Acevedo, Evangelina

BOARD

Examination by industrial insurance appeals judge

When the party with the burden of proof is unrepresented, judges must ask questions with the purpose of eliciting the facts needed to support a prima facie case, and should not advocate for any party, ask leading questions, or ask questions that attempt to elicit inadmissible testimony. **….*In re Evangelina Acevedo*, BIIA Dec., 08 15613 (2009)**

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: EVANGELINA ACEVEDO	)	**DOCKET NO. 08 15613**
	)	
CLAIM NO. AF-44843	)	**ORDER VACATING PROPOSED DECISION**
	)	**AND ORDER AND REMANDING THE**
	)	**APPEAL FOR FURTHER PROCEEDINGS**

APPEARANCES:

Claimant, Evangelina Acevedo, Pro Se

Employer, Elijah Gallaway,
None

Department of Labor and Industries, by
The Office of the Attorney General, per
Dale E. Becker, Assistant

The claimant, Evangelina Acevedo, filed an appeal with the Board of Industrial Insurance Appeals on June 16, 2008, from an order of the Department of Labor and Industries dated June 12, 2008. In this order, the Department affirmed a July 25, 2007 order, in which it rejected Ms. Acevedo's claim for a May 24, 2007 injury because the claimant was employed as a domestic servant in a private home by an employer who has less than two employees regularly employed 40 or more hours a week in such employment and the employer had not made provisions for coverage by means of elective adoption. The appeal is **REMANDED FOR FURTHER PROCEEDINGS**.

ISSUE

Was Ms. Acevedo a domestic servant excluded from industrial insurance coverage pursuant to RCW 51.12.020(1) on May 24, 2007, when she alleges she injured her right arm during the course of her employment, or July 2007, when she contends she re-injured her arm at work? Stated alternatively, did Ms. Acevedo's employer have two or more domestic servants regularly employed 40 or more hours per week as of May 24, 2007, or July 2007?

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the Department to a Proposed Decision and Order issued on April 3, 2009. The industrial appeals judge reversed the June 12, 2008 Department order and "remanded to the Department with directions to find that Ms. Acevedo's

employment with Elijah and Beryl Gallaway is not excluded from coverage under the Industrial Insurance Act by virtue of RCW 51.12.020(1) and to thereafter take such other and further actions as required by the law and facts." Proposed Decision and Order, at 11. We have granted review to vacate the Proposed Decision and Order and remand for further proceedings because Elijah Gallaway died on November 3, 2008, during the pendency of this appeal, and his wife Beryl Gallaway pre-deceased him on December 12, 2007. On remand, the industrial appeals judge shall determine whether Mr. Gallaway's estate should be substituted as a party.

In its order under appeal the Department does not identify any employer, nor is there any indication the order was mailed to any employer. The stipulated jurisdictional history indicates that the Application for Benefits referred to "various" employers. However, that application was admitted as an exhibit. On its face, it identifies Elijah Gallaway as the employer and gives his address and telephone number as 320 Asahel Curtis Dr., Grandview WA 98930, 509-882-7526. Exhibit No. 2, at 3.

During the mediation process, the mediation judge identified Elijah Gallaway as the employer and used the same address and telephone number as appear on the Application for Benefits. On September 9, 2008, the mediation judge sent Mr. Gallaway a letter advising him of the appeal, making him a party, and warning him of the consequences should he fail to participate. In a September 24, 2008 Report of Proceedings, the mediation judge wrote: "Note that the DLI order did not identify Mr. Gallaway as the employer. I sent a letter (right of file) to Gallaway and added to BAIS addresses. An attorney called to inquire and was to call me back if he wished to participate in the 9/22 teleconference. He did not call back."

There is no indication in the record that Mr. Gallaway ever took any further action with respect to this appeal before he died on November 3, 2008. His wife, Beryl Gallaway, had already died on December 12, 2007. On November 13, 2008, the industrial appeals judge's assistant advised him by e-mail that: "A Mr. Steve Winfree called regarding the employer in the above case Mr. Elijah Galloway [*sic*] Mr. Galloway [*sic*] passed away on 11/3/08. Mr. Winfree is Mr. Galloway's [*sic*] attorney and is handling his estate, he was not participating in the L&I claim, but wanted to know if you need him to do anything. His number is 509-837-5302." The record is silent with respect to any further contact with Mr. Winfree.

