

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

1 **IN RE:     BRIAN G. CORNTASSEL                     )   DOCKET NOS. 12 15731, 12 15732, 12 15733**  
2   )   **& 12 15734**  
3   )   **CLAIM NOS. Y-555338, Y-587919, Y-520693**  
4 **& Y-372872**   )   **DECISION AND ORDER**

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5 APPEARANCES:

6             Claimant, Brian G. Corntassel, Pro Se

7             Employer, Labor Ready Northwest, Inc.  
8             Risk Management, by  
9             None

10            Employer, A & G Leasing, Inc., by  
11            None

12            Department of Labor and Industries, by  
13            The Office of the Attorney General, per  
14            Steven J. Nash and Penny L. Allen, Assistant

15            In Docket No. 12 15731, the claimant, Brian G. Corntassel, filed an appeal with the Board of  
16 Industrial Insurance Appeals on May 9, 2012, from an order of the Department of Labor and  
17 Industries dated April 9, 2012, entered in Claim No. Y-555338. In this order, the Department  
18 affirmed the provisions of an order dated February 8, 2012, in which it denied the claimant's  
19 application to reopen the claim. The Department order is **REVERSED AND REMANDED**.

20            In Docket No. 12 15732, the claimant, Brian G. Corntassel, filed an appeal with the Board of  
21 Industrial Insurance Appeals on May 9, 2012, from an order of the Department of Labor and  
22 Industries dated April 9, 2012, entered in Claim No. Y-587919. In this order, the Department  
23 affirmed the provisions of an order dated February 8, 2012, in which it denied the claimant's  
24 application to reopen the claim. The Department order is **REVERSED AND REMANDED**.

25            In Docket No. 12 15733, the claimant, Brian G. Corntassel, filed an appeal with the Board of  
26 Industrial Insurance Appeals on May 9, 2012, from an order of the Department of Labor and  
27 Industries dated April 9, 2012, entered in Claim No. Y-372872. In this order, the Department  
28 affirmed the provisions of an order dated February 8, 2012, in which it denied the claimant's  
29 application to reopen the claim. The Department order is **REVERSED AND REMANDED**.

30            In Docket No. 12 15734, the claimant, Brian G. Corntassel, filed an appeal with the Board of  
31 Industrial Insurance Appeals on May 9, 2012, from an order of the Department of Labor and  
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1 Industries dated April 9, 2012, entered in Claim No. Y-520693. In this order, the Department  
2 affirmed the provisions of an order dated February 8, 2012, in which it denied the claimant's  
3 application to reopen the claim. The Department order is **REVERSED AND REMANDED**.

#### 4 DECISION

5 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for  
6 review and decision. The claimant filed a timely Petition for Review of a Proposed Decision and  
7 Order issued on December 20, 2012, in which the industrial appeals judge reversed and remanded  
8 the orders of the Department dated April 9, 2012. Contested issues addressed in those orders  
9 include reopening Claim Nos. Y-555338, Y-587919, Y-520693 and Y-372872.

10 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
11 no prejudicial error was committed. The rulings are affirmed.

12 The Department filed a motion to dismiss these appeals for failure to state a claim for which  
13 relief may be granted, as provided by CR 12(b)(6). However, because matters other than the  
14 pleadings were presented in support of and in opposition to the motion, it must be treated as a  
15 motion for summary judgment under CR 56. CR 12(b).

16 We agree with our industrial appeals judge's decision to reverse the Department's orders in  
17 which it denied Mr. Corntassel's applications to reopen these claims because the Department  
18 lacked the legal authority to take that action. We have, however, granted review to make an  
19 additional finding of fact that there were no genuine issues of material fact to prevent us from  
20 granting the Department's motion for summary judgment.

#### 21 Motion for Summary Judgment

22 In the Proposed Decision and Order, the industrial appeals judge fully recites the  
23 documents and evidence considered by the judge when deciding the motion for summary  
24 judgment. That recitation is adopted and will not be repeated here.

25 The evidence submitted by the parties establishes the following uncontested facts. The four  
26 claims were allowed by the Department for industrial injuries occurring in 2001 and 2002. The  
27 Department closed the claims in 2006. The closing orders were protested or appealed. Ultimately  
28 the Department issued separate orders in which it closed all claims on October 19, 2006.  
29 Mr. Corntassel appealed the October 19, 2006 orders to this Board under Docket Nos. 06 20941,  
30 06 20942, 06 20943, and 06 20940. On January 7, 2009, our industrial appeals judge issued a  
31 Proposed Decision and Order in which he directed the Department to close the claims. The  
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1 industrial appeals judge also assessed costs against the Department for Mr. Corntassel's travel  
2 expenses totaling \$75. Mr. Corntassel filed a timely Petition for Review to the January 7, 2009  
3 Proposed Decision and Order. On April 10, 2009, we denied that Petition for Review and adopted  
4 the Proposed Decision and Order.

5 Mr. Corntassel appealed our April 10, 2009 order to the superior court. The superior court  
6 affirmed it on September 30, 2011. On October 28, 2011, Mr. Corntassel appealed the superior  
7 court's order to Division III of the Washington Court of Appeals. That appeal remained pending  
8 before the Court of Appeals through April 9, 2012.

