November 15, 2023

Lump Sum Special Death Benefit

COMPREHENSIVE REPORT

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ISSUE STATEMENT

LEOFF Plan 2 beneficiaries have been denied a one-time special death benefit because they missed the Department of Labor and Industries deadline for application.

OVERVIEW

LEOFF Plan 2 beneficiaries are eligible for a one-time lump sum special death benefit if the member died because of a workplace injury or occupational disease. The Department of Labor and Industries (LNI) determines the beneficiary's eligibility for this benefit while the Department of Retirement Systems (DRS) pays the benefit. LEOFF 2 beneficiaries have been denied this benefit because they missed LNI's application deadline.

BACKGROUND AND POLICY ISSUES

Beneficiaries of LEOFF 2 members have several benefits available to them should the member die in the line of duty. One benefit is the "special death benefit," a one-time, lump sum payment established in 1996 and payable to the member's estate or person (or persons) designated by the member as beneficiary.[1] If the member did not designate a beneficiary in writing, then the surviving spouse or legal representative receives payment. This benefit was initially paid only if the member sustained workplace injuries that resulted in death but, with the Board's endorsement, expanded in 2006 to include deaths from occupational disease or infection.[2]

[1] 1996 Wash. Laws ch. 226.
[2] 2006 Wash. Laws ch. 351.

For several years the benefit amount was $150,000, but in 2010 the Board endorsed legislation to increase the minimum benefit to $214,000, with an annual cost of living adjustment.[3] The benefit payout is currently $287,781.[4]

When the special death benefit was initially created and the eligibility determination was given to LNI, duty disability benefits did not exist for LEOFF 2. Now that DRS makes duty disability determinations for LEOFF 2, the Board may consider it more appropriate for DRS to also make the determination whether a death was duty related or not for purposes of a LEOFF 2 survivor receiving the special death benefit. This is the only pension benefit paid out of the pension system in which the eligibility is determined by an agency other than DRS.

Procedurally, DRS provides the application for this benefit to the beneficiary or survivor only when it is notified of a potential line of duty death. The beneficiary must return the completed application to DRS along with the death certificate and if available, autopsy report or other medical records supporting the claim that the death resulted from a workplace injury or illness. DRS forwards the application and supporting documents to LNI for review and determination of eligibility. LNI determines eligibility "consistent with Title 51 RCW".[5] LNI then provides written notice of its decision to both DRS and the beneficiary.

If the application is approved, DRS provides payment to the beneficiary or surviving spouse. If the application is denied, the beneficiary may protest or appeal the decision through LNI's administrative process. LNI provides notice of its appeal process with its denial.

The issue brought to the Board's attention is that unlike other pension benefits this benefit has a one-year statute of limitations (from the date of death) for deaths resulting from a workplace injury and a two-year statute of limitations for deaths resulting from occupational diseases. This statute of limitations is not explicitly in the special death benefit statute; however, it has been applied by LNI as being "consistent with Title 51 RCW".

According to DRS, who has been in communication with LNI to attempt to resolve these denials, LNI has cited *Cordova v. City of Seattle and LNI, Case No. 81947-0-1*, in support of their decisions to deny this benefit for beneficiaries who do not apply within the statute of limitations under Title 51 RCW. In *Cordova*, the court did not decide on whether the LNI statute

[3] 2010 Wash. Laws ch. 261

[4] For deaths occurring after July 1, 2023. For deaths occurring July 1, 2022 through June 30, 2023, the benefit payout was $279,399.

[5] RCW 41.26.048(2).

of limitations should apply to the LEOFF 2 special death benefit. The issue with the court was whether a widow who had made a claim with DRS for the Special Death Benefit, which was then forwarded to LNI by DRS, had filed timely for LNI benefits separate from the Special Death Benefit. The Court held that *Cordova* had not filed for LNI benefits timely. According to DRS,

> LNI has pointed it out as the case they are using to support their contention that:
> 1. 1 year time limit in RCW 51. RCW 51.32.040(2)(c) is applicable to all death claims, including the DRS one-time lump sum death benefit, and
> 2. Applying for one benefit, whether DRS death benefit or LNI benefits, is not notice that you are applying for the other independent benefit.