At the beginning of the November 17, 2008 hearing, the industrial appeals judge indicated: "The employer in this case, Elijah Galloway [*sic*] is not present. I have been advised that since this

matter started, Mr. Galloway has passed away and there is a probate of his estate underway . . .. there is an attorney handling his estate." 11/17/08 Tr. at 2-3. Likewise, at the beginning of the January 8, 2009 hearing, the industrial appeals judge indicated that: "The alleged employer is deceased, Mr. Elijah Gallaway." 1/8/09 Tr. at 2. However, Mr. Gallaway's estate was not substituted as a party. In addition, after the industrial appeals judge was notified of Mr. Gallaway's death, all mailings continued to be sent to his address as it appears on the Application for Benefits, including notices of hearings and the Proposed Decision and Order. As the matter currently stands, if the April 3, 2009 Proposed Decision and Order were to become final, it would be binding only on Ms. Acevedo and the Department. It would not be binding on Mr. Gallaway's estate, because it was not substituted as a party after Mr. Gallaway died, it was not notified of any proceedings pursuant to WAC 263-12-100, nor was it provided with a copy of the Proposed Decision and Order pursuant to RCW 51.52.104 and WAC 263-12-140.

The question of whether any claims for premiums, penalties, and interest would survive and be considered debts to be satisfied by Mr. Gallaway's estate under RCW 51.16.160 is not before us at this time. However, any determination in the current appeal that Ms. Acevedo was a covered worker during her employment with Mr. Gallaway would likely have consequences with respect to any future attempt by the Department to collect premiums, penalties, and interest from the estate. It is possible that the Department has no intention of proceeding against the estate, regardless of the outcome of the current appeal. However, that question was not addressed on the record below. It is therefore not clear whether the estate has any interest or stake in the resolution of this appeal. As a result, the Proposed Decision and Order must be vacated and the matter remanded to determine whether the estate should be substituted as a party, place that determination on the record, and hold further proceedings if necessary.

One other matter requires some discussion. In its Petition for Review, the Department contends that: "The IAJ failed to act in a fair and impartial manner and became the advocate for the claimant in advancing her cause with the BIIA." Petition for Review, at 4. According to the Department, the industrial appeals judge violated the appearance of fairness doctrine, by asking "in excess of 600 questions," rather than limiting himself to background or clarifying questions. Petition for Review, at 4.

Ms. Acevedo was initially represented by counsel, but he was permitted to withdraw on October 28, 2008. Thereafter, Ms. Acevedo appeared pro se. The industrial appeals judge held a

conference on November 17, 2008. As required by WAC 263-12-020(d), he explained to Ms. Acevedo the issue he would be deciding and provided information regarding the hearing process. He promised to send her an explanatory DVD and a pamphlet produced by the Board, along with the Interlocutory Order Establishing Litigation Schedule, memorializing the outcome of the conference. At the November 17, 2008 conference, Ms. Acevedo identified her witnesses, and the industrial appeals judge directed her to confirm that they would appear at the December 17, 2008 hearing by December 5, 2008. She did so in a letter received at the Board on December 3, 2008.

Ms. Acevedo appeared at the December 17, 2008 hearing and offered her own testimony and that of her co-workers--Maria Delaluz Castillo, Yasilia De La Rosa, her daughter, and Manuela Patricia (Tricia) Acevedo, her daughter-in-law.[1] At the beginning of the December 17, 2008 hearing, the industrial appeals judge advised Ms. Acevedo that he could not act as her attorney, but that he would "get the ball rolling by asking you some questions if that's all right with you . . . [to] get started that way." 12/17/208 Tr. at 4. The hearing then proceeded with the presentation of Ms. Acevedo's testimony, elicited through the industrial appeals judge's questions, with cross-examination by the Department.

Ms. Acevedo's testimony was interrupted for the presentation of her second witness, Ms. Castillo. Prior to the presentation of her testimony, the following exchange occurred:

> JUDGE MCDONALD: All right. Now, Ms. Acevedo, I am going to ask Maria some questions to get some background information.
>
> MS. ACEVEDO: Yes, sir.
>
> JUDGE MCDONALD: But what you need to understand is that I am going to give this pen back to you. I may not ask Maria everything that you want to be asked. So you need to pay attention, and if I leave something out that you think is important, you need to be ready to ask Ms. Castillo about that. Do you understand?
>
> MS. ACEVEDO: Yes, sir.
>
> JUDGE MCDONALD: In other words, I can't be your attorney. It is your responsibility to make sure that we hear all the information from Ms. Castillo that you want me to hear. Do you understand?
>
> MS. ACEVEDO: Yes, sir.

