term is commonly understood.
5 *Bowie v. Dep’t of Revenue*, 171 Wn.2d 1, 12-13, 248 P.3d 504 (2011).

6 **d. Specific Statutory Provisions Control Over General Provisions:**

7 Meanwhile, when interpreting statutes, “[a] general statutory provision must yield to a more
8 specific statutory provision.” *Ass’n of Wash. Spirits & Wine Distribs. V. Liquor Control Bd.*,
9 182 Wn.2d 342, 356, 340 P.3d 849 (2015). When statutes conflict, specific statutes control over
10 general ones. *Hallauer v. Spectrum Props., Inc.*, 143 Wn.2d 126, 146-47, 18 P.3d 540 (2001).
11 Stated another way, when a general statute, standing alone, includes the same subject as the
12 special statute and then conflicts with it, the court deems the special statute to be an exception
13 to, or qualification of, the general statute. *State v. Reeder*, 181 Wn. App. 897, 922-23, 330 P.3d
14 786 (2014), *aff’d*, 184 Wn.2d 805, 365 P.3d 1243 (2015).

15 **e. Avoidance of Strained and Superfluous Language:**

16 Whenever possible, courts interpret statutes in a manner that does not render any portion
17 of the statute superfluous or meaningless. *Whatcom County v. City of Bellingham*, 128 Wn.2d
18 537, 546, 909 P.2d 1303 (1996). Courts also avoid construing a statute in a manner that results
19 in “unlikely, absurd, or strained consequences.” *Glaubach v. Regence Blueshield*, 149 Wn.2d
20 827, 833, 74 P.3d 115 (2003).

21 **f. Dealing with Conflicting Statutes:**

22 “Where two statutes are in apparent conflict, [courts] reconcile them, if possible, so that
23 each may be given effect.” *City of Lakewood v. Pierce County*, 106 Wn.App. 63, 71, 23 P.3d
24 (2001). “Statutes must be read together to achieve a ‘harmonious total statutory scheme...which
25 maintains the integrity of the respective statutes.’” *Id.* (quoting *State v. O’Neill*, 103 Wn.2d 853,

1 862, 700 P.2d 711 (1985)). "When resolving a conflict between two statutes, [courts] must look
2 at the statutory context as a whole to give effect to the intent underlying the legislation." *Servais*
3 *v. Port of Bellingham*, 72 Wn. App. 183, 192, 864 P.2d 4 (1993), aff'd, 127 Wn.2d 820 (1995).
4 Preference is given a more specific statute only if the two statutes deal with the same subject
5 matter and conflict to such an extent that they cannot be harmonized. *Omega Nat'l Ins. Co. v.*
6 *Marquardt*, 115 Wn.2d 416, 425, 799 P.2d 235 (1990).

7 **g. Doctrine of noscitur a sociis:**

8 Definition of *noscitur a sociis* (latin: "it is known by the company it keeps"): A doctrine
9 or rule of construction wherein the meaning of an unclear or ambiguous word or phrase should
10 be determined by considering the words with which it is associated in context. Merriam-
11 Webster's Dictionary of Law, 1999, Online (see at [https://www.merriam-
13 webster.com/legal/noscitur%20a%20sociis](https://www.merriam-
12 webster.com/legal/noscitur%20a%20sociis), last accessed 1/23/19) (modified to add "or phrase"
14 consistent with the definition provided by USLegal, Inc.'s Business Dictionary Online [see at
15 <http://www.businessdictionary.com/definition/noscitur-a-sociis.html>, last accessed 1/23/19).

16 **STATUTES:**

17 **RCW 51.32.240(1)(a) provides that:**

18 "Whenever any payment of benefits under this title is made because of
19 clerical error, mistake of identity, innocent misrepresentation by or on behalf of
20 the recipient thereof mistakenly acted upon, or any other circumstance of a similar
21 nature, all not induced by willful misrepresentation, the recipient thereof shall
22 repay it and recoupment may be made from any future payments due to the
23 recipient on the claim...[although t]he department...must make claim for such
24 repayment or recoupment within one year of the making of any such payment or
25 it will be deemed any claim therefor has been waived." (emphasis added)

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2 RCW 51.32.240(1)(b) provides that:

3 "Except as provided in subsections (3)[rejection orders], (4)[orders on
4 appeal], and (5)[willful misrepresentations], the department may only assess an
5 overpayment of benefits because of adjudicator error when the order upon which
6 the overpayment is based is not yet final..."