In the dissenting opinion for Cordova, Judge Dwyer, discusses how in a similar case he "urged that either the legislature cure the problem by statute or that the Supreme Court ride to the rescue […]". He added that:

> As with most such exhortations by intermediate appellate court judges, my jurisprudential call to arms failed to inspire legislative rescue. And the Justices remained dismounted.

Judge Dwyer explains why he believes that LNI receiving the filing from DRS should have been enough to meet the statutory requirement to file with LNI. He concludes his dissent by stating that: "Widows are not supposed to have to hire lawyers in order to receive widow's benefits. This area of law is confused enough without conflating the issues at hand."

Earlier this year, at the request of the LEOFF 2 Board, DRS agreed to discuss these denials and their current practice of applying the statute of limitations to the Special Death Benefit. Since then, Board staff has been informed that LNI will continue to apply its statute of limitations to the Special Death Benefit and that they were willing to review the current denials to see if they could reverse any of them. LNI has reversed one of its denials so far (See Appendix B). The minor and his guardian grandmother in this case hired an attorney who successfully pursued the appeal with LNI. In this case the grandmother filed with LNI within 1 year of LNI deciding that her daughter's death was in the line of duty. LNI had initially denied the grandmother because she did not file within 1 year of her daughter's death.

There is no requirement for LNI or DRS to notify beneficiaries that they may be eligible for the benefit and that there is a statute of limitations to apply. Also, there is no standardized process for beneficiaries to be notified of their potential eligibility for this benefit. There is a patchwork of ways in which a beneficiaries could find out that they may be eligible for this benefit,

including the LEOFF 2 Board Benefit Ombuds, DRS Death and Disability staff, employers, unions, and others. In previous years this patchwork has appeared to work successfully, but in the last year there have been multiple instances of survivors being denied benefits for missing LNI deadlines.

The LEOFF 2 Board requested data from DRS on the number of Special Death Benefit from 2010 to the present that were approved and the number at were denied. For the denials DRS provided the reason for denial. During this time 72 out of 85 applications were approved, while 13 were denied. Three of those denials were for timeliness. For the data provided, prior to 2022, no beneficiaries were denied a Special Lump Sum Death Benefit for timeliness. It is unclear from the information LEOFF 2 staff have gathered why timeliness has become an issue in the last year.

LEOFF 2 staff has been unable to locate a data source that identifies the number of survivors that were eligible for this benefit but never applied for it. DRS does not have data on the number of retirees whose death was duty related and LEOFF 2 staff has been unable to identify a data source that would identify the potential number of survivors who may have been eligible for this benefit but did not apply for it. If a beneficiary calls DRS and lets DRS know that they believe the member death was duty related, DRS sends a packet of information to the beneficiary, which includes information about the Special Death Benefit. DRS has a form that survivors or beneficiaries may fill out notifying DRS of a member death. This form has a box to identify if they believe the death was duty related. However, this data field is not inputted into any DRS IT systems and is instead used to provided additional information to the survivor/beneficiaries. Moreover, the form is not required to be filled out and most survivors/beneficiaries do not fill out the form. Instead, DRS typically receives notice of a death either through data share agreements with Department of Health and Social Security or with a phone call from a beneficiary. DRS does have a data field in the member IT system that identifies duty death, but it is only identified in the system when LNI provides notification to DRS that the death was duty related.

POLICY OPTIONS

Option 1: Shift determination of benefit eligibility from LNI to DRS

This policy option would align the special death benefit with the rest of the LEOFF 2 pension benefits, which are administered by DRS.

Option 2: Remove statute of limitations and keep LNI responsible for determination
The statute of limitations for LNI applies to other LNI benefits not just special death benefits for LEOFF 2 and the other pension systems. Therefore, if this statute of limitations was going to be removed it would need to clearly identify that it is only for purposes of the LEOFF 2 Special Death Benefit.

SUPPORTING INFORMATION

Appendix A: *Cordova v. City of Seattle and LNI, Case No. 81947-0-1*.

Appendix B: Report of Proceeding Agreement Elizabeth Hoover 9-27-23.

