

## **Leal, Cristobal**

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### **BOARD**

#### **Summary judgment**

Summary judgment may be granted in favor of a non-moving party where there is no genuine issue of material fact. ...*In re Cristobal Leal*, BIIA Dec., 15 21241 (2017)

Scroll down for order.

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

**IN RE: CRISTOBAL L. LEAL** ) **DOCKET NO. 15 21241**  
 )  
**CLAIM NO. AN-89634** ) **DECISION AND ORDER**

Christobal L. Leal injured his low back during the course of his employment as a mechanic for Clearview Farm, Inc. On the application for industrial insurance benefits that Mr. Leal filed because of the injury, he informed the Department of Labor and Industries that he was married on the date he was injured. The Department allowed his claim and paid benefits, including time-loss compensation benefits calculated on the understanding that Mr. Leal was married. The Department subsequently determined that Mr. Leal's industrial injury rendered him permanently totally disabled. On the "Pension Benefits Questionnaire" Mr. Leal informed the Department that he was single and had never been married or in a registered domestic partnership. The Department issued an order changing the claimant's marital status from married to single. Mr. Leal contends that for purposes of establishing his workers' compensation benefits, it was res judicata that he was married. Based on the Washington Supreme Court's decision in *Birrueta v. Department of Labor and Industries*,<sup>1</sup> our industrial appeals judge granted summary judgment relief to the Department. We agree and affirm the Department order changing Mr. Leal's status from married to single. We granted review to make clear that, as our industrial appeals judge noted, summary judgment relief may be granted to a non-moving party.

**DISCUSSION**

Mr. Leal filed a Motion for Summary Judgment on March 23, 2016. The Department filed its Response to Claimant's Motion for Summary Judgment on March 30, 2016. It asked only that Mr. Leal's motion be denied.

Civil Rule 56, which governs motions for summary judgment, provides that judgment shall be rendered forthwith if the pleadings, answers to interrogatories, admissions on file and affidavits, if any are filed, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In *Rubenser v. Felice*,<sup>2</sup> the Washington Supreme Court held that judgment may be entered for a non-moving party so long as the facts of the case are not in dispute and the record demonstrates that the non-moving party is entitled to judgment as a matter of law. Our appellate courts have followed that holding in a long line of cases.

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<sup>1</sup> No. 92215-2 (September 15, 2016).

<sup>2</sup> 58 Wn.2d 862 (1961).

1 The material facts in this appeal are not in dispute. In his Application for Benefits, Mr. Leal  
2 told the Department that he was married. The Department administered Mr. Leal's claim in reliance  
3 on the information the claimant provided. In truth, Mr. Leal was single on the day when he was injured  
4 at work. Mr. Leal first notified the Department that he had never been married almost five years after  
5 he was hurt, when his pension benefits were being calculated.  
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8 In *Birrueta*, due to a miscommunication between the claimant and the person who completed  
9 his industrial injury claim, the Department paid benefits to Mr. Birrueta based on his reported status  
10 as a married individual who had one dependent on the date when he was injured at work. In fact,  
11 Mr. Birrueta was single when he was injured. It was only in early 2011, when he completed a required  
12 pension benefits questionnaire, that Mr. Birrueta told the Department that he was unmarried and had  
13 no dependents on the day when he was hurt. In accordance with RCW 51.32.240(1)(a), which allows  
14 recoupment of benefits erroneously paid, the Department subsequently issued an order that changed  
15 Mr. Birrueta's marital status for compensation purposes to single. Mr. Birrueta appealed, contending  
16 that prior orders that paid benefits to him based on the understanding that he was married were final  
17 and binding and barred the Department from changing his marital status.  
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20 After appeals to superior court and the court of appeals, our supreme court held that the  
21 recoupment statute applies to any order, whether final or interlocutory, that results in an erroneous  
22 overpayment of benefits.  
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24 The facts in this appeal are virtually identical to those presented in *Birrueta*. The undisputed  
25 material facts and the law definitively established that the Department was entitled to judgment in this  
26 appeal. No purpose would be served to deny judgment to the Department solely because it failed to  
27 formally move for summary judgment.  
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29 We grant summary judgment to the Department and affirm its September 4, 2015 order.  
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### 31 **DECISION**

32 In Docket No. 15 21241, the claimant, Cristobal L. Leal, filed an appeal with the Board of  
33 Industrial Insurance Appeals on September 28, 2015, from an order of the Department of Labor and  
34 Industries dated September 4, 2015. In this order, in accordance with RCW 51.32.240(1)(a), the  
35 Department changed Mr. Leal's marital status for purposes of establishing his rate of compensation  
36 from married to single. This order is correct, and it is affirmed.  
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**FINDINGS OF FACT**

1. On December 15, 2015, an industrial appeals judge certified that the parties agreed to include the Jurisdictional History in the Board record solely for jurisdictional purposes.
2. Christobal L. Leal injured his low-back during the course of his employment as a mechanic with Clearview Farm, Inc., on August 21, 2010.
3. On the application for industrial insurance benefits that Mr. Leal filed with the Department of Labor and Industries because of the injury, the claimant erroneously declared that he was married on the day when he was injured.
4. In reliance on the erroneous information regarding Mr. Leal's marital status that he provided, the Department paid time-loss compensation benefits to the claimant by orders that were not protested or appealed.
5. Mr. Leal was not married nor was he in a registered domestic partnership on the day when he was injured at work.
6. On July 6, 2015, Mr. Leal informed the Department that he was not married on the day when he sustained his industrial injury.
7. On September 4, 2015, the Department issued an order changing Mr. Leal's marital status for purposes of establishing his rate of compensation from married to single.
8. The incorrect information that Mr. Leal gave to the Department regarding his marital status was due to an innocent misrepresentation.
9. The pleadings and evidence submitted by the parties established that there is no genuine issue as to any material fact.

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**CONCLUSIONS OF LAW**

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in this appeal.
2. In accordance with Civil Rule 56, the Department is entitled to judgment as a matter of law.
3. The Department properly changed Mr. Leal's marital status for purposes of establishing his rate of compensation from married to single in accordance with RCW 51.32.240(1)(a).



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**Addendum to Decision and Order  
In re Cristobal L. Leal  
Docket No. 15 21241  
Claim No. AN-89634**

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**Appearances**

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Claimant, Cristobal L. Leal, by Smart, Connell, Childers & Verhulp, P.S., per Francesca Garcia  
Employer, Clearview Farm, Inc., by Cheryl Byerley  
Department of Labor and Industries, by The Office of the Attorney General, per  
Sarah A. McCalmant

**Petition for Review**

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The claimant filed a timely Petition for Review of a Proposed Decision and Order issued on October 28, 2016, in which the industrial appeals judge affirmed the Department order dated September 4, 2015.