[1] For ease of reference, we will refer to the latter as "Tricia Acevedo," because she goes by Tricia, Manuela, and Patricia, as well as having the same last name as the claimant.

> JUDGE MCDONALD: So, if you think I am leaving something out, I will give you a chance.
>
> MS. ACEVEDO: I have a question. If I don't understand the question, can you repeat it, because sometimes it doesn't go to my head?
>
> JUDGE MCDONALD: Absolutely.
>
> MS. ACEVEDO: Okay.
>
> JUDGE MCDONALD: Interrupt me any time you have a question.
>
> MS. ACEVEDO: All right.

12/17/08 Tr. at 42-43.

After this exchange, the industrial appeals judge proceeded to question Ms. Castillo, through an interpreter, without objection. He allowed Ms. Acevedo an opportunity to ask any questions she might have, and restated the one question she had. He then invited cross-examination from the Department.

The claimant then presented her third witness, Ms. De La Rosa. The industrial appeals judge asked some initial questions and the Department lodged its objection, as follows:

> Your Honor, if I might just for the record [*sic*] sake, because the claimant is acting as her own attorney in this case, I think, it is her obligation to do the questioning of the witness. I didn't object during the previous testimony primarily due to the difficulties with the interpreter. And while I think the Board has the opportunity to ask clarifying questions, but I think it is the obligation of the claimant to elicit testimony.

12/17/08 Tr. at 57.

The industrial appeals judge overruled the objection, as follows:

> Well, I appreciate your objection, and also, probably, your frustration, counsel, but I do have an independent obligation to create a complete record. Ms. Acevedo is doing the best she can, but I frankly don't have confidence that she can ask the background questions that are necessary, and so as part of my obligation to create a full and complete record, I am going to continue to do the questioning, and your objection will be noted, and it will be a continuing objection.

12/17/08 Tr. at 57-58.

The industrial appeals judge proceeded to question Ms. De La Rosa. He then completed the questioning of the claimant, and questioned Tricia Acevedo. When he offered the claimant an opportunity to question Ms. De La Rosa, she had no questions, saying: "No, I think we covered it. Okay." 12/17/08 Tr. at 62. After completing his questions of Ms. Acevedo, he asked if she had anything to add, and she did not. 12/17/08 Tr. at 75. Likewise, she had nothing to add after the Department finished its cross-examination of the claimant. 12/17/08 Tr. at 79-80. She also had no

questions to ask after the industrial appeals judge finished his questioning of Tricia Acevedo. 12/17/08 Tr. at 93. After the Department's cross-examination, the industrial appeals judge asked further questions. 12/17/08 Tr. at 97-98. Once again, Ms. Acevedo declined the offer to ask additional questions. 12/17/08 Tr. at 99.

The Department then presented the testimony of Linda Gore, the employer's bookkeeper, and Eric Smith, who performed a Department audit of the Gallaways for the fourth quarter of 2004 through the third quarter of 2007. The claimant's husband asked Ms. Gore several questions. 1/18/09 Tr. at 10-12. The industrial appeals judge also questioned her. 1/8/09 Tr. at 13-15. The industrial appeals judge offered the claimant an opportunity to question Mr. Smith, and rephrased and asked her questions. 1/8/09 Tr. at 24. He also asked some additional questions of his own. 1/8/09 Tr. at 26-28.

At the outset, we note that the Department did not object to the industrial appeals judge's questioning of either Ms. Acevedo or Ms. Castillo. We agree that his decision to take the lead in questioning both witnesses was appropriate. Indeed, when an unrepresented party is testifying, the best approach is for the judge to focus the witness on the issues at hand with a question-and-answer format, rather than permitting purely narrative testimony. The question-and-answer format makes for a clearer record, and also provides the opposing party a fair opportunity to lodge objections. With respect to Ms. Castillo's testimony, the Department implicitly acknowledged that her need for an interpreter added an extra layer of difficulty to the process of questioning her. The industrial appeals judge rightly took the lead, so that the record would be clear.