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RONALD CORDOVA, DEC'D, Appellant, v. CITY OF SEATTLE and THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Respondents.	)	No. 81947-0-I DIVISION ONE UNPUBLISHED OPINION

BOWMAN, J. — A workers' compensation application need not be formal or highly technical but it must, within a year of a worker's injury or death, notify the Department of Labor and Industries (DLI) that the applicant seeks workers' compensation benefits. Because Tracy Cordova's application to the Department of Retirement Services (DRS) for a one-time death benefit did not notify DLI that she also sought workers' compensation, we conclude that the Board of Industrial Insurance Appeals (BIIA) properly denied her subsequent DLI claim as untimely. We affirm the superior court's order on summary judgment affirming the decision of the BIIA.

FACTS

Ronald Cordova worked for the city of Seattle (City) as a police detective. He died at home on April 30, 2017 from a ruptured cerebral aneurysm. His wife

Tracy[1] believed "unusual stress" from Ronald's job led to his aneurysm, so she timely applied for a "lump sum benefit payment" through DRS under the Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act (LEOFF), chapter 41.26 RCW. The application titled "One-Time Duty-Related Death Benefit" bore the DRS logo and "Washington State Department of Retirement Systems" on the first page and identified DRS on each subsequent page.

Per statute, DRS sent Tracy's application to DLI to process on its behalf.[2] DLI through its "Pension Adjudicator Section" denied Tracy's claim. In its December 2017 order, pension adjudicator Noreen Currier denied the application for the one-time death benefit "because the cause of death is not related to either an injury sustained in the course of employment or an occupational disease." The order displays DRS claim number "DRS0202."

Tracy hired an attorney, who wrote a letter in January 2018 protesting the denial of DRS benefits. The letter identified Tracy's DRS application by claim number DRS0202 but described the retirement benefits application as a "Labor and Industries claim." The attorney mailed the letter to the general DLI post-office box address but did not identify the Pension Adjudication Section as the intended recipient.

[1] For clarity, we refer to Tracy Cordova and Ronald Cordova by their first names. We intend no disrespect.

[2] DLI determines an individual's eligibility for a one-time death benefit claim under RCW 41.26.048 and WAC 415-02-710(3).

DLI responded that it was "unable to locate a claim for this injured worker" and requested Tracy's attorney add a "current state fund claim number" and provide a "report of accident." Tracy's attorney replied by resending his original letter with the DRS0202 claim number but added "Attn: Noreen" in the upper right corner. The DLI Pension Adjudicator Section confirmed receipt of the second letter and on May 9, 2018, affirmed the December 2017 order denying Tracy's claim "for death benefits provided under RCW 41.26.048," finding Ronald's death was not duty-related. Tracy timely appealed the ruling to the BIIA.

Tracy asserts that on September 11, 2018, she realized for the first time that she had not applied for Title 51 RCW workers' compensation benefits with either the City or DLI. So on September 25, 2018, nearly 17 months after Ronald died, Tracy applied to the City for Title 51 RCW benefits.[3] On October 30, 2018, DLI denied Tracy's claim because she did not file it within the one-year statutory period and because she did not establish an employment-related injury.[4]

Tracy protested the decision and the BIIA assigned her case to an industrial appeals judge (IAJ). Tracy and the City cross moved for summary judgment on timeliness grounds. DLI joined the City's motion. The IAJ granted summary judgment for the City and DLI. The IAJ also rejected Tracy's argument that the BIIA should equitably estop DLI from rejecting her application for Title 51 RCW benefits as untimely.

[3] Because Ronald worked for the City, a self-insured employer, the DLI oversees applications for workers' compensation, though the City is directly responsible for the costs. RCW 51.14.010, .020; RCW 41.26.048.

[4] The issue of whether Ronald's death was employment-related is not before us.

The BIIA also denied Tracy's petition for review. Tracy then appealed to the Snohomish County Superior Court. Tracy and the City again cross moved for summary judgment on timeliness grounds. DLI responded to both motions, arguing the court should grant the City's motion and deny Tracy's. The superior court granted summary judgment for the City, affirming the BIIA and dismissing Tracy's appeal. The superior court determined that Tracy's claim was untimely and such untimeliness "cannot be excused under the doctrine of equity."

Tracy appeals.

