transferred intent. Trial counsel was not ineffective for failing to argue otherwise. For the same reason, Iromuanya cannot show prejudice from counsel's failure to better explain involuntary manslaughter in closing arguments.

It is true that trial counsel could have argued that according to Iromuanya's statement, the predicate act for Iromuanya's unintentional killing of Cooper was his unlawful shooting at Jenkins to scare him away. But even if trial counsel had better explained involuntary manslaughter, the result would not have been different. Because the jurors found that Iromuanya intended to kill Jenkins, that intent transferred to his killing of Cooper. Because his intent transferred, there was no basis for finding that he killed Cooper unintentionally.

V. CONCLUSION

The district court did not err in dismissing Iromuanya's motion for postconviction relief without an evidentiary hearing. For all of his claims, Iromuanya has either failed to allege facts that show his counsel's deficient performance or failed to allege facts that show he was prejudiced by his counsel's alleged deficiencies.

AFFIRMED.

JENNIFER BASSINGER, APPELLEE AND CROSS-APPELLANT,
v. NEBRASKA HEART HOSPITAL, APPELLANT
AND CROSS-APPELLEE.
806 N.W.2d 395

Filed December 9, 2011. No. S-10-653.

1. **Workers' Compensation: Appeal and Error.** On appellate review of a workers' compensation award, the trial judge's factual findings have the effect of a jury verdict and will not be disturbed unless clearly wrong.
2. **Courts: Appeal and Error.** An appellate court independently decides questions of law.
3. **Statutes.** Statutory interpretation presents a question of law.
4. **Judgments.** The interpretation and meaning of a prior opinion present a question of law.
5. **Courts: Appeal and Error.** Generally, when a party raises an issue for the first time in an appellate court, the court will disregard it because a lower court

cannot commit error in resolving an issue never presented and submitted to it for disposition.

6. ____: ____. A party is not required to ask a lower court not to follow a controlling decision from an appellate court to preserve for appeal an issue that the party claims the appellate court incorrectly decided.
7. **Workers' Compensation: Statutes: Intent: Appeal and Error.** The intent of the Nebraska Workers' Compensation Act is to provide benefits for employees who are injured on the job, and an appellate court will broadly construe the act to accomplish this beneficent purpose.
8. **Statutes: Legislature: Public Policy.** It is the Legislature's function through the enactment of statutes to declare what is the law and public policy.
9. **Workers' Compensation: Courts: Jurisdiction.** Because the Workers' Compensation Court does not have equity jurisdiction, it cannot apply remedies of rescission and estoppel that are not statutorily authorized.
10. **Workers' Compensation: Case Overruled.** The Nebraska Supreme Court's decision in *Hilt Truck Lines, Inc. v. Jones*, 204 Neb. 115, 281 N.W.2d 399 (1979), adopting an equitable misrepresentation defense, was clearly erroneous and is overruled.

Appeal from the Workers' Compensation Court. Reversed and remanded for further proceedings.

Tiernan T. Siems and Sara A. Lamme, of Erickson & Sederstrom, P.C., for appellant.

Brody J. Ockander, of Rehm, Bennett & Moore, P.C., L.L.O., for appellee.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

CONNOLLY, J.

SUMMARY

The Workers' Compensation trial judge found that the appellee, Jennifer Bassinger, had misrepresented her history of work-related injuries on a preemployment questionnaire and dismissed her petition for benefits. The three-judge review panel reversed, and remanded for further proceedings on whether a causal relationship existed between Bassinger's misrepresentation and her later injury.

In her cross-appeal, Bassinger argues that the review panel exceeded its authority in permitting an employer to deny benefits based on an affirmative misrepresentation defense. Summed up, she claims that the misrepresentation defense that

we adopted in *Hilt Truck Lines, Inc. v. Jones*[1] is a limitation on benefits that is not authorized by the Nebraska Workers' Compensation Act (the Act).[2] We agree.

