

THE SUPREME COURT

STATE OF NORTH DAKOTA

EDDIE SALVADOR GIL,)	COUNTY OF WILLIAMS
)	
Appellant,)	Supreme Court No: 20200253
)	Claim No. 53-2020-CV-00298
vs.)	
)	
)	
NORTH DAKOTA WORKFORCE)	
SAFETY INSURANCE FUND,)	
)	
Appellee.)	

APPELLANT’S REPLY BRIEF TO THE NORTH DAKOTA SUPREME COURT

ADMINISTRATIVE LAW JUDGE’S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER, INDEX #10 AND WSI’S MOTION TO DISMISS APPEAL # 13 AND ORDER FOR JUDGMENT, BY THE HONORABLE BENJAMEN J. JOHNSON, DISTRICT COURT JUDGE, INDEX #26 AND JUDGMENT TO DISMISS, INDEX #27 ENTERED ON JULY 24, 2020 WITH THE NOTICE OF ENTRY OF JUDGMENT INDEX #28 SERVED ON THE 27TH DAY OF JULY, 2020.

**COUNTY OF WILLIAMS
NORTHWEST JUDICIAL DISTRICT
THE HONORABLE BENJAMEN J. JOHNSON**

STEPHEN D. LITTLE (ID 03323)

1] The Appellee's brief argues that Appellant Eddie Gil's good cause for failing to properly file and serve his appeal is irrelevant. WSI points out that this Court's decision in Inwards v. WSI, 2014 ND 163, 851 N.W.2d 693 determined that the failure of WSI's counsel to understand the requirements of service was a "technical problem" and thus, excusable. This Court's decision in Inwards affirmed that of the District Court which had accepted WSI's argument that its counsel's lack of understanding of the requirements of service was good cause for not complying with those requirements. Eddie Gil simply asks not to be held to a higher standard than that applied to a lawyer for WSI. Surely, if a lawyer's misunderstanding of the technical requirements of service is good cause for relaxing those requirements, Mr. Gil has good cause as well. Again, WSI has not suffered prejudice if Mr. Gil is allowed to proceed with his appeal.

2] The record of proceedings contained in the ALJ's decision shows that Mr. Gil was surprised that counsel was not present at hearing to represent him as he had expected (APP 010). The record shows that Mr. Gil could not understand English and required a translator to let him participate in the hearing. If Mr. Gil could not understand spoken English well enough to participate in the hearing without translation, presumably he could not read WSI's exhibits. The record shows that Mr. Gil agreed, after discussion with the ALJ (presumably through the translator), to close the hearing without taking the testimony of the only witness who could confirm Mr. Gil's injury. WSI suggests that none of these facts are relevant to the issue of subject matter jurisdiction. These facts were offered to demonstrate that Mr. Gil's inability to understand English, coupled with his obvious lack of understanding of the hearing process, itself, affected his decision-making at hearing. Mr. Gil's actions in appealing the ALJ's decision were taken with the same language

difficulties and the same lack of understanding of the appeal process that he had shown at hearing.

3] WSI's situational approach to a fair consideration of Mr. Gil's appeal is regrettable. The organization apparently believes that injured workers such as Eddie Salvador Gil should be held to a higher standard of practice than its own attorneys. Mr. Gil's documented difficulty understanding English, coupled with his unfamiliarity with North Dakota legal procedure, is good cause for his failure to comply with that procedure. Absent prejudice, Mr. Gil's appeal should be allowed to proceed.

4] Dated this 2nd day of December, 2020

LITTLE LAW OFFICE

/s/ Stephen D. Little

Stephen D. Little (ND ID #03323)

220 East Rosser Ave., Unit 4090

Bismarck, ND 58502

T/N: 701-222-176

littlelaw@littlelawnd.com

ATTORNEY FOR APPELLANT

THE SUPREME COURT
STATE OF NORTH DAKOTA

EDDIE SALVADOR GIL,)	COUNTY OF WILLIAMS
)	
Appellant,)	Supreme Court No: 20200253
)	Claim No. 53-2020-CV-00298
vs.)	
)	
)	
NORTH DAKOTA WORKFORCE)	CERTIFICATE OF SERVICE
SAFETY INSURANCE FUND,)	
)	
Appellee.)	

1] I, Stephen D. Little certify that on the 2nd day of December, 2020, I caused to be filed an Appellant’s Reply Brief to The ND Supreme Court and Certificate of Service with the North Dakota Supreme Court through the ND Supreme Court E-File Portal and served the following:

Supreme Court of North Dakota
supclerkofcourt@ndcourts.gov

Mitchell Armstrong
Marmstrong@smithporsborg.com

2] Dated this 2nd day of December, 2020.

LITTLE LAW OFFICE

/s/

STEPHEN D. LITTLE (ID 03323)
Attorney For The Appellant
220 E. Rosser Ave., Unit 4090
Bismarck, ND 58502
(701) 222-1761
littlelaw@littlelawnd.com