ANALYSIS

Timeliness

Tracy argues the superior court erred in granting the City's summary judgment motion because the BIIA erred by rejecting her claim for Title 51 RCW benefits as untimely. She claims the "information and documents [she] submitted to DRS and delivered to DLI, along with her counsel's subsequent letters to DLI," amount to a timely application for workers' compensation benefits under RCW 51.28.020. We disagree.

We review a superior court's grant of summary judgment de novo, engaging in the same inquiry as the superior court. Hill v. Dep't of Labor & Indus., 161 Wn. App. 286, 292, 253 P.3d 430 (2011); Rabey v. Dep't of Labor & Indus., 101 Wn. App. 390, 393-94, 3 P.3d 217 (2000). A party is entitled to summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). The moving party must establish its right to judgment as a matter of law, and we view

the facts in the light most favorable to the nonmoving party. Romo v. Dep't of Labor & Indus., 92 Wn. App. 348, 354, 962 P.2d 844 (1998). In our review, we rely exclusively on the certified BIIA record. Watson v. Dep't of Labor & Indus., 133 Wn. App. 903, 909, 138 P.3d 177 (2006); RCW 51.52.115. We accept the BIIA's decision as prima facie correct, and the party challenging the decision must support its challenge by a preponderance of the evidence. Watson, 133 Wn. App. at 909; Hill, 161 Wn. App. at 291.

Title 51 RCW governs claims for industrial insurance and workers' compensation. Under RCW 51.28.030, a party making a workers' compensation claim "shall make application for the same . . . accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation." Under RCW 51.28.050, "[n]o application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued."

We construe Title 51 RCW liberally "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. In that regard, we have determined that an application for Title 51 RCW benefits need not be as formal and highly technical as a pleading. Magee v. Rite Aid, 144 Wn. App. 1, 8, 182 P.3d 429 (2008). Any writing seeking Title 51 RCW benefits "filed with the Industrial Commission that challenges its attention, and causes it to act, is sufficient to put in motion the process of the Industrial Commission to see that

compensation is paid." Magee, 144 Wn. App. at 9 (citing Nelson v. Dep't of Labor & Indus., 9 Wn.2d 621, 630, 115 P.2d 1014 (1941)).

Citing Nelson, Tracy argues her May 4, 2017 DRS LEOFF application along with her attorney's letters notified DLI that she was also seeking workers' compensation benefits. In Nelson, a logger broke his ankle and fell on his neck and upper back while working in the forest. Nelson, 9 Wn.2d at 623. The logger timely applied for workers' compensation related to his broken ankle and DLI approved his claim. Nelson, 9 Wn.2d at 623. Less than a year after his injury, the logger petitioned DLI for a rehearing, seeking additional compensation for "increasing pain in his spine and head, dizziness and weakness in his back due to said injury and the fall upon his back." Nelson, 9 Wn.2d at 624-25.[5]

Our Supreme Court held that the logger's petition amounted to an application for additional Title 51 RCW benefits. Nelson, 9 Wn.2d at 628-29. It reasoned that the petition was a writing "filed with the department" that "reasonably directs its attention to the fact that an injury with its particulars has been sustained and that compensation is claimed." Nelson, 9 Wn.2d at 629. Because the logger first notified DLI of his injuries within the one-year statute of limitations, he timely "challenged the attention of the department." Nelson, 9 Wn.2d at 629-30.

Tracy's claim is distinguishable from the petition in Nelson. In Nelson, the logger petitioned for additional compensation in an existing Title 51 RCW claim. But here, Tracy had no existing Title 51 RCW claim. Her May 2017 application was titled "One-Time Duty-Related Death Benefit" and bore either the DRS logo

[5] Emphasis omitted.

and/or "Department of Retirement Systems" on each page. It made no mention of workers' compensation benefits and sought only an LEOFF one-time death payout—a separate benefit from a different government agency.

Neither did the protest letters sent by Tracy's attorney notify DLI that she was also claiming workers' compensation.[6] Though her attorney asserted that he "represents Tracy . . . with regard to the Labor and Industries claim referenced above," the "claim referenced" was DRS0202, the case number DRS assigned to her one-time death benefit application. In trying to clarify the discrepancy, DLI told the attorney that it was "unable to locate a claim for this injured worker" and requested a current state fund claim number and a copy of an accident report. Still, Tracy's attorney made no effort to explain that Tracy was seeking both LEOFF and Title 51 RCW benefits. Instead, he sent his original protest letter again but wrote "Attn: Noreen"—the first name of the DLI pension adjudicator who processes DRS death benefit claims—on the upper right corner. As a result, DLI forwarded the letter to their Pension Adjudication Section and processed the claim for only DRS benefits.

