



Washington State Department of  
Labor & Industries

Self-Insurance



**Self-Insurance  
Training Presents:**

# **Disputes, Protests and Appeals**

*2024 Quarterly Training*

# Safety Video



# Resources

- L&I self-insured section – self-insured main-page  
<https://lni.wa.gov/insurance/self-insurance/about-self-insurance/>
- Claims Adjudication Guidelines – Medical Treatment  
[https://www.lni.wa.gov/insurance/\\_docs/CAGMedTreat.pdf](https://www.lni.wa.gov/insurance/_docs/CAGMedTreat.pdf)
- Claims Adjudication Guidelines – Protest and Appeals
  - Pay During Appeal Matrix  
[https://www.lni.wa.gov/insurance/\\_docs/CAGProtestAppeals.pdf](https://www.lni.wa.gov/insurance/_docs/CAGProtestAppeals.pdf)

# What is a Dispute?

- Disputes are similar to protests, except there has NOT been an order issued to make it a formal protest.
- A written disagreement with a SIE/TPA action on a claim where no order had been issued.
- Could be received by SIE/TPA or the department.

# Recognizing a Dispute

- The letter will usually consist of any of the following language:
  - Reconsideration
  - Protesting the decision...
  - “I do not want my claim closed”
  - Cancel
  - Disagree/Dispute

# Examples of Disputes

- Employer won't pay time-loss.
- Employer won't authorize treatment.
- Provider is not paid for services rendered.
- Time-loss paid incorrectly (rate of pay incorrect, payments not being paid timely).
- AP refuses to comply with reporting requirements.

# Department Initial Action

- Send the dispute acknowledgment letter.
- Review the dispute.
- Send a letter asking the SIE/TPA to explain their position along with a copy of the dispute.
- Send a letter requesting documentation needed in order to resolve the dispute.

# SIE/TPA Action

- Upon receipt of dispute, take appropriate steps to resolve the issue.
  - Inform the department of any action taken and/or explain your rationale.
- Within 10 working days from receipt of file/documentation request, send the requested information to the department.



# Resolving the Dispute

- When information is received, the department adjudicator will review and issue an order or letter.
  - If additional information is needed, it will be requested.
- If no documentation is received, a decision will be made with the information the department has on file.

# Action Per Department Order

- Benefits become due on the date a further order is issued.
- Every time benefits are unreasonably delayed or payment is refused as they become due, the SIE/TPA shall pay a penalty.

# Wages and Time-Loss Disputes

- Time-loss rates or dates can be disputed
- If rate is disputed:
  - Wage order
  - Letter of explanation
- If dates disputed:
  - Order directing or denying payment of benefits

# IME Disputes

- Disputes may be filed at any time during the process.
- Some reason(s) workers may dispute
  - Location of exam.
  - AP already recommended treatment/consult.
  - Already had an IME.
  - Quality of examiner/report.
- Should include a copy of the Self-Insurance Assignment Letter.

