

**FILED**

**AUG 16 2017**

**Superior Court  
Linda Myhre Enlow  
Thurston County Clerk**

**WASHINGTON STATE SUPERIOR COURT  
THURSTON COUNTY**

In the matter of:

Daniel Binswanger

Petitioner, Pro Se

Re: OAH DOCKET NO. 02-2017-GOV-0004

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)  
) **PETITION FOR JUDICIAL REVIEW**  
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17-2-04603-34

**NAME AND MAILING ADDRESS OF PETITIONER**

The Petitioner in this matter is: Daniel Binswanger (hereinafter sometimes referred to as "Mr. Binswanger" or "Petitioner").

The Petitioner's mailing address is: PO Box 3125 Sequim, WA 98382.

**FACTS THAT DEMONSTRATE THAT THE PETITIONER IS ENTITLED TO OBTAIN JUDICIAL REVIEW**

1) On April 24, 2017, May 3, 2017 and May 17-18, 2017, Administrative Law Judge Lisa N. W. Dublin of the Washington State Office of Administrative Hearings presided over a hearing to determine if the Port of Port Angeles retaliated against Daniel Binswanger in violation of Chapter 42.41 RCW and, if so, what the appropriate penalty would be. (Attached hereto, OAH Docket No. 02-2017-GOV-00004 PREHEARING CONFERENCE ORDER AND NOTICE OF HEARING, as well as, Chapter 42.41. RCW).

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1           2) On July 17, 2017, ALJ Dublin issued her Final Order. (Attached hereto, OAH Docket No. 02-2017-  
2 GOV-00004 FINAL ORDER).

3  
4           3) Page 17 and 18 of ALJ Dublin's Final Order includes notice of appeal rights, including an option for  
5 Judicial Review.

6  
7           4) Chapter 42.41 RCW, subsection 42.41.010 (Policy), states: *"It is the policy of the legislature that local  
8 government employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper  
9 governmental actions of local government officials and employees. The purpose of this chapter is to protect local  
10 government employees who make good-faith reports to appropriate governmental bodies and to provide remedies  
11 for such individuals who are subjected to retaliation for having made such reports."*

12  
13           5) Chapter 42.41 RCW, subsection 42.41.030(1) (Right to report improper governmental action--Policies  
14 and Procedures.), states: *"Every local government employee has the right to report to the appropriate person or  
15 persons information concerning alleged improper governmental action."*

16  
17           6) Chapter 42.41 RCW, subsection 42.41.040(1) (Retaliatory action unlawful—Relief by whistleblower—  
18 Penalty.), states: *"It is unlawful for any local government official or employee to take retaliatory action against a  
19 local government employee because the employee provided information in good faith in accordance with the  
20 provisions of this chapter that an improper governmental action occurred."*

21  
22           7) Chapter 42.41 RCW, subsection 42.41.020(3) (Definitions.), states in part: *"Retaliatory action"  
23 means: (a) Any adverse change in a local government employee's employment status...suspension, dismissal or  
24 any other disciplinary action..."*

25  
26           8) On page 8 of ALJ Dublin's July 17, 2017, Final Order, in subsections 4.15. and 4.16., she states in part:  
27 **4.15. "At the Port commission meeting on January 9, 2017, Mr. Binswanger brought to the attention of the**

1 *commission what he determined to be a financial discrepancy of approximately \$79,000.00...* “*Ms. Goschen and*  
2 *Finance & Administration Director John Nutter recalled Commissioner Burke commenting that the Port could*  
3 *play a “shell game” with the money.*” “*Commissioners Burke, Beauvais, and McAleer did not recall any such*  
4 *statement.*”; 4.16. “*Based on the totality of the circumstances, I resolve conflicting testimony in favor of Ms.*  
5 *Goschen and Mr. Nutter, finding that Commissioner Burke suggested playing a shell game to account for the*  
6 *financial discrepancy.*”

7  
8 9) On pages 11 and 12 of ALJ Dublin’s July 17, 2017, Final Order, in subsections 4.26., 4.27., 4.28. and  
9 4.29., she states in part: 4.26. “*The morning of Monday January 23, 2017, Mr. Binswanger emailed Human*  
10 *Resources Manager Holly Hairell and asked to meet with her...*”; 4.27. “*Later that afternoon, Mr. Binswanger*  
11 *met with Ms. Hairell, stated he was not getting along with Ms. Goschen...and, that he wanted to take action*  
12 *regarding her unethical action relative to a lease.*” “*Ms. Hairell stated she had to leave, but would think about it*  
13 *and suggested they talk again the following morning.*”; 4.28. “*After leaving work, Ms. Hairell called her*  
14 *supervisor, John Nutter, and informed him of her meeting with Mr. Binswanger. Mr. Nutter then reported this to*  
15 *Ms. Goschen...*”; 4.29. “*That evening, Ms. Goschen emailed Mr. Binswanger and placed him on paid*  
16 *administrative leave...*”; 4.32. “*The evening of January 30, 2017, Ms. Goschen emailed Mr. Binswanger that the*  
17 *Port intended to discharge him for insubordination and unsatisfactory conduct...*”