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8 **VII. ARGUMENT**

9 By its obvious terms, RCW 51.32.240(1)(a) provides for recovery of overpayments. It
10 does not provide that the Department may readjudicate a final and binding wage order at the time
11 an injured worker is placed on pension. According to the Washington Supreme Court in *Marley*,
12 125 Wn.2d at 537-38, it may not. This is true, even if the Department has made a mistake of
13 law. *Id.* at 38. Meanwhile, RCW 51.32.240(1)(b) provides that overpayments cannot be charged
14 to an injured worker once the order upon which the overpayment is assessed is final if the
15 overpayment arose as a result of "adjudicator error." The Supreme Court's decision in *Birrueta*,
16 186 Wn.2d at 546, the plain statutory definitions provided in RCW 51.32.240(1)(b) and RCW
17 51.32.240(2)(b), as well as this Board's own decision of *Flora Lacy*, at 3-4, provide that if the
18 Department has failed to obtain sufficient information necessary to determine that it was making
19 a mistake of law, that failure to obtain sufficient evidence is an "adjudicator error" which now
20 lays solely at the feet of the Department.

21 Conceptually, there may be an overlap between RCW 51.32.240 subpt. (1)(a) and subpt.
22 (1)(b) because an innocent misrepresentation can potentially lead to adjudicator error in some
23 claims. In those claims, Ms. Lacy concedes the Department may be correct in revising a
24 Claimant's pension order. Yet there is also implicit tension, and therefore potential conflict
25 between these above-listed statutory provisions, because in other claims, an innocent
misrepresentation may not be the cause of the adjudicator error, which itself may also be distinct

1 from a pure error of law which cannot be revisited according to Marley. For example, an
2 “adjudicator error” might be limited only to errors in interpreting facts, not in specifically
3 applying the law to facts which are already known. Perhaps this question needs to be decided in
4 this case, but likely it does not.

5 Respectfully, Ms. Lacy believes the resolution of this case is much easier than wading
6 through the semantic quagmire of RCW 51.32.240, probing whether the Supreme Court’s
7 respective decisions in Marley and Birrueta are even perfectly consistent with each other (they
8 are not), or deciding whether an “adjudicator error” is limited to a mistake of fact leading to a
9 mistake of law. Rather, Ms. Lacy contends that she has at all times treated Drake Alexander
10 Latson Lacy (hereafter “Drake”) just as she would her own natural born child; and moreover, she
11 has demonstrated that Drake is a dependent child in her legal custody and control for purposes
12 of RCW 51.08.030. Drake is also her “beneficiary” as an undisputed “dependent” child under
13 RCW 51.08.020, the more specifically-applicable of these two statutes in this dispute.

14 Certainly, the rule of liberal construction, the requirement to harmonize the subsections
15 of that statute in order to interpret the statute as a whole and the doctrine of *noscitur a sociis* also
16 lead to the same conclusion: that Drake Lacy is Ms. Lilia Lacy’s qualified dependent minor
17 beneficiary and should continue to be included in her wage entitlement calculation.

18 For these above-stated reasons, the Board should now hold as a matter of law that Ms.
19 Lacy never made any misrepresentation in the first place, so RCW 51.32.240 cannot even apply
20 to the facts of this case. RCW 51.08.020 defines the beneficiaries of an injured worker to include
21 dependents without any requirement that those dependents be an “adopted” child. It is also wrong
22 for the Department to impose strict technicalities like formal adoption as an overlay to the
23 definitional language in RCW 51.08.030, as the meaning and relevance of that statute must be
24 harmonized with the more dispositive language of RCW 51.08.020.