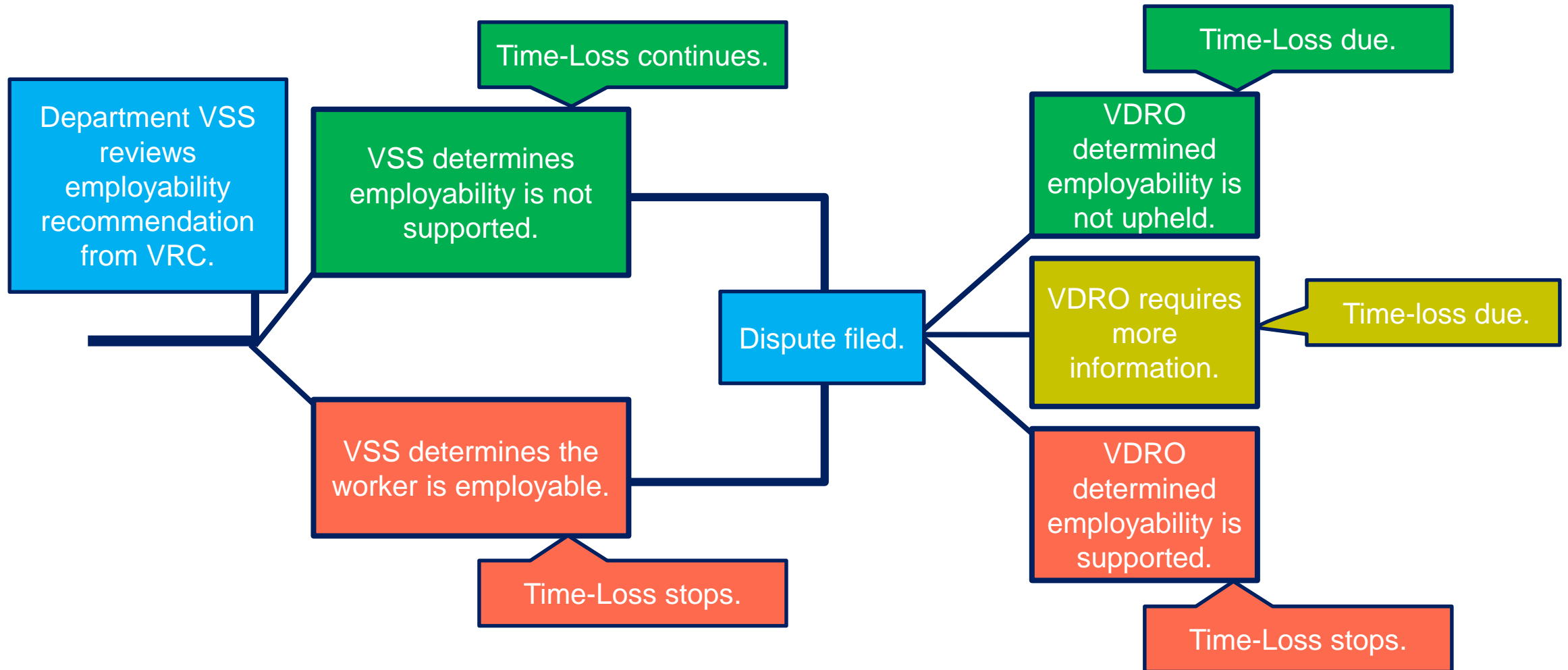
# Vocational Disputes

- Vocational Dispute Resolution Office (VDRO)
- Only elements that can be disputed:
  - Finding worker eligible or not eligible for services.
  - Approved vocational plan.
  - Approved plan modifications.
- VDRO makes recommendation to the Director

# Time-Loss During Vocational Disputes

- Payments are discretionary, but should follow:
  - If employable, time-loss not payable.
  - If employability not upheld, restart time-loss.
  - If deferred, restart time-loss.

# Paying Time-Loss VOC Dispute



# Lump Sum Requests

- Worker does not want monthly payments.
- Written request must be received.
- Order must be final.
- Department will determine if lump sum is appropriate.



# Knowledge Check



Within how many days of the department's request for a copy of the claim file/documentation must the requested information be sent to the department?

10 working days

Within how many days should you respond to a notice of dispute letter with any action taken and/or an explanation or rationale?

15 business days

# Which are examples of a dispute?

1. Worker writes in that they have not received time-loss benefits.
2. Provider disagrees with the amount paid for services.
3. Worker sends a letter that an IME appt. is too far away.
4. Worker writes a letter that they want a new claim manager.
5. Worker writes in response to a Notice of Overpayment in disagreement.

You are on the phone with a worker and they disagree with the denial of additional physical therapy. They insist they need more visits and that their AP has recommended it.

What should you do?

Advise them that if they wish to dispute the action they need to submit it in writing.

# Who handles vocational disputes?

1. Vocational Rehab Counselor (VRC)
2. Vocational Dispute Resolution Office (VDRO)
3. Vocational Services Specialist (VSS)
4. Department Adjudicator

Tim's VRC found him employable and submitted the closing report on 9/30/22. The department VSS determined employability was not supported via letter issued on 10/24/22. The SIE files a dispute to this determination on 11/1/22. Today is 11/10/22. To date, what period would time-loss be due?

9/30/22 -11/10/22

# What is a Protest?

- Any party aggrieved by an order and notice has a right to protest the decision.
- Orders issued by the self-insured employer can be protested to the department, SIE, or appealed to the Board of Industrial Insurance Appeals.
- Orders issued by the department can be protested to the department or appealed to the Board of Industrial Insurance Appeals.



# Timeliness of Protest

- Has the order been communicated to all parties?
- Was the protest received within 60 days of the date the order was communicated?
  - The date the protest is received by the SIE/TPA is considered the date received by the department.
  - Per WAC 296-15-480, a SIE/TPA must submit a written protest by a worker to the department within 5 working days of receipt.