In challenging the industrial appeals judge's questioning of Ms. De La Rosa and Tricia Acevedo, the Department relied on *In re Olson*, 69 Wn. App. 621, 625-626 (1993), for the proposition that "[p]ro se litigants are held to the same standards as attorneys." Petition for Review, at 5. In *Olson*, the Court noted:

> the trial court was under no obligation to grant special favors to Mr. Olson as a pro se litigant, nor is this court. Understandably, as a pro se litigant, Mr. Olson's representation of himself was unskilled. Undoubtedly, an attorney would have made different tactical decisions and more effective use of cross examination. Unfortunately for Mr. Olson, 'the law does not distinguish between one who elects to conduct his or her own legal affairs and one who seeks assistance of counsel -- both are subject to the same procedural and substantive laws.' *In re Marriage of Wherley,* 34 Wn. App. 344, 349, 661 P.2d 155, review denied, 100 Wn.2d 1013 (1983).

Olson, 69 Wn. App. at 626.

However, *Olson* does not stand for the proposition that our judges should not provide any assistance to the parties who appear before them. There is ample authority to the contrary. Under ER 614(b): "The court may interrogate witnesses, whether called by itself or by a party; provided, however, that in trials before a jury, the court's questioning must be cautiously guarded so as not to constitute a comment on the evidence." RCW 51.52.102 provides:

> the board may continue hearings on its own motion to secure in an impartial manner such evidence, in addition to that presented by the parties, as the board, in its opinion, deems necessary to decide the appeal fairly and equitably, but such additional evidence shall be received subject to any objection as to its admissibility, and, if admitted in evidence all parties shall be given full opportunity for cross-examination and to present rebuttal evidence.

WAC 263-12-045(2)(e) and (f) provide:

> It shall be the duty of the industrial appeals judge to conduct conferences or hearings in cases assigned to him or her in an impartial and orderly manner. The industrial appeals judge shall have the authority, subject to the other provisions of these rules:
>
> . . .
>
> (e) To interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the appeal;
>
> (f) To secure and present in an impartial manner such evidence, in addition to that presented by the parties, as he or she deems necessary to fairly and equitably decide the appeal . . ..

WAC 263-12-020(1)(d) provides:

> (d) Although the industrial appeals judge may not advocate for either party, all parties who appear either at conferences or hearings are entitled to the assistance of the industrial appeals judge presiding over the proceeding. Such assistance shall be given in a fair and impartial manner consistent with the industrial appeals judge's responsibilities to the end that all parties are informed of the procedure which is to be followed and the issues which are involved in the proceedings. Any party who appears representing himself or herself shall be advised by the industrial appeals judge of the burden of proof required to establish a right to the relief being sought.

Based on these provisions, we have consistently held that, when the party with the burden of proof is unrepresented, our judges must ask those questions necessary to elicit a prima facie case. *In re Calvin Williams*, BIIA Dec., 04 12770 (2005); *In re Doretta Pratt*, Dckt. No. 04 16655 (May 3, 2006); and *In re Chester Burns*, Dckt. No. 08 11027 (February 4, 2009). In *Williams*, we addressed the scope of this responsibility as follows:

> We also note that the judge, in his December 9, 2004 letter to Mr. Williams, stated that he would only be asking questions concerning the doctor's qualifications and

> not any substantive questions. We think this is a very narrow interpretation of our obligation to secure additional evidence to 'fairly and equitably decide the appeal.' WAC 263-12-045(2)(f). See RCW 51.52.102. The hearing judge should ask those questions necessary to present a 'bare bones' prima facie case. We do not believe this would constitute 'advocacy' on the part of the judge based on our rules, as well as our legislative mandate. *In re Adeline I. King*, Dckt. No. 92 2380 (January 25, 1994) and *In re Gladys G. Langen*, Dckt. No. 68,404 (January 3, 1986).

Williams, at 3.