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

In re: LILIA LACY) Docket No.: 18 19397
)
 vs.) DECLARATION OF ATTORNEY
) SPENCER D. PARR
)
 DEPARTMENT OF LABOR &)
 INDUSTRIES)
)
)
 Claim No.: AS-31430)
 _____)

COMES NOW Attorney Spencer D. Parr, and I do declare under penalty of perjury under the laws of the state of Washington that the following are true and correct:

- 1) I am a Washington Attorney retained as counsel in this matter for Claimant, Lilia Lacy. I make the declarations contained herein in my representative capacity;
- 2) I am a citizen of the United States; I am over the age of eighteen; I am not a party to this matter; and I am otherwise competent to testify concerning the declarations made herein.
- 3) Attached hereto as Exhibit A is a true and accurate copy of the Department's Notice of Decision dated 06/01/17.
- 4) The Department's order of 06/01/17 was neither protested, appealed, nor administratively reversed during the 60 days after it was communicated upon the parties.

- 1 5) The Department paid time loss to Ms. Lacy beginning on or about 06/01/2017 as if she had
2 the dependent child indicated in the Department's order of 06/01/2017.
- 3 6) Attached hereto as Exhibit B is a true and accurate copy of the Department's Notice of
4 Decision dated 06/20/2018.
- 5 7) The Department's order of 06/20/2018 found Lilia Lacy to be permanently and totally
6 disabled as a result of her claim related condition.
- 7 8) Ms. Lilia Lacy's claim related condition in L&I Claim No. AS-31430 is Carpal Tunnel
8 Syndrome ("CTS").
- 9 9) The Department's order of 06/20/2018 stated that Lilia Lacy would be placed on the
10 Department's pension rolls effective 08/16/2018.
- 11 10) When a worker is placed on the Department's pension rolls, the worker must complete
12 certain paperwork indicating pension elections and providing such other information as the
13 Department requires.
- 14 11) Based upon Lilia Lacy's responses to the information requested by the Department as
15 indicated in paragraph nine herein, The Department issued an order dated 07/06/2018.
- 16 12) Attached hereto as Exhibit D is a true and accurate copy of the Department's Notice of
17 Decision dated 07/06/2018.
- 18 13) Attached hereto as Exhibit C is a true and accurate copy of the Department's Notice of
19 Decision dated 07/20/2018.
- 20 14) The Department has at no time requested that Lilia Lacy pay back the additional 2% in time
21 loss benefit payments that she was paid in L&I Claim AS-31430 subsequent to the
22 Department's order dated 06/01/2017.

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DECLARATION OF ATTORNEY SPENCER D. PARR

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RESPECTFULLY SUBMITTED THIS 23rd DAY of JANUARY, 2019.

Signed in Tukwila, Washington.



SPENCER D. PARR, ESQ.
WSBA No. 42704
Attorney for Claimant, Donna Dotty Gunderson

EXHIBIT A

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

MAILING DATE 06/01/2017
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 order corrects and supersedes the order(s) of 05/02/2017.

THE ORDER DATED 01/24/2017 IS REVERSED.

The workers 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 includes:

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 is \$1,148.03 per month.

Worker's marital status eligibility on the date of this order is single with 1 child.

	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.BIA.WA.GOV/](http://www.bia.wa.gov/).	

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

MAILING DATE 06/01/2017
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

Supervisor of Industrial Insurance
By Kristi L Falzon
Claims Consultant
(360) 902-4780

MAILED TO: WRKER/ATTY - LILIA LACY, % WASHINGTON LAW CENTER, PLLC
651 STRANDER BLVD STE 215, TUKWILA WA 98188-2953
EMPLOYER(B) - 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(B) - 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	
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EXHIBIT B

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
PENSION ADJUDICATOR SECTION
PO BOX 44281
OLYMPIA, WA 98504-4281

MAILING DATE 06/20/2018
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 Sequim

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

NOTICE OF DECISION

Time loss compensation benefits are terminated as paid through 08/15/2018.

This worker is totally and permanently disabled and is placed on pension effective 08/16/2018.

Medical Treatment will not be covered after the effective pension date.

The Department denies responsibility for Reflex Sympathetic Dystrophy (RSD) and Complex Regional Pain Syndrome (CRPS) as not being caused or aggravated by this industrial injury.

Supervisor of Industrial Insurance

By Heather R Balderson
Pension Adjudicator
PHONE: 360-902-5119

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STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
PENSION ADJUDICATOR SECTION
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510 PLUM ST SE STE 200, OLYMPIA WA 98501-1587

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EXHIBIT C

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF INDUSTRIAL INSURANCE
PO BOX 44281
OLYMPIA, WA 98504-4281

MAILING DATE 07/20/2018
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 Sequim

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

NOTICE OF DECISION

This order corrects and supersedes the order(s) of: 07/06/2018

The department established this worker's compensation rate based upon having a dependent on the date of injury or disease manifestation.