# Recognizing a Protest

- The letter will usually consist of any of the following language:
  - Reconsideration
  - Protesting the decision and order dated...
  - “I do not want my claim closed” after a closing order has been issued.
  - Cancel
  - Disagree/Dispute
  - “Any adverse orders issued within the last 60 days”

# Is Medical a Protest?

- If you are unsure if a medical document is a protest:
  - Call the provider's office to clarify if they intended to protest.
  - Determine if the document was received within 60 days of the order.
  - Verify the order in question was sent to the provider and if they were an interested party.

# Is it a Protest?

- If you are unsure if any other document is a protest:
  - Call the sender and verify if it was meant as a protest.
  - Keep an eye on your timeframes.
    - 60 days from order.
    - 5 days from receipt.

# Department Initial Action

- Send the protest acknowledgment letter.
- Review the protest.
- If more information is needed:
  - Place protested order in abeyance.
  - Send a letter requesting documentation needed in order to resolve the protest.

# Resolving the Protest

- When information is received, the department adjudicator will review and issue an order.
  - If additional information is needed, it will be requested.
- If no documentation is received, a decision will be made with the information the department has on file.

# SIE/TPA Action

- Within 10 working days from receipt of file/documentation request sent the requested information to the department.
- Following the department order resolving the protest take appropriate action.

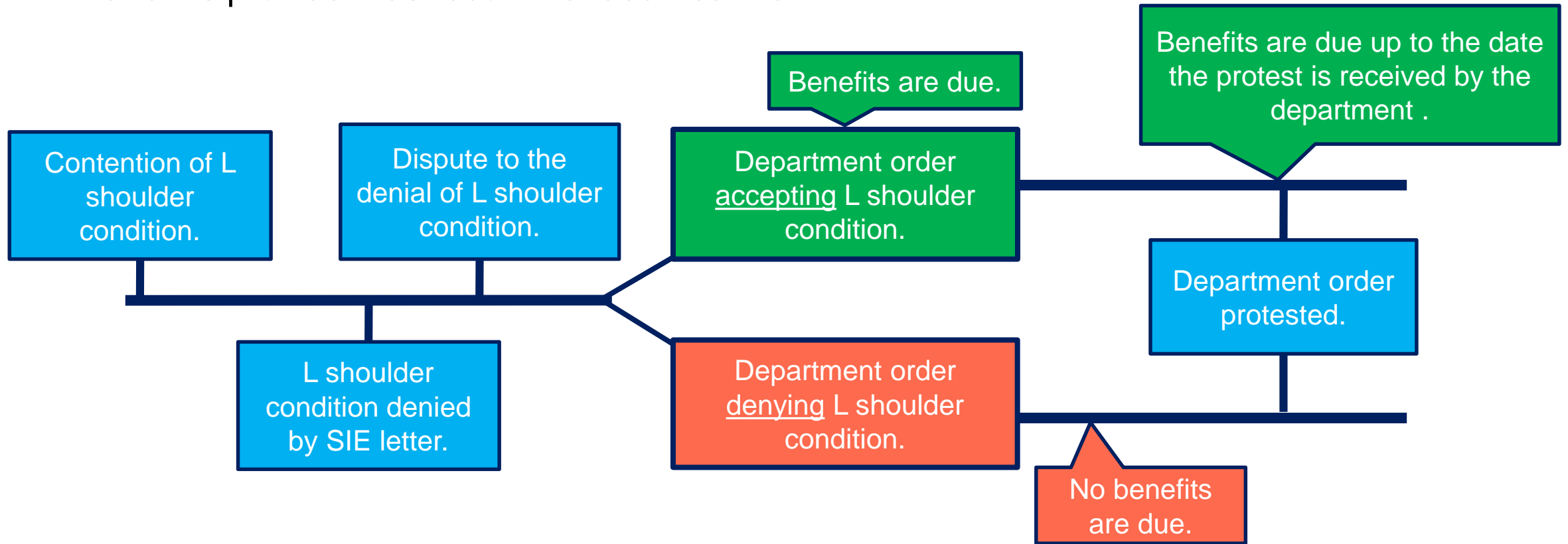
# Action Per Department Order

- Benefits become due on the date a further order is issued.
- Every time benefits are unreasonably delayed or payment is refused as they become due, the SIE/TPA shall pay a penalty.
- See Pay During Appeal Matrix.