FACTUAL BACKGROUND

Bassinger's Previous Employment History

In 1996, Bassinger started work as a certified nurse aide (CNA) at a nursing home in Syracuse, Nebraska. In 2000, she strained her lower back muscles while moving a patient, an injury that was treated with physical therapy. Workers' compensation benefits covered the treatment, and she fully recovered.

Beginning in 2001, she worked as a CNA for BryanLGH Medical Center, a hospital in Lincoln, Nebraska. In October, while lifting a patient, she developed right low-back pain. She was treated for chronic sacroiliac joint dysfunction. Later, her physician noted disk problems in addition to the joint problem, but he did not recommend treatment. He did not give Bassinger a permanent impairment rating because her pain was under control. But he noted that she had agreed with his recommendation that she should perform only light-duty work. In November 2003, she agreed to a lump-sum settlement of $5,000 for her injury at BryanLGH Medical Center.

Bassinger's Employment at Nebraska Heart Institute

In March 2006, Bassinger began work as a CNA at Nebraska Heart Hospital (the hospital). The hospital's preemployment questionnaire asked Bassinger to respond to questions about her history of work-related injuries and her physical condition. She reported only her injury at the Syracuse nursing home. She did not report her 2001 injury at BryanLGH Medical Center.

In her preemployment physical, the hospital's nurse reported that Bassinger could perform the physical tests without pain. But in April 2008, while lifting a patient, she injured her back

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[1] *Hilt Truck Lines, Inc. v. Jones*, 204 Neb. 115, 281 N.W.2d 399 (1979).

[2] See Neb. Rev. Stat. § 48-101 et seq. (Reissue 2010 & Supp. 2011).

and experienced instant pain in her lower back and down her leg. She testified that the piercing pain she experienced was different from what she had experienced in 2001. Physical therapy and medications did not alleviate her symptoms from the 2008 injury.

She continued to perform light-duty work at the hospital until she was discharged in July 2008. The hospital discharged her because she could not work during the day, the only time that the hospital offered her light-duty work. In October, she elected to undergo a spinal fusion surgery with a different physician, which successfully alleviated her symptoms.

PROCEDURAL HISTORY

In July 2008, Bassinger petitioned for workers' compensation benefits. In August 2009, the trial judge dismissed her petition. The judge found that Bassinger had willfully misrepresented her work-related injury history when she failed to disclose any information about her 2001 injury. In concluding that the hospital could deny benefits because of Bassinger's misrepresentation, the judge relied on the rule we adopted in *Hilt Truck Lines, Inc*.[3] He concluded that the hospital satisfied the causation component of the rule because the hospital would not have hired her had she truthfully reported her previous injury: "It is clear that [Bassinger's] misrepresentations allowed her to pass through the [hospital's] efforts to screen out people who are physically limited in some way that would make them either incapable of performing the tasks required or somehow be put in danger of reinjury."

Bassinger appealed to the review panel. The review panel addressed only her assignment that the trial judge erred in finding a causal connection between her misrepresentation and her 2008 injury. It concluded that *Hilt Truck Lines, Inc.* required the hospital to show a direct causal relationship between the 2001 injury that Bassinger concealed and her 2008 injury. It reversed the trial judge's order and remanded the case for further findings on causation under its corrected standard.

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[3] *Hilt Truck Lines, Inc., supra* note 1.

ASSIGNMENTS OF ERROR

The hospital assigns that the review panel erred in determining that the trial judge applied the wrong causation standard.

On cross-appeal, Bassinger assigns that the trial judge and review panel improperly applied a misrepresentation defense that the Act does not authorize.

