

Final Mean Final: New Court of Appeals ruling changes how the Washington Department of Labor and Industries can treat final orders.

A recent decision by the Washington Court of Appeals (*Birrueta v. Dep't of Labor and Indus.*, Docket No. 32210-6-III) has important implications on how self-insured employers and claims adjusters initially administer new claims.

In the case, the emergency room doctor who saw Claimant after a ladder fall injury indicated on the accident form that the Claimant was married with one child. This information was incorrect, and Claimant was not married and had no children, but he could not understand English when he signed the accident form. The Department issued a wage order in 2008 based on the incorrect information. It was discovered in 2011 that Claimant was actually single, and issued an updated wage order based on innocent misrepresentation along with an overpayment order. Claimant protested the orders and argued the 2008 wage order was final and binding.

The matter made its way to the Court of Appeals from a Superior Court ruling in favor of Claimant's position. The Department argued that it can correct orders based on innocent error - which it argued was a distinct concept from adjudicator error - after they have gone final. There were some Board decisions in support of this position that final order could be corrected due to inaccuracy. The Court of Appeals disagreed, however, and sought to distinguish between final and non-final orders. It held that once an order had gone final the Department lost the ability to further adjudicate the matter.

The *Birrueta* decision makes it all the more important to obtain correct facts regarding a Claimant's wages and family relationships before the Department begins issuing orders. This is especially true in cases of non-English speaking Claimants, for whom the information regarding marital and dependency status may have been completed by a third person. Another concern is children of Claimants who may be listed erroneously as dependants, based on the Claimant's unfamiliarity with the applicable definition. After *Birrueta*, the Department no longer has the ability to correct wage orders based on such mistakes.

Claims examiners should be aware of this development, and ensure that due diligence is done to confirm facts at the outset of a claim. Once a new wage order is issued, all the representations made in the order should be verified for accuracy. One should consider protesting the wage order, if necessary, in order to complete the investigation and confirm the facts before the order goes final. Please contact Wallace Klor & Mann with questions or advice regarding this new law.