On 07/05/2018 the worker informed the Department that information was incorrect.

Effective 08/16/2018, the department is changing the dependent status upon which compensation is established to 0 dependent(s). This action is taken in accordance with RCW 51.32.240(1).

Supervisor of Industrial Insurance
By Tyler Gruhn
Pension Benefit Specialist
PHONE: 360-902-5119

MAILED TO: WRKER/ATTY - LILIA LACY, % WASHINGTON LAW CENTER, PLLC
651 STRANDER BLVD STE 215, TUKWILA WA 98188-2953
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EXHIBIT D

STATE OF WASHINGTON
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CLAIMANT LACY LILIA S

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

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

NOTICE OF DECISION

The department established this worker's compensation rate based upon being married on the date of injury or disease manifestation. This action was taken due to information supplied by the worker on the Report of Accident.

On 07/05/2018 the worker informed the Department that information was incorrect.

Effective 08/16/2018, the department is changing the dependent status upon which compensation is established to 0 dependent(s). This action is taken in accordance with RCW 51.32.240(1).

Supervisor of Industrial Insurance

By Tyler Gruhn
Pension Benefit Specialist
PHONE: 360-902-5119

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STATE OF WASHINGTON
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1 10. Drake Lacy has been my financial dependent for the past 15+ years.

2 11. Drake Lacy's mother lives in parts unknown and rarely visits Drake Lacy, perhaps one
3 time per year.

4 12. Drake Lacy's mother does not provide regular, meaningful or substantial financial
5 support to provide for Drake Lacy's care and upbringing, meaning the financial costs
6 required to provide for his normal living expenses, inclusive of rent, food, medical care,
7 clothing, education and entertainment expenses.

8 13. Drake Lacy's father works as a deck-hand on a private yacht that can be rented by wealthy
9 individuals who wish to charter the yacht for purposes of sightseeing in the waters off of
10 Alaska during the spring and summer or in the Gulf of Mexico during the fall and winter.

11 14. Drake Lacy's father does visit him from time to time, and he does during such visits buy
12 Drake Lacy clothes or meals if they go to a restaurant or other incidental items, but he
13 does not provide regular or substantial financial support to provide for Drake Lacy's care
14 at other times, meaning the financial costs required to provide for his normal living
15 expenses, inclusive of rent, food, medical care, clothing, education and entertainment
16 expenses.

17 15. I provide in my household approximately 95% of Drake Lacy's costs of care and financial
18 support, meaning that I pay to provide for Drake Lacy's normal living expenses, inclusive
19 of rent, food, medical care, clothing, education and entertainment expenses.

20 16. I have provided approximately 95% of the costs of Drake Lacy's dependency, as indicated
21 in paragraph 15 herein, for the past 15+ years.

22 17. I have elected to not formally adopt Drake Lacy.

23 //

24 //

1 18. The primary reason I have not formally adopted Drake Lacy is that I do not wish Drake
2 Lacy to feel more rejected by his natural parents than his current dependency and living
3 arrangements, lasting for the past 15+ years, may already suggest. Moreover, there has
4 never been a legal need to formally adopt Drake Lacy as his schools, teachers, physicians
5 and all others individuals of consequence in our community have always readily accepted
6 my role as Drake Lacy's guardian and de facto custodian.

7 19. I believe that I meet the definition of a "person entrusted with the physical custody of a
8 child or other dependent" as that term is used in RCW 9A.42.080, and I therefore
9 understand as a consequence (and have always understood even before reviewing the
10 aforementioned statute) that it is my legal responsibility to never abandon Drake Lacy,
11 my dependent grandson.

12 20. When considering "the relevant strength, nature, and stability of the child's relationship"
13 with myself, I do regard my grandson, Drake Lacy as if he were actually my son. I do
14 not provide any less love, care, financial support, supervision, or guidance to him than I
15 would to a natural-born child of my own.

16 21. I have at all times knowingly and voluntarily entered into the care of Drake Lacy, taking
17 care of him, providing him love and providing for his financial support, food, clothing,
18 supervision, education, medical care, guidance and other best interests as if he were my
19 own natural-born child.