We agree with DLI that this case is more like Magee. In that case, Rite Aid employee Magee claimed her supervisor sexually assaulted her. Magee, 144 Wn. App. at 4. She petitioned for an antiharassment order against her supervisor and sued him civilly. Magee, 144 Wn. App. at 4-5. Rite Aid was not a named party to either civil action but it received copies of the antiharassment

[6] As much as Tracy argues that applications for an LEOFF payout and workers' compensation benefits are coextensive, her argument is unsupported by citation to legal authority, so we do not consider it. RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (argument unsupported by reference to the record or citation to authority will not be considered).

order and Magee's answer to the supervisor's counter suit and participated in settling the lawsuit. Magee, 144 Wn. App. at 5-6. Magee later sought workers' compensation for her injuries and claimed that Rite Aid's receipt of the antiharassment order and her answer was sufficient timely notice that she would be seeking workers' compensation under Title 51 RCW.[7] Magee, 144 Wn. App. at 9. We concluded that under Nelson, the documents did not amount to an application for Title 51 RCW benefits. Magee, 144 Wn. App. at 11.[8] Because the documents sought only civil damages for Magee's injuries, Rite Aid could not "reasonably infer that a claim for workers' compensation [wa]s being made." Magee, 144 Wn. App. at 11.

Like the documents in Magee, Tracy's DRS application did not notify DLI that she was seeking workers' compensation. She filed her application with DRS seeking an LEOFF one-time death benefit. Nothing in the application would reasonably cause DLI in their role as DRS pension adjudicator to conclude that Tracy was also seeking workers' compensation benefits.

Tracy argues that Magee "is readily distinguishable" because notice of the claim there was "wholly unrelated to statutory benefits," while her application sought a specific, though different, statutory benefit. But she fails to explain how notice of Ronald's death in the form of a DRS application for a one-time death benefit differs in any meaningful way from notice of Magee's injury in the form of

[7] Rite Aid was a self-insured employer under RCW 51.14.020. Magee, 144 Wn. App. at 13.

[8] We expressed our concern that the notice requirement established in Nelson is outdated given "the many changes to workers' compensation law that have taken place over the past seven decades" and urged legislative review of the statutory scheme to prevent future similar outcomes. Magee, 144 Wn. App. at 15-16 (Dwyer, J., concurring). To date, neither the Supreme Court nor the legislature has acted.

a civil lawsuit seeking money damages. Neither notifies the insurer of a claim for Title 51 RCW benefits. We conclude that the BIIA properly determined that the sum of Tracy's communications with DLI did not amount to an application for workers' compensation benefits and the superior court did not err in granting the City's summary judgment motion.

Equitable Estoppel

Tracy argues that even if the information she submitted to DRS did not amount to an application for benefits under Title 51 RCW, "DLI should be [equitably] estopped from denying that her claim was timely made." We disagree.

The trial court has broad discretion, exercised in light of the facts and circumstances of a particular case, to determine whether a party is entitled to equitable relief. Rabey, 101 Wn. App. at 396; Heckman Motors, Inc. v. Gunn, 73 Wn. App. 84, 88, 867 P.2d 683 (1994). In industrial insurance cases, a trial court may grant equitable relief only in the limited circumstances where (1) a claimant's competency to understand orders, procedures, and time limits affects the communication process and (2) DLI engaged in misconduct. Rabey, 101 Wn. App. at 395 (citing Kingery v. Dep't of Labor & Indus., 132 Wn.2d 162, 174, 937 P.2d 565 (1997)); Lynn v. Dep't of Labor & Indus., 130 Wn. App. 829, 839, 125 P.3d 202 (2005); Harman v. Dep't of Labor & Indus., 111 Wn. App. 920, 924, 47 P.3d 169 (2002). We review a superior court's decision whether to fashion an equitable remedy for an abuse of discretion. Harman, 111 Wn. App, at 923.