# Paying Benefits During Protest Process

Josh has a claim for a low back strain from a slip and fall which is accepted. Three months after the injury he reports that his left shoulder has been bothering him as well and his provider has recommended treatment.



# Withdrawing a Protest

- Request to withdraw a protest must be in writing.
- Further order must still be issued affirming the decision.

# Protest to Appealable-Only Order

- Some department orders are only appealable to the BIIA.
- “Protest” could be received to such orders and should be forwarded to the department to be handled as a misdirected appeal.

# Protest to Ministerial Orders

- Parties can only protest the department's compliance with the Board order.
  - Actions not taken as directed
  - Typos
- Board decisions should be appealed to higher court if a party still disagrees.

# Typos/Clerical Errors

- Defined as transposition of numbers, typographical errors or other like circumstances.
  - If typo is discovered prior to 60<sup>th</sup> day, no written protest is needed to correct the order.
  - If department is notified in writing, it will be treated like a protest.

# Knowledge Check



Jim's claim closed on 9/8/22. He wrote a letter stating he still needed treatment which was received on 10/12/22. You sent it to the department on 10/20/22.

Is this a timely protest?

Yes

Was it sent to the department timely?

No

Cheri protested the denial of her claim on 8/9/2023. She remains unable to work. The department reviewed the protest and allowed her claim on 10/1/2023.

When must benefits be issued?

Immediately



Lacey's preferred language is French. Her claim closed on 6/10/21 with orders mailed to her and her attending provider. The translated copy was mailed to her on 6/24/21. Her protest was received on 8/20/21.

Is this a timely protest?

Yes

True or False:

If the department receives a request to withdraw a protest a further order is required.

True, a further order is still required affirming the decision.

# What orders are appealable only?

1. Closing orders
2. Affirm orders
3. Wage orders
4. Interlocutory orders
5. Timeliness orders
6. Board/Ministerial orders

What is the difference between a dispute and a protest?

A dispute is a disagreement to any claim action where no order has been issued while a protest is to a decision made by order.

# What is an Appeal? (RCW51.52.050)

- Any party who disagrees with an order and notice has a right to appeal the decision.
- Orders issued by a self-insured employer can be protested to the department.
- Orders issued by the department can be:
  - Protested to the department, or
  - Appealed to the Board of Industrial Insurance Appeals.

# Timeliness of Appeals

- Has the order been communicated to all parties?
- Was the appeal received within 60 days of the date the order was communicated?
  - The date the appeal is received by the SIE/TPA is considered the date received by the department.
  - Per WAC 296-15-490, a SIE/TPA must submit a written appeal by a worker to the department within 5 working days of receipt.

# Appeal Process

- The Board of Industrial Insurance Appeals (BIIA) has three board members appointed by the governor.
- Employs attorneys as industrial insurance judges.

# Department Initial Action

- The Board assigns a docket number to each appeal and then forwards them to the department.
- The department reviews the forwarded appeals.
- Within 30 days, decides if the department will reassume the issue or return it to the Board for litigation.



# Board Action

- If the department reassumes jurisdiction of the claim, the Board issues an order denying the appeal.
- Appeals returned to the Board without department action are granted and assigned to an industrial appeals judge in the geographic area of the workers residence.
- The Board will deny the appeal if the decision appealed was not a final decision or if they determine they do not have jurisdiction for some other reason.