STANDARD OF REVIEW

[1-4] On appellate review of a workers' compensation award, the trial judge's factual findings have the effect of a jury verdict and will not be disturbed unless clearly wrong. But we independently decide questions of law.[4] Statutory interpretation presents a question of law.[5] The interpretation and meaning of a prior opinion present a question of law.[6]

ANALYSIS

The hospital contends that the trial judge applied the correct causation standard. It argues that the review panel incorrectly interpreted *Hilt Truck Lines, Inc.* to require a direct causal relationship between Bassinger's misrepresentation and her work injury. Bassinger contends that the review panel's direct causation requirement was correct—assuming that *Hilt Truck Lines, Inc.* adopted an affirmative defense for misrepresentation under the Act.

But in her cross-appeal, Bassinger contends that *Hilt Truck Lines, Inc.* created a limitation on workers' compensation benefits that the Act does not authorize. Because we conclude that our decision in *Hilt Truck Lines, Inc.* was clearly erroneous, we do not analyze whether the lower courts correctly applied the causation factor of the misrepresentation defense.[7]

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[4] See *Risor v. Nebraska Boiler*, 277 Neb. 679, 765 N.W.2d 170 (2009).

[5] See *id.*

[6] *State v. Stolen*, 276 Neb. 548, 755 N.W.2d 596 (2008). See, also, *Anderson v. Houston*, 277 Neb. 907, 766 N.W.2d 94 (2009).

[7] See *In re Trust Created by Hansen*, 281 Neb. 693, 798 N.W.2d 398 (2011).

Bassinger Has Not Waived the Argument in Her Cross-Appeal

Bassinger contends that the trial court and review panel exceeded their authority by applying a misrepresentation defense because the Act does not authorize such a defense. She argues that because this court's limitation on compensation benefits from *Hilt Truck Lines, Inc.* is not supported by the Act, the trial court's reliance on that decision and the review panel's acceptance of its application were contrary to law.

The hospital responds that Bassinger has waived this argument by not presenting it to the review panel. It alternatively argues that even if she has not waived it, it is without merit because the lower court had no alternative but to follow this court's precedent. The hospital's second argument succinctly sums up why Bassinger has not waived her argument.

[5] It is generally true that when a party raises an issue for the first time in an appellate court, the court will disregard it because a lower court cannot commit error in resolving an issue never presented and submitted to it for disposition.[8] Alternatively, the rule rests upon the principle that a party may not waive an error, gamble on a favorable result, and, upon obtaining an unfavorable result, assert the previously waived error.[9] Neither of these rationales applies here.

[6] The crux of Bassinger's cross-appeal is that our decision in *Hilt Truck Lines, Inc.* was wrong. The hospital cites no authority holding that a party must ask a lower court not to follow a controlling decision from this court to preserve for appeal an issue that the party claims we incorrectly decided. Requiring parties to ask a lower court to ignore our decision would obviously be inconsistent with the doctrine of stare decisis, which compels lower courts to follow our decisions.[10] We conclude that Bassinger has not waived her argument that we erroneously adopted a misrepresentation defense in *Hilt Truck Lines, Inc*.

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[8] See *Maycock v. Hoody*, 281 Neb. 767, 799 N.W.2d 322 (2011).

[9] See *State v. Collins*, 281 Neb. 927, 799 N.W.2d 693 (2011).

[10] See *State v. Barranco*, 278 Neb. 165, 769 N.W.2d 343 (2009).

Misrepresentation Defense in *Hilt Truck Lines, Inc.*

Although we do not analyze the lower courts' application of the three-factor test that we adopted in *Hilt Truck Lines, Inc.*,[11] we discuss it to explain what we held and why we now overrule it. There, a truckdriver's survivors sought workers' compensation death benefits after he was killed in a work-related crash. The tractor-trailer that he was driving struck and broke through a guardrail. A state trooper opined that the crash was caused by speeding and driving too fast for the weather and road conditions.

The driver died shortly after the trucking company hired him, and the company did not receive his driving records until after his death. Those records showed that in the previous 2 years, under a different name, the driver had three driving under the influence convictions. He had started using a different name shortly before he was hired. It was undisputed that the trucking company would not have hired the driver if it had known of his convictions and that it would have discharged him immediately if it had discovered his true driving record before the accident. But the record showed conflicting evidence whether intoxication had caused the crash and his death.