Tracy contends that DLI engaged in misconduct because it failed to notify her of her rights under RCW 51.28.010. That statute compels DLI to notify workers or beneficiaries of their statutory rights after receiving an accident report from an employer:

> (1) Whenever any accident occurs to any worker it shall be the duty of such worker or someone in his or her behalf to forthwith report such accident to his or her employer . . . and of the employer to at once report such accident and the injury resulting therefrom to [DLI] . . . .
>
> (2) Upon receipt of such notice of accident, [DLI] shall immediately forward to the worker or his or her beneficiaries or dependents notification, in nontechnical language, of their rights under this title.

RCW 51.28.010. But DLI did not receive an accident report from Ronald's employer. Instead, it received notice of his death in the form of an application for DRS benefits provided to its Pension Adjudication Section. As a result, the application did not trigger the notice requirement under RCW 51.28.010. And even if we construed the statute so broadly as to trigger a duty to notify on receipt of a report of injury from any source, DLI's failure to interpret the statute likewise does not amount to misconduct.

Tracy also asserts that DLI engaged in misconduct by obscuring from her its role in processing DRS applications. The record does not support her assertion.

DLI's letter accompanying its order denying Tracy's application for LEOFF benefits identifies Noreen Currier as the "Pension Adjudicator" and explains that DLI "received your application for death benefits through the Department of Retirement Systems." It then explains that DLI "determines eligibility for the

death benefit you have filed for." And the order itself states that "[t]he application for the death benefit provided under RCW 41.26.048 . . . is hereby denied." The order displays DRS claim number DRS0202. And it includes addresses for both the "Dept. of Retirement Systems LEOFF" and "Dept. of Labor and Industries Pension Adjudicator Section." The record shows that DLI adequately identified its role as Pension Adjudicator for DRS when communicating with Tracy.

Because Tracy's DRS application did not also amount to an application for Title 51 RCW benefits and she was not entitled to equitable relief, the BIIA did not err in concluding her application for workers' compensation was untimely. We affirm the superior court order granting the City's summary judgment motion to dismiss Tracy's appeal.

I CONCUR:

APPENDIX A

Cordova v. City of Seattle, No. 81947-0-I

DWYER, J. (concurring and dissenting) — More than a dozen years ago, in a case referenced in the majority opinion, I expressed my dismay at the state of the law concerning the requirement that a writing be filed with the Department of Labor and Industries in order to pursue a workers' compensation claim. See Magee v. Rite Aid, 144 Wn. App. 1, 12, 182 P.3d 429 (2008) (Dwyer, J., concurring). My premise then was simple: the legislature had not chosen to define a "claim" or to delineate that which was required to constitute a "claim," and the Supreme Court's formulations of such requirements as explicated in Nelson v. Dep't of Labor & Industries, 9 Wn.2d 621, 115 P.2d 1014 (1941), were anti-worker, inconsistent with the evolution of workers' compensation law, and unjust. I urged that either the legislature cure the problem by statute or that the Supreme Court ride to the rescue and alter its Nelson decision.

As with most such exhortations by intermediate appellate court judges, my jurisprudential call to arms failed to inspire legislative rescue. And the Justices remained dismounted.

As to the content of the notices given to the Department of Labor and Industries herein, the majority imposes an injustice by correctly applying the law. As I observed 13 years ago, "[t]hus, with a reluctance outweighed only by my obligation to the law, I concur"[1] in that decision.

[1] Magee, 144 Wn. App. at 16 (Dwyer, J., concurring).

However, there is more to this case. Both the Board of Industrial Insurance Appeals and the superior court ruled that Tracy Cordova did not file a writing with the Department of Labor and Industries within one year of Detective Ronald Cordova's death, as required by statute. See RCW 51.28.050. To reach its decision, the majority does not need to address this issue and understandably does not do so.

But I disagree with both the Board and the superior court on this question. And here is why.

The statutory requirement is merely that a writing be filed with the Department of Labor and Industries. See RCW 51.28.010. As conceded at oral argument in this court, *any* employee of the Department of Labor and Industries can be the recipient of the filing. The statute does not provide otherwise. Moreover, to "file" the writing does not require action akin to service of process in a civil action. To the contrary, the writing can be mailed to *anyone* employed by the Department of Labor and Industries or to the Department itself.