18  
19 10) On page 15 of ALJ Dublin’s July 17, 2017, Final Order, in subsection 5.9., she states in part: “*In the*  
20 *present case, over the course of his communications with Ms. Hairell on January 23, 2017 in person...Mr.*  
21 *Binswanger reported alleged improper governmental activity, i.e. filed a whistleblower claim, relative to the*  
22 *CRTC lease and the EDA...*”

23  
24 In conclusion, as ALJ Dublin’s ruling reveals, in the afternoon of January 23, 2017, Mr. Binswanger came  
25 forward to the appropriate person at the Port of Port Angeles to disclose and to report alleged improper  
26 governmental actions of local government officials and employees, and within hours was suspended and ultimately  
27 dismissed. For the aforementioned reasons, Petitioner is entitled to obtain Judicial Review.

1 **THE PETITIONER’S REASONS FOR BELIEVEING THAT RELIEF SHOULD BE GRANTED**

2 1) 42.41 RCW states in part: *“every local government employee has the right to report to the appropriate*  
3 *person or persons information concerning an alleged improper governmental action”* and, that *“the purpose of*  
4 *this Chapter is to protect local government employees who make good-faith reports to appropriate governmental*  
5 *bodies and to provide remedies for such individuals who are subjected to retaliation for having made such*  
6 *reports.”*

7  
8 2) In fact, ALJ Dublin concluded that on January 09, 2017, in response to Mr. Binswanger bringing a  
9 financial discrepancy to the attention of Port Commissioner’s, a government officer, Port Commissioner Steve  
10 Burke, commented that the Port could play a “shell game” with the money.

11  
12 3) In fact, ALJ Dublin concluded that at approximately 3:30PM on January 23, 2017, Mr. Binswanger  
13 disclosed and reported improper governmental actions, “i.e. filed a whistleblower claim, relative to the CRTC lease  
14 and EDA...”, to the appropriate person at his employer, Human Resources Manager Holly Hairell.

15  
16 4) In fact, ALJ Dublin concluded that during her January 23, 2017, meeting with Mr. Binswanger, Ms.  
17 Hairell informed him that “she had to leave, but would think about it and suggested they talk in the morning.”

18  
19 5) In fact, ALJ Dublin concluded that after meeting with Mr. Binswanger earlier that afternoon, at  
20 approximately 5:30PM on January 23, 2017, Ms. Hairell informed her supervisor John Nutter of her meeting with  
21 Mr. Binswanger.

22  
23 6) In fact, ALJ Dublin concluded that after Ms. Hairell informed Mr. Nutter of her meeting with Mr.  
24 Binswanger, Mr. Nutter called his and Mr. Binswanger’s supervisor, Port Executive Director Karen Goschen, to  
25 report on Mr. Binswanger’s earlier meeting with Ms. Hairell.

1 7) In fact, ALJ Dublin concluded that after receiving Mr. Nutter's report about Mr. Binswanger's meeting  
2 with Ms. Hairell earlier that afternoon, at approximately 6:50PM on January 23, 2017, Ms. Goschen emailed Mr.  
3 Binswanger suspending him with no explanation.  
4

5 In conclusion, Mr. Binswanger believes it is clear ALJ Dublin grossly misinterpreted Chapter 42.41 RCW,  
6 and that she also ignored, excused, justified and/or overlooked a substantial amount of testimony and evidence  
7 admitted during the hearing she presided over.  
8

9 As is clear in Chapter 42.41 RCW, there is no prerequisite compelling a local government employee  
10 coming forward to disclose alleged improper governmental action to do anything other than to disclose or report the  
11 alleged improper governmental action to an appropriate person; there is NO language stating that the local  
12 government employee's disclosure or report shall be in writing. However, ALJ Dublin inexplicably overlooked this  
13 fact and erroneously concluded that Mr. Binswanger's disclosure and report of alleged improper governmental  
14 action was not effectuated until he sent a follow-up email to Ms. Hairell approximately twelve (12) hours after he  
15 met with her to disclose and reported improper governmental action.  
16

17 Further, ALJ Dublin inexplicably overlooked the fact that Mr. Binswanger had had no disciplinary action  
18 taken or lodged against him as is defined in the Port of Port Angeles employee handbook whatsoever until  
19 approximately two (2) days after he was suspended for coming forward to disclose and report improper  
20 governmental action. Mr. Binswanger believes that the timeline in these events is not a coincidence; he believes  
21 facts prove that he was unlawfully suspended and ultimately dismissed in retaliation for coming forward to disclose  
22 and report improper governmental action.  
23