The Workers' Compensation Court awarded benefits. It concluded that because the evidence was insufficient to support a causal relationship between the false representation and the later accident, it was legally insufficient to void the employment relationship retroactively. It also found that under the statutory affirmative defense, the company had failed to prove that intoxication or intentional negligence caused his death.[12]

We affirmed. We agreed that under the statutory defense, the evidence was insufficient to prove that intoxication or intentional negligence caused the driver's death. We also rejected the trucking company's claim that the employment contract was void ab initio because of the driver's misrepresentations. We first stated an employment contract rule from a legal

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[11] *Hilt Truck Lines, Inc., supra* note 1.

[12] See § 48-127.

encyclopedia that essentially incorporated the misrepresentation rule:

> Plaintiff concedes the general rule that false statements made at the time employment was secured are ordinarily insufficient to terminate the relation of master and servant existing at the time of the injury, even though they may constitute grounds for rescinding the contract of employment, at least where there is no causal connection between the injury and the misrepresentation.[13]

Next, we adopted a common-law misrepresentation defense from Professor Larson's treatise to govern when an applicant's misrepresentations will bar recovery of workers' compensation benefits:

> "[I]t has been held that employment which has been obtained by the making of false statements—even criminally false statements—whether by a minor or an adult, is still employment; that is, the technical illegality will not of itself destroy compensation coverage. . . . The following factors must be present before a false statement in an employment application will bar benefits: (1) The employee must have knowingly and wil[l]fully made a false representation as to his physical condition. (2) The employer must have relied upon the false representation and this reliance must have been a substantial factor in the hiring. (3) There must have been a causal connection between the false representation and the injury."[14]

Under this rule, we affirmed the Workers' Compensation Court's finding that the evidence was insufficient to show a causal connection between the driver's misrepresentations and his subsequent accident:

> [I]ssues of causation are for determination by the fact-finder. . . . Although it is quite clear from the findings of fact here that the contract of employment was voidable or subject to rescission upon discovery of the

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[13] See *Hilt Truck Lines, Inc., supra* note 1, 204 Neb. at 121, 281 N.W.2d at 403, citing 56 C.J.S. *Master and Servant* § 180(e) (1948).

[14] *Id.* See 3 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 66.04 (2009).

misrepresentations, the employment contract was not void from the beginning and the misrepresentations did not destroy compensation coverage.[15]

Common-Law Misrepresentation Defense Is Incompatible With the Act

Bassinger argues that *Hilt Truck Lines, Inc.* is an anomaly among our cases and contrary to our holdings that the Workers' Compensation Court has only the authority to act that is conferred upon it by the Act. Substantively, the hospital contends that the Act supports the misrepresentation defense. It points to § 48-102, which provides an employer with a statutory affirmative defense: "[I]t shall not be a defense (a) that the employee was negligent, unless it shall also appear that such negligence was willful, or that the employee was in a state of intoxication . . . ." The hospital contends that "any employee that knowingly and willingly makes a misrepresentation of the employee's physical condition, which misrepresentation causes an injury to the employee, commits a deliberate act knowingly done, which would constitute willful negligence, and therefore bar recovery."[16] We disagree that § 48-102 authorizes the misrepresentation defense.

The plain language of § 48-102 creates an affirmative defense for injury caused by an *employee's* willful negligence. Persons who misrepresent their physical condition to obtain employment are applicants, not employees. Notably, in *Hilt Truck Lines, Inc.*, we separately analyzed and affirmed the Workers' Compensation Court's conclusions about whether the benefits were barred by the statutory defense for willful negligence or intoxication, or the common-law misrepresentation defense that we adopted.

We conclude that the statutory defense under § 48-102 does not apply to applicants.