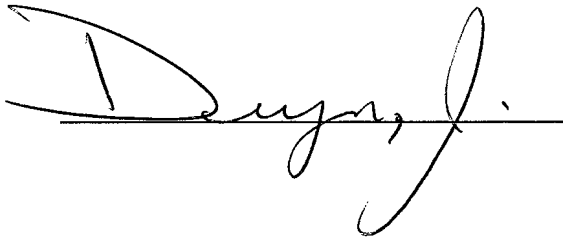
Here, such a filing happened twice. It first happened when an employee of the Department of Retirement Systems transmitted documents sent to them by Tracy Cordova to the Department of Labor and Industries for claim handling. It happened a second time when Tracy Cordova's attorney wrote and mailed his January 2018 letter, which was received by an employee of the Department of Labor and Industries.

I recognize that the majority rejects these filings as insufficient in their *content*—but that is a separate question. Tracy Cordova unquestionably filed—

twice—a writing with the Department of Labor and Industries in a timely manner. Her claims were *timely* even if their content was insufficient under the Nelson requirements.

It is important that we recognize this distinction. Widows are not supposed to have to hire lawyers in order to receive widow's benefits. This area of law is confused enough without conflating the issues at hand.

Both the Board and the superior court erred in their rulings on this question.



BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: ELIZABETH A. HOOVER, DEC'D	**DOCKET NO. 23 L0000**
CLAIM NO. DRS0269	**REPORT OF PROCEEDING · AGREEMENT OF PARTIES**

Appearances:

Beneficiary, Corran K Hanley, by Putnam Lieb Potvin Dailey, per Dustin J. Dailey

Department of Retirement Systems, LEOFF (did not appear)

Department of Labor and Industries, by Office of the Attorney General, per Alexandra Syssoeva Fair, Paralegal

I, Industrial Appeals Judge David W. Swan or the Board of Industrial Insurance, held a conference on August 30, 2023, with notice to all parties. Dustin J. Dailey and Alexandra Syssoeva Fair have provided additional communications by electronic mail requesting the Board issue this Order on Agreement of Parties

INTRODUCTION

The beneficiary, Corran K Hanley, filed a timely protest with the Department of Labor and Industries. The Department forwarded this to the Board of Industrial Insurance Appeals as an appeal on April 6, 2023 Corran K. Hanley appeals January 11, 2023 Department of Labor and Industries order that affirmed denial of Corran K Hanley's request for a special death benefit under RCW 41.26 048 on grounds the request was untimely pursuant to RCW 51 32.040(2)(c). The Department order is **REVERSED AND REMANDED.**

AGREEMENT

The requesting special death benefit beneficiary, Corran Hanley, and the Department of Labor and Industries agree: **(1)** The one-year limitations period for death benefits claims stated in RCW 51 32.040(2) is not separately applicable in this matter to Corran Hanley's special death benefit claim under RCW 41 26.048, **(2)** Corran K Hanley was, within a year of Elizabeth Hoover's death, recognized by the Department of Retirement Systems as having a cognizable claim for special death benefits under RCW 41 26.048, and this claim should be further adjudicated as a timely claim by the Department of Labor and Industries as directed by RCW 41 26.048(2), and, **(3)** the parties request the Board issue the following Order

ORDER

The Board of Industrial Insurance Appeals has jurisdiction in this timely appeal The January 11, 2023 Department of Labor and Industries order is reversed and remanded to the Department of Labor and Industries with directions to determine the request of Corran Hanley for a

special death benefit under RCW 41 26 048 was timely and with directions to determine on the merits whether Corran K Hanley's request should be granted

I certify that this is a true and accurate report of proceedings

Dated September 20, 2023, at Centralia, Washington

David W. Swan
Industrial Appeals Judge
Board of Industrial Insurance Appeals

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: ELIZABETH A. HOOVER, DEC'D	)	**DOCKET NO. 23 L0000**
CLAIM NO. DRS0269	)	**ORDER ON AGREEMENT OF PARTIES**

The parties to this appeal have reached an agreement that is set out in the attached. ***Report of Proceeding Agreement of Parties dated September 20, 2023*** The parties have requested that the Board issue an Order on Agreement of Parties

The appeal was timely filed The agreement is in conformity with the facts and the law. Therefore, the Board issues this order in accordance with the parties' agreement The agreement is incorporated as part of this order.