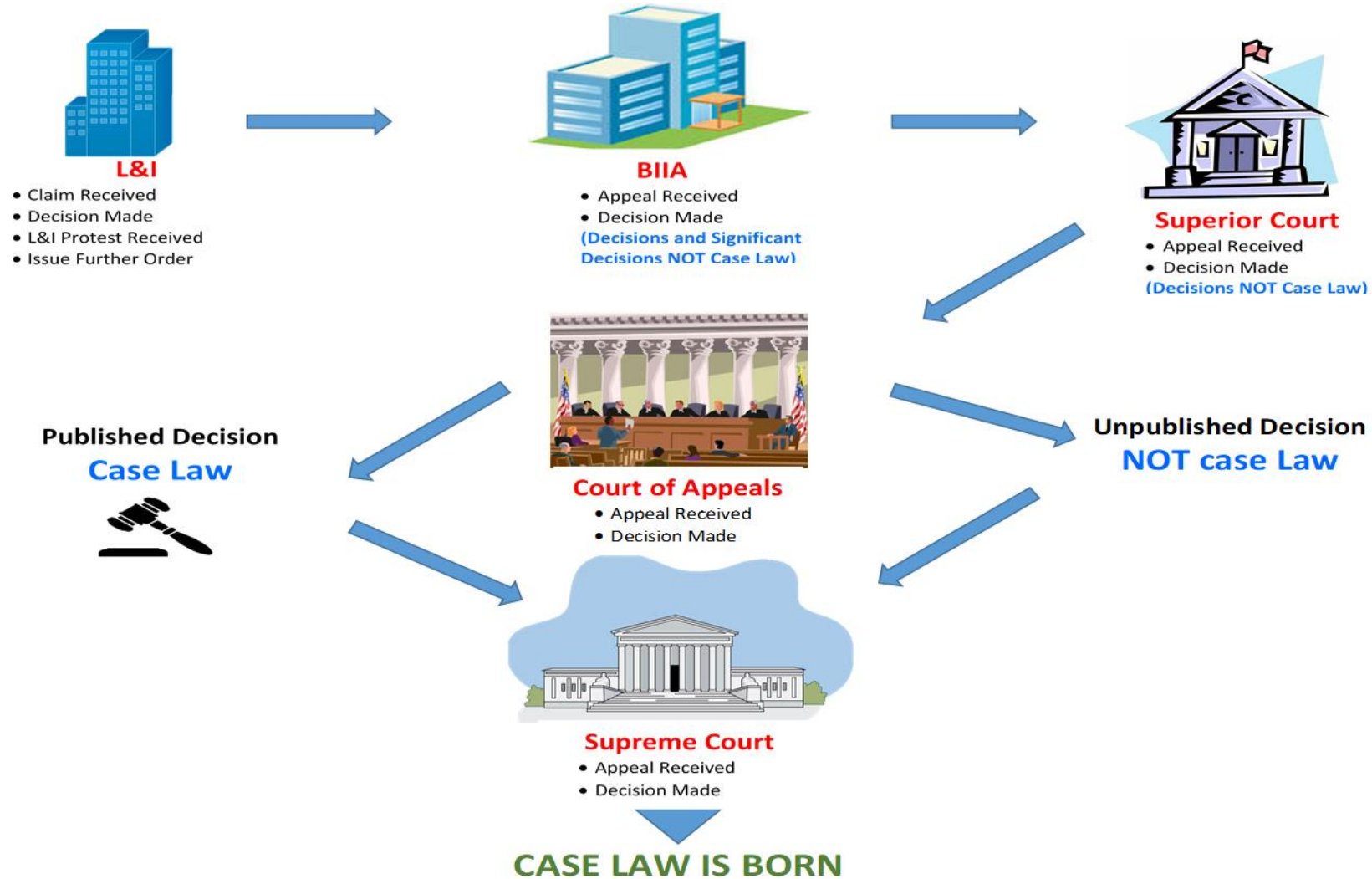
# Court Appeals

- A final decision from the Board can be appealed to Superior Court within 30 days of communication of the Board order.
- The department may appeal issues of law only.
- To make its decision, the Superior Court will review all transcripts, testimony and exhibits from the Board hearing.
- The court will issue a judgment that upholds, reverses, or modifies the Board's order.

# Court Appeals

- A further appeal from a Judgment of the Superior Court may be made to the Court of Appeals.
- A Court of Appeals decision may be appealed to the Washington State Supreme Court.
- Determinations and interpretation of the law at these two levels may be considered to set precedent for the handling of future cases with similar factual makeup.

# Journey of The Courts



# When are benefits due?

- When an order awarding benefits is appealed to the Board, benefits must continue to be paid unless there is a stay of benefits.
- Two types of benefit orders are automatically stayed by law.
- The employer can make a motion to stay benefits any time from the notice of appeal until 15 days after the Board order granting appeal.

# Knowledge Check



If any party wishes to appeal an order and notice, by when must they submit their appeal?

60 days from the order  
being communicated

Can a party appeal a Board order?

Yes



Within how many days of receipt of a worker written appeal must the SIE/TPA forward it to the department?

5 working days

# Resources

- L&I self-insured section – self-insured main-page  
<https://lni.wa.gov/insurance/self-insurance/about-self-insurance/>
- Claims Adjudication Guidelines – Medical Treatment  
[https://www.lni.wa.gov/insurance/\\_docs/CAGMedTreat.pdf](https://www.lni.wa.gov/insurance/_docs/CAGMedTreat.pdf)
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