Having disposed of the hospital's argument, we now consider Bassinger's argument that the Act does not authorize a misrepresentation defense. Some states have workers' compensation

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[15] *Id.* at 122, 281 N.W.2d at 403.

[16] Reply brief and answer to brief on cross-appeal for appellant at 14.

statutes that exclude coverage for employees who knowingly made false statements about their physical condition in an application or preemployment questionnaire.[17] And it is true that many courts have adopted the "Larson rule" as a common-law misrepresentation defense. At least 12 courts, besides this court, currently apply the defense, despite the lack of a statute.[18] Conversely, many courts either currently hold that an applicant's misrepresentations to obtain employment cannot bar workers' compensation benefits absent statutory authorization or held this before the defense was codified by statute.[19]

Moreover, Bassinger correctly states that *Hilt Truck Lines, Inc.* is an exception in our workers' compensation jurisprudence. We have not applied or considered the misrepresentation defense that we adopted there in any other workers' compensation case. This is significant because in *Hilt Truck Lines, Inc.*, we did not analyze whether a common-law defense was compatible with the Act. We do so now.

[7] We have previously explained that workers' compensation laws reflect a compromise between employers and employees. Under these statutes, employees give up the complete compensation that they might recover under tort law in exchange for no-fault benefits that they quickly receive for most economic losses from work-related injuries.[20] So we have consistently held that the Act's intent is to provide benefits for employees who are injured on the job, and we will broadly construe the Act to accomplish this beneficent purpose.[21]

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[17] See, *Akef v. BASF Corp.*, 275 N.J. Super. 30, 645 A.2d 158 (1994) (citing statutes); 2 John P. Ludington et al., Modern Workers Compensation § 115:6 n.43 (Matthew J. Canavan & Donna T. Rogers eds., 1993) (same).

[18] See Annot., 12 A.L.R.5th 658 (1993 & Supp. 2011).

[19] See, *Akef, supra* note 17 (citing cases); 12 A.L.R.5th, *supra* note 18 (same).

[20] See *Jackson v. Morris Communications Corp.*, 265 Neb. 423, 657 N.W.2d 634 (2003) (citation omitted).

[21] See *id.* Accord, e.g., *Zach v. Nebraska State Patrol*, 273 Neb. 1, 727 N.W.2d 206 (2007).

Courts holding that misrepresentations to obtain employment cannot defeat the right to compensation benefits have concluded that because of the compromise that their workers' compensation laws represent, the issue is one for legislatures to resolve: "'This problem is a legislative one and in the absence of a clear legislative intent, we do not feel at liberty to impose any limitations or exceptions upon the employee's statutory right to recover compensation.'"[22] They have concluded that judicially engrafting an affirmative defense onto their workers' compensation law to deny benefits months or years after the employee was hired is inconsistent with liberally construing these statutes in favor of providing benefits.[23] And they have reasoned that a misrepresentation defense would resurrect barriers to compensation based on an employee's fault and conflict with a legislative intent to reduce litigation by eliminating most employer defenses.[24]

We share these concerns. We believe that the Larson rule lacks a coherent rationale apart from being a rule of equity based on public policy concerns. As stated by Professor Larson, the rule does not rest on "purely contractual tests, [but] is a common-sense rule made up of a mix of contract, causation, and estoppel ingredients."[25] In effect, the Larson rule permits rescission, but only in limited circumstances.

First, the Larson rule reflects a concern that it is inequitable to permit an employer to deny compensation benefits after it has obtained the employee's services for an extended period. This concern has great force in workers' compensation cases because employees have given up the right to sue the defendant for full compensation. Second, it reflects a concern that

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[22] *Marriott Corp. v. Industrial Comm'n of Arizona*, 147 Ariz. 116, 121, 708 P.2d 1307, 1312 (1985). Accord, *Akef, supra* note 17; *Stovall v. Sally Salmon Seafood*, 306 Or. 25, 757 P.2d 410 (1988); *Blue Bell Printing v. W.C.A.B.*, 115 Pa. Commw. 203, 539 A.2d 933 (1988).