In *King*, the industrial appeals judge questioned the claimant's expert witness and sustained a hearsay objection to the doctor's reference to his nurse practitioner's notes. On review, we held that the judge should have attempted, through further questioning, to ascertain if the records were admissible as business records under ER 803(a)(4) and RCW 5.45.020, or whether the doctor's reliance on the notes was permissible under ER 703. We stressed that we did not believe:

> our industrial appeals judges are cast into an improper advocacy role by providing assistance of the particular kind which we have just described. We encourage the provision of such assistance even in instances where a party is represented by an attorney who may have some apparent difficulty with a pivotal evidentiary rule when the problem and solution is obvious to the industrial appeals judge. This encouragement arises out of our commitment to ensure that appeals are decided 'fairly and equitably.' RCW 51.52.102.

King, at 7.

In *Langen*, we vacated a Proposed Decision and Order and remanded for further proceedings because the industrial appeals judge had sustained objections to questions propounded by the pro se employer to her expert witness. We noted that, as a non-attorney, the co-owner of the company was not "as versed in all skills required in the presentation of witnesses before a quasi-judicial forum." *Langen*, at 1. As a result, objections were made to a series of questions she propounded, bearing directly on the facts underlying her expert's opinion. The industrial appeals judge sustained those objections. We held that those rulings unfairly curtailed the employer's opportunity to inquire, explaining:

> We have long recognized that non-attorneys appearing before this Board may not be fully conversant with the legal technicalities governing modes of interrogation and presentation of witnesses. It is well within the duties of our industrial appeals judges to assist any party, whether represented by counsel or not, in the presentation of their evidence, so long as such is done in a fair and impartial manner. WAC 263-12-045 and WAC 263-12-120.

Langen, at 2.

In *Pratt*, the claimant rested after presenting her medical witness, without presenting her own testimony. She told the industrial appeals judge that she felt too physically uncomfortable to proceed. There was no indication on the record that the judge advised her of the consequences of failing to testify. We vacated the Proposed Decision and Order and remanded for further proceedings, holding that:

> a pro se appellant should be informed of the adverse consequences of canceling the testimony of an essential witness. To put it another way, since we require our judges to inform an unrepresented claimant of his or her burden of proof in an appeal, they should also indicate on the record the consequences of canceling a witness whose testimony is necessary to present a prima facie case.

Pratt, at 4-5.

We directed that:

> Our judge should ask Ms. Pratt such questions as may be necessary for her to present a prima facie case regarding her eligibility for additional treatment and time loss benefits. *In re Calvin Williams,* BIIA Dec., 04 12770 (2005). This necessarily includes questions regarding any admissible evidence that Ms. Pratt's cervical conditions have previously been treated under this claim. Such evidence is relevant to the determination of whether Ms. Pratt's current cervical conditions are proximately caused by her industrial injury.

Pratt, at 5-6.

In *Burns*, "the claimant acted pro se and called his attending provider, Jonathon Wolman, ARNP to testify. Our industrial appeals judge failed to ask Nurse Wolman the necessary questions to elicit information that might establish a prima facie case." *Burns*, at 1-2. We held that: "The industrial appeals judge should have asked the appropriate questions. See *In re Calvin Williams*, BIIA Dec., 04 12770 (2005)." *Burns*, at 2. We remanded the matter for an additional hearing "to provide Nurse Wolman, or another medical expert, the opportunity to respond to the questions that would elicit testimony to establish a prima facie case." *Burns*, at 2. We directed the industrial appeals judge to ask those questions if Mr. Burns appeared at the hearing unrepresented.

With this backdrop, we return to the Petition for Review. The Department has cited *Nationscapital Mortgage Corp. v. Department of Financial Institutions*, 133 Wn.App. 723, 758 (2006) in support of its contention that the industrial appeals judge violated the appearance of fairness doctrine through his questioning of the claimant's witnesses. Petition for Review, at 5. The

Department has paraphrased a portion of the Court's opinion. We quote that portion of the opinion in full:

> Generally, under the appearance of fairness doctrine, proceedings before administrative tribunals acting in a quasi-judicial capacity are valid only if 'a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing.' *Wash. Med. Disciplinary Bd. v. Johnston,* 99 Wn.2d 466, 478, 663 P.2d 457 (1983). The doctrine is intended to avoid the evil of participation in the decision-making process by a person who is personally interested or biased. *City of Hoquiam v. Pub. Employment Relations Comm'n,* 97 Wn.2d 481, 488, 646 P.2d 129 (1982). Under the appearance of fairness doctrine, it is not necessary to show that a decision-maker's bias actually affected the outcome, only that it could have. *Buell v. City of Bremerton,* 80 Wn.2d 518, 523, 495 P.2d 1358 (1972).