Dated September 20, 2023.

BOARD OF INDUSTRIAL INSURANCE APPEALS

HOLLY A KESSLER, Chairperson

ISABEL A M COLE, Member

JACK S ENG, Member

LEOFF
Plan 2 Retirement Board

Lump Sum Special Death Benefit

Comprehensive Report
November 15, 2023

Issue

- LEOFF Plan 2 beneficiaries have been denied a one-time special death benefit because they missed the Department of Labor and Industries (LNI) deadline for application

Special Death Benefit

- LEOFF Plan 2 beneficiaries are eligible for a one-time lump sum special death benefit (currently $287,781) if the member died because of a workplace injury or occupational disease
  - LNI determines the beneficiary's eligibility for this benefit
  - Department of Retirement Systems (DRS) pays the benefit out of the pension
- Beneficiaries have been denied this benefit because they missed LNI's application deadline

DRS Data

- Since 2010, 72 out of 85 applications were approved
- 13 were denied
- 3 denied for timeliness
- 1 denial has been reversed
- Prior to 2022 no beneficiaries were denied a Special Lump Sum Death Benefit for timeliness

Legislative History

- Established in 1996
- Board endorsed 2006 legislation that expanded the benefit to include deaths from occupational disease or infection
- Board endorsed 2010 legislation increased the minimum benefit from $150k to $214k, with an annual COLA

Statute of Limitations

- “The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by […]” LNI
- Pension benefits typically do not have deadlines, you are paid what you have earned
  - Special Death Benefit is paid out of pension trust fund not LNI
- LNI Benefits typically have a statute of limitations to apply for the benefit, in part due to the increasing difficulty of determining the cause of an injury the further away from it occurring

Update on LNI/DRS

- In July, the Board was told that DRS and LNI were reviewing their current practices to determine if LNI deadlines should apply to this pension benefit or if a legislative change would be needed to correct the issue
- Since then, the Board has been informed that:
  - LNI will continue to apply its statute of limitations to the Special Death Benefit
  - LNI has reversed its initial decision on one of the previous denials
    - Required minor and his grandma hiring an attorney and pursuing an appeal with LNI

Cordova v. City of Seattle and LNI

- "Widows are not supposed to have to hire lawyers in order to receive widow's benefits." – Judge Dwyer, dissenting opinion
- LNI has told DRS they are using *Cordova* to support their contention that:
  - 1 year time limit in RCW 51. […] is applicable to all death claims, including the DRS one-time lump sum death benefit
  - Applying for one benefit, whether DRS death benefit or LNI benefits, is not notice that you are applying for the other independent benefit

Cordova, continued

- Judge Dwyer cited a previous decision where he “urged that either the legislature cure the problem by statute or that the Supreme Court ride to the rescue [...]”.
- He lamented in *Cordova*: “As with most such exhortations by intermediate appellate court judges, my jurisprudential call to arms failed to inspire legislative rescue. And the Justices remained dismounted.”

Policy Options

1. Shift determination of benefit eligibility from LNI to DRS
   - No statute of limitations
   - Apply retroactively to beneficiaries that have been denied special death benefits for not meeting LNI statute of limitations
2. Remove statute of limitations for special death benefit and keep LNI responsible for determination

Pros/Cons – Option 1

- Pros
  - Similar to other pension benefits would remove statute of limitations, and ensure members and their beneficiaries receive the benefits they have earned
  - Aligns the special death benefit with the rest of the LEOFF 2 pension benefits administered by DRS
  - Simplifies pension benefit process for beneficiaries by only working with one state agency

Cons

- Minor increase in costs to pay beneficiaries denied benefits for not meeting LNI statute of limitations

Pros/Cons – Option 2

- Pros
  - Determining whether a death was duty related or not is within the existing scope of LNI's work
- Cons
  - LNI would continue making a determination for a pension benefit which is outside their typical scope of work
  - Would need to ensure that removing statute of limitations for pension benefit does not impact other LNI benefits

Next Steps - Options

1. Motion for final briefing on Policy Option 1
2. Motion for final briefing on Policy Option 2
3. No action

LEOFF
Plan 2 Retirement Board

Thank You

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