[23] See, *Akef, supra* note 17; *Stovall, supra* note 22.

[24] See, *Stovall, supra* note 22; *Goldstine v. Jensen Pre-Cast*, 102 Nev. 630, 729 P.2d 1355 (1986); *Marriott Corp., supra* note 22.

[25] See 3 Larson & Larson, *supra* note 14 at 66-26.

an applicant's misrepresentations about his or her physical condition could frustrate the employer's attempt to protect itself from liability for the aggravation of a previous injury or a causally related injury.

Both of these concerns are obviously issues of public policy. The Larson rule balances these concerns through a unique application of rescission and estoppel rules. The employer is estopped from rescinding the contract for the employee's misrepresentation about his or her physical condition unless the misrepresentation resulted in the very injury that the employer was attempting to protect itself from by asking the applicant to respond to questions about his or her physical condition and work-related injuries.

[8,9] The Larson rule may reflect a laudable goal. But it is the Legislature's function through the enactment of statutes to declare what is the law and public policy.[26] For example, one court has declined to adopt the Larson rule because the intent of the workers' compensation statutes was to encourage employers to hire applicants with previous injuries.[27] Equally important, this court has repeatedly held that the Workers' Compensation Court does not have equity jurisdiction.[28] So it cannot apply remedies of rescission and estoppel that are not statutorily authorized.

For example, under Nebraska case law, the absence of equity jurisdiction means that the Workers' Compensation Court (1) does not have contempt power to enforce its awards[29]; (2) cannot give credit to an employer for wages that it paid to an employee, who had returned to work, before the employer filed for a modification[30]; (3) cannot permit an insurer's posttrial

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[26] *City of Falls City v. Nebraska Mun. Power Pool*, 281 Neb. 230, 795 N.W.2d 256 (2011).

[27] See *Akef, supra* note 17.

[28] See, e.g., *Burnham v. Pacesetter Corp.*, 280 Neb. 707, 789 N.W.2d 913 (2010); *Risor, supra* note 4.

[29] *Burnham, supra* note 28.

[30] *Daugherty v. County of Douglas*, 18 Neb. App. 228, 778 N.W.2d 515 (2010).

intervention in an appeal[31]; and (4) cannot consider whether an employer *is estopped* from denying coverage to an independent contractor claimant because it took out a workers' compensation insurance policy to cover the claimant.[32]

We have also held that when an employer seeks to enforce its subrogation interest in a third-party settlement through an action in district court, the district court may not bar the claim on equitable grounds: "Whether the employer's defense against the workers' compensation claim is reasonable is determined by the Workers' Compensation Court under the . . . Act, not in the district court by resort to equitable principles."[33] Finally, we have stated that we have no authority to apply equitable principles to alleviate the harshness of a claimant's recovery under the Act.[34]

[10] The unavoidable consequence of these holdings is that our adoption of the equitable misrepresentation defense in *Hilt Truck Lines, Inc.* was clearly erroneous. We therefore overrule *Hilt Truck Lines, Inc.* and reverse the judgment of the review panel of the Workers' Compensation Court. We remand the cause to the review panel and direct it to remand the case to the trial judge for further proceedings to determine whether Bassinger is entitled to benefits without regard to the hospital's misrepresentation defense.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

WRIGHT, J., not participating.

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[31] *Risor, supra* note 4.

[32] *Anthony v. Pre-Fab Transit Co.*, 239 Neb. 404, 476 N.W.2d 559 (1991).

[33] *Burns v. Nielsen*, 273 Neb. 724, 735, 732 N.W.2d 640, 650 (2007).

[34] See *Runyan v. Lockwood Graders, Inc.*, 176 Neb. 676, 127 N.W.2d 186 (1964).