Nationscapital, 133 Wn.App. at 758-759; Petition for Review, at 5.

The Department has neglected to include the critical language immediately following the above quote:

> But in the context of administrative proceedings, the appearance of fairness doctrine exists in tension with the presumption that public officials will properly perform their duties. See *Johnston*, 99 Wn.2d at 479. To overcome the presumption, a party invoking the appearance of fairness doctrine must come forth with evidence of actual or potential bias.

Nationscapital, 133 Wn.App. at 759.

The Department complains that the industrial appeals judge took the lead in questioning the claimant's witnesses and asked numerous questions of them. Yet the Department has not pointed to any evidence of actual or potential personal interest or bias, nor do we find any such evidence in our review of the record. Not only is there a presumption that the industrial appeals judge properly performed his duties, he was in fact fulfilling his obligations as dictated by our prior decisions. The test of whether he acted appropriately is not whether he took the lead in asking questions or the number of questions asked, but whether those questions were asked in an advocatory manner rather than to elicit facts. See, discussion, *Sherman v. Moloney*, 106 Wn.2d 873, 882-884 (1986).

Given the legal issue at stake, which appears to be a matter of first impression before us, and the fact-intensive inquiry necessary to resolve that issue, the number of questions asked by the industrial appeals judge, as well as his manner in asking them, were entirely appropriate. Unlike an advocate for a particular party, he had no knowledge of the case, other than what he elicited

through questioning. Of necessity, some of his questions cut a wide swath, since he was asking questions without knowing or having a stake in what the answers would be. It would not be appropriate to use hindsight to parse each and every question asked, nor has the Department pointed to any particular question or series of questions it deems objectionable.

The Department has also misconstrued the industrial appeals judge's reference to his "independent obligation to create a complete record." Petition for Review, 4. That expression is not evidence of advocacy. Rather, the industrial appeals judge was using a term of art to describe the obligation we have placed on him to make a complete record for our review, as well as for the courts beyond us.

Finally, the judicial role in questioning witnesses when a party is appearing pro se is likely to arise again. We therefore take this opportunity to suggest several guidelines, in addition to those already set forth in our rules and prior decisions. Our judges should avoid asking leading questions "except as may be necessary to develop the witness's testimony." ER 611. They should not attempt to elicit testimony that is inadmissible under the rules of evidence. They should ask the necessary questions, and then turn the process over to the parties. The purpose of their questions should be to elicit facts, not to act as an advocate for any party. To that end, it may be helpful to provide all parties, prior to hearing, with the likely questions that will be asked or areas that will be delved into.

The Department's focus in the current appeal has been on the industrial appeals judge's questioning of the claimant's witnesses. The extent to which a judge should question the opposing party's witnesses was not raised. Nonetheless, we caution that our judges should not cross-examine the opposing party's witnesses on behalf of the unrepresented party. As a general rule, the judge should require the unrepresented party to proceed with whatever cross-examination that party chooses to engage in. Thereafter, the judge may ask clarifying questions, or questions pertaining to matters uniquely within the judge's purview, like an expert witness's qualifications.

In sum, the judicial questioning here did not violate the appearance of fairness doctrine and was appropriate under our rules, the court rules, the statute, and our prior decisions. The April 3, 2009 Proposed Decision and Order is vacated and the appeal is remanded to the hearings process, pursuant to WAC 263-12-145(4), for further proceedings to ascertain whether Elijah Gallaway's estate should be substituted as a party, to place that determination on the record, and to hold

further proceedings if necessary. This order is not a final appealable Decision and Order of the Board within the meaning of RCW 51.52.110. On remand, unless the appeal is dismissed or resolved by an Order on Agreement of Parties, the industrial appeals judge will issue a new Proposed Decision and Order. The new order will contain findings and conclusions as to each contested issue of fact and law. Any party aggrieved by the new Proposed Decision and Order may petition the Board for review, pursuant to RCW 51.52.104.

Dated: August 24, 2009.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
THOMAS E. EGAN Chairperson

/s/_____
FRANK E. FENNERTY, JR. Member

/s/_____
LARRY DITTMAN Member