20 22. I have taken care of Drake Lacy's financial needs and dependency, as well as all of his
21 other best interests as indicated throughout this affidavit, with the knowing agreement
22 and consent of his natural parents whose identities are set forth in paragraphs 6 and 7
23 herein.

24 23. I have committed, and remain committed, to taking care of the total dependency, love,
25 support, supervision, financial needs, guidance and other best interests of Drake Lacy

1 until he shall reach the age of both majority and maturity and can therefore be expected
2 to provide, at least substantially, for himself.

3 24. I have zero expectation that Drake Lacy's natural parents will ever take over and provide
4 for his dependency, love, support, financial needs and guidance before Drake Lacy
5 reaches the age of both majority and maturity and can therefore be expected to provide,
6 at least substantially, for himself.

7 25. Drake Lacy was my dependent, as indicated throughout this affidavit, at the time my
8 injuries became manifest, as found in Labor & Industries claim AS-31430.

9 26. On account of my parenting, guardianship and de facto custodian relationship to Drake
10 Lacy, as described throughout this affidavit, I have received 2% additional time loss
11 payments throughout the pendency of my L&I claim (AS-31430). Moreover, there has
12 never been any change in the circumstances of my custody, guardianship, parenting,
13 supervision, guidance and financial support performances to and toward Drake Lacy
14 during the pendency of my L&I claim (AS-31430). Accordingly, I believe there has been
15 no change in any of these same circumstances as between the time prior to when the
16 Department of Labor & Industries agreed to award me an injury pension (and was paying
17 me 2% additional time loss) and the time thereafter (when it is now withholding the 2%
18 additional time-loss previously paid on account of Drake Lacy's dependency in my
19 household); there is no change in my circumstances.

20 27. I am not aware that I have done anything illegal, and neither do I believe that I have done
21 anything illegal, in raising my grandson, Drake Lacy, as if he were my own, natural-born
22 son. Moreover, no police or other legal authority has ever objected or instituted
23 proceedings against me for raising Drake Lacy as if he were my own, natural-born son,
24 nor to challenge my fitness to act in that nature as Drake Lacy's custodial grandparent.
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DATED this 1st day of October, 2018.



Lilia Lacy, Claimant

* See Attached
Jurat YW
10-01-2018

RCW 9A.42.080**Abandonment of a dependent person in the third degree—Exception.**

(1) Except as provided in subsection (2) of this section, a person is guilty of the crime of abandonment of a dependent person in the third degree if:

(a) The person is the parent of a child, a person entrusted with the physical custody of a child or other dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or dependent person any of the basic necessities of life; and

(b) The person recklessly abandons the child or other dependent person; and:

(i) As a result of being abandoned, the child or other dependent person suffers bodily harm; or

(ii) Abandoning the child or other dependent person creates an imminent and substantial risk that the child or other person will suffer substantial bodily harm.

(2) A parent of a newborn who transfers the newborn to a qualified person at an appropriate location pursuant to RCW 13.34.360 is not subject to criminal liability under this section.

(3) Abandonment of a dependent person in the third degree is a gross misdemeanor.

[2006 c 228 § 8; 2002 c 331 § 5; 1996 c 302 § 4.]

NOTES:

Intent—Effective date—2002 c 331: See notes following RCW 13.34.360.

Severability—1996 c 302: See note following RCW 9A.42.010.

JURAT WITH AFFIANT STATEMENT

~~*****~~

State of Washington } ss.
County of Clallam

- See Attached Document (Notary to cross out lines 1-7 below)
- See Statement Below (Lines 1-7 to be completed only by document signer[s], not Notary)

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____
7 _____

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me

this 1st day of October, 2018, by
Date Month Year

Lilia Lacy
Name of Signer No. 1

Name of Signer No. 2 (if any)

Tanja Wishart
Signature of Notary Public



Place Notary Seal/Stamp Above

Any Other Required Information
(Residence, Expiration Date, etc.)

OPTIONAL

This section is required for notarizations performed in Arizona but is optional in other states. Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Affidavit of Lilia Lacy

Document Date: 10-01-2018 Number of Pages: 5

Signer(s) Other Than Named Above: No other signers

~~*****~~