24 In regard to Mr. Binswanger's good-faith report of alleged improper governmental action, ALJ Dublin  
25 inexplicably excused and justified Commissioner Burke's comment that the Port play a "shell game" with the  
26 financial discrepancy Mr. Binswanger brought to the Port commission's attention. \*Merriam-Webster's definition of  
27 a "shell game" is in part: *"Fraud; especially: a swindle involving the substitution of something of little or no value*  
28

1 *for a valuable item.*” Dictionary.com’s definition of a “shell game” is in part: *“any deceit, swindle, fraud, or the*  
2 *like.*” Google’s definition of a “shell game” is in part: *“a deceptive and evasive action or ploy...”*  
3 TheFreeDictionary.com’s definition of a shell game is in part: *“any swindle or fraud”*. Mr. Binswanger believes the  
4 term “shell game” has no place under any circumstances in any legitimate enterprise; and, especially in this instance  
5 where it was used by a Port Commissioner as a means to cover up an oversight by Port management.  
6

7           Should ALJ Dublin have ruled according to the law as is defined in Chapter 42.41 RCW, and as testimony  
8 and facts admitted during the hearing revealed, the Port of Port Angeles would have been found to have callously  
9 retaliated against Mr. Binswanger in violation of Chapter 42.41 RCW, and she would have been compelled to grant  
10 appropriate and commensurate relief to Mr. Binswanger.  
11

12           For these reasons, Mr. Binswanger believes that relief should be granted and ALJ Dublin’s Final Order  
13 should be overturned.  
14

15 **REQUEST FOR RELIEF, SPECIFYING THE TYPE AND EXTENT OF RELIEF REQUESTED.**

16           Based on the aforementioned facts and reasons, Mr. Binswanger requests ALJ Dublin’s July 17, 2017,  
17 Final Order be overturned, and that the Port of Port Angeles be found to have in fact retaliated against Mr.  
18 Binswanger in violation of Chapter 42.41 RCW.  
19

20           Specific relief requested is included in the following alternatives:  
21

22           **Alternative 1.** Mr. Binswanger desires to be reinstated with back pay, and such injunctive relief as may be  
23 found necessary in order to return him to the position he held before the retaliatory action and to prevent any  
24 recurrence of retaliatory action.  
25

26           Mr. Binswanger also requests relief of up to \$250,000.00 for the time spent defending himself, and for the  
27 pain and suffering he has endured which has been caused by the Port of Port Angeles’ retaliation against him.  
28

1           Additionally, Mr. Binswanger requests Your Honor(s) utilize any and all remedies deemed appropriate to  
2 impose maximum penalty on the Port of Port Angeles, and personally upon those persons determined to have  
3 retaliated against Mr. Binswanger.  
4

5           **Alternative 2.** Should Your Honor(s) determine conditions at the Port unreasonable for Mr. Binswanger to  
6 return to work there by no fault of himself, Mr. Binswanger requests Your Honor(s) grant him relief in an amount  
7 equivalent of up to five years back pay plus the health and welfare benefits he would have earned while at the Port;  
8 approximately \$152,000.00 per year plus CPI increases.

9           Mr. Binswanger also requests relief of up to \$250,000.00 for the time spent defending himself, and for the  
10 pain and suffering he has endured which has been caused by the Port of Port Angeles' retaliation against him.

11           Additionally, Mr. Binswanger requests Your Honor(s) utilize any and all remedies deemed appropriate to  
12 impose maximum penalty on the Port of Port Angeles, and personally upon those persons determined to have  
13 retaliated against Mr. Binswanger.  
14

15           **Alternative 3.** Mr. Binswanger desires to be reinstated with back pay, and such injunctive relief as may be  
16 found necessary in order to return him to the position he held before the retaliatory action and to prevent any  
17 recurrence of retaliatory action.  
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22  
23  
24

Dated this 14<sup>th</sup> day of July, 2017

25  
26   
27 DANIEL BINSWANGER, Pro Se  
Petitioner

28       PETITION FOR JUDICIAL REVIEW - 7

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1 **CERTIFICATE OF SERVICE FOR REQUEST FOR JUDICIAL REVIEW**

2 **(Re: OAH DOCKET NO. 02-2017-GOV-00004)**

3 I certify that a true copy of this document was served from Sequim, Washington upon the following as indicated.

4 Thurston County Superior Court X Hand Delivery  
5 2000 Lakeridge Drive Southwest, Bldg. 3  
6 Olympia, WA 98502

7 Washington Sate Office of the X Frist Class Mail  
8 Attorney General  
9 1125 Washington Street SE  
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11 Olympia, WA 98504-0100

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18 John Nutter X First Class Mail  
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29 Date: July 15, 2017

PETITIONER

  
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