9 Mr. Corntassel also filed applications to reopen each of his claims with the Department on  
10 January 26, 2007, and again on April 1, 2008. These applications were filed after his appeals to the  
11 Department's 2006 closing orders had been filed with us, but before the Proposed Decision and  
12 Order in Docket Nos. 06 20941, 06 20942, 06 20943, 06 20940 had been issued. On February 8,  
13 2012, and while the appeal to our April 10, 2009 Order Denying Review was pending in the courts,  
14 the Department issued orders in which it denied Mr. Corntassel's applications to reopen his claims.  
15 Those orders were affirmed on April 9, 2012, and those affirming orders are now before us in these  
16 appeals.

17 The Department may not act on an application to reopen a claim when there is no final  
18 order closing the claim. *Reid v. Department of Labor & Indus.*, 1 Wn. 2d 430 (1939). When an  
19 order closing a claim is on appeal to the courts and an application to reopen the claim is filed with  
20 the Department, the earliest the Department may act on that application is the date on which the  
21 Department receives a conformed copy of the court's order in the pending appeal. *In re Edwin*  
22 *Fiedler*, BIIA Dec. 90 1680 (1990). Mr. Corntassel's appeals of the earlier closing orders were still  
23 pending on April 9, 2012, when the Department affirmed the February 8, 2012 orders. The  
24 Department lacked the authority to deny those applications on April 9, 2012, because there was no  
25 final court order closing the claims. The April 9, 2012 orders closing the claims are incorrect, and  
26 our industrial appeals judge properly reversed them.

### 27 Motion for an Order of Contempt

28 Mr. Corntassel's response to the Department's motion included a separate motion asking  
29 that we find the Department in contempt for failing to pay him the \$75 previously assessed in the  
30 Proposed Decision and Order entered in Docket Nos. 06 20941, 06 20942, 06 20943, 06 20940.  
31 This motion is denied.

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1 We may certify facts supporting a contempt order to the superior court if we find that a  
2 person [or entity] disobeys any lawful order. RCW 51.52.100. The Department has not disobeyed  
3 any lawful order. The order assessing the \$75 is the same April 10, 2009 Order Denying Review  
4 that Mr. Corntassel appealed to the courts. That order never became final. The Department has  
5 not disobeyed a lawful order because its obligation to pay those fees remains unsettled.

#### 6 **FINDINGS OF FACT**

- 7 1. On August 15, 2012, an industrial appeals judge certified that the parties  
8 agreed to include the amended Jurisdictional History for Claim Nos.  
9 Y-555338, Y-587919, Y-520693, and Y-372872 in the Board record  
10 solely for jurisdictional purposes.
- 11 2. There are no genuine issues of material fact that preclude granting the  
12 Department's motion for summary judgment in these consolidated  
13 appeals. The uncontested facts establish that the Department is entitled  
14 to judgment as a matter of law.
- 15 3. In 2006 the Department of Labor and Industries issued orders in which it  
16 closed Claim Nos. Y-555338, Y-587919, Y-520693, and Y-372872. The  
17 claimant, Brian G. Corntassel, appealed the 2006 closing orders to the  
18 Board of Industrial Insurance Appeals. The appeals were assigned  
19 Docket Nos. 06 20941, 06 20942, 06 20943, and 06 20940. On  
20 April 10, 2009, the Board adopted a Proposed Decision and Order  
21 entered in those appeals, in which we directed the Department to close  
22 the claims. Mr. Corntassel appealed the Board's April 10, 2009 order to  
23 the courts.
- 24 4. On April 9, 2012, Brian G. Corntassel's appeal of the Board's order  
25 dated April 10, 2009, remained pending in the courts.
- 26 5. On January 26, 2007, and on April 1, 2008, Brian G. Corntassel filed  
27 applications to reopen Claim Nos. Y-555338, Y-587919, Y-520693, and  
28 Y-372872. On February 8, 2012, the Department of Labor and  
29 Industries denied those applications. Following timely requests for  
30 reconsideration, the Department affirmed the provisions of the  
31 February 8, 2012 orders by orders dated April 9, 2012, entered in each  
32 of these four claims.

#### 33 **CONCLUSIONS OF LAW**

- 34 1. Based on the record, the Board of Industrial Insurance Appeals has  
35 jurisdiction over the parties to and the subject matter of these appeals.
- 36 2. The Department of Labor and Industries did not have the authority to  
37 deny Brian G. Corntassel's applications to reopen Claim Nos. Y-555338,  
38 Y-587919, Y-520693, and Y-372872 on April 9, 2012. *Reid v.*  
39 *Department of Labor & Indus.*, 1 Wn. 2d 430 (1939); *In re Edwin Fiedler*,  
40 BIIA Dec., 90 1680 (1990).

1 3. The orders of the Department of Labor and Industries dated April 9,  
2 2012, are incorrect and are reversed. Claim Nos. Y-555338, Y-587919,  
3 Y-520693, and Y-372872 are remanded to the Department for further  
4 action consistent with this order and as indicated by the law and the  
5 facts.

6 Dated: February 25, 2013.

7 BOARD OF INDUSTRIAL INSURANCE APPEALS

8 /s/ \_\_\_\_\_  
9 DAVID E. THREEDY Chairperson

10 /s/ \_\_\_\_\_  
11 FRANK E. FENNERTY, JR. Member

12 /s/ \_\_\_\_\_  
13 JACK S. ENG Member