NO. 90287-9

SUPREME COURT
OF THE STATE OF WASHINGTON

JEFF KIRBY, an individual, AND PUGET SOUND SECURITY PATROL, INC.,

Appellant-Petitioners,

v.

STATE OF WASHINGTON DEPARTMENT OF EMPLOYMENT SECURITY,

Respondent.

ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

JEREMY GELMS
WSBA # 45646
Assistant Attorney General
Attorneys for Respondent
OID #91020
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
Phone: (206) 464-7676
Fax: (206) 389-2800
E-mail: LALSeaEF@atg.wa.gov

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Rules

I. INTRODUCTION

A claimant who has been discharged from employment is entitled to unemployment benefits unless the employer proves the claimant was discharged for statutory misconduct. The Court of Appeals correctly applied the statutory language and established precedent in affirming the Employment Security Department Commissioner's decision that Puget Sound Security Patrol, Inc. ("Employer") failed to prove that it discharged Dorothy Thomas for statutory misconduct. Therefore, Ms. Thomas was eligible for unemployment benefits.

Ms. Thomas, a security guard, complied with the Employer's policy when she contemporaneously wrote and submitted all required incident reports. The court properly held the Employer failed to prove that its order to Ms. Thomas that she immediately write a duplicative incident report was reasonable under the circumstances. Further, the court properly held the claimant's conduct was not willful when she was legitimately confused by the Employer's request based on a breakdown in communication attributable to the Employer.

The Court of Appeals decision does not conflict with existing Washington law, and raises no issues of substantial public importance. Instead, it is a fact-bound opinion that applies the correct and established legal standards to the particular facts of this case. The Employer shows no

basis for review under RAP 13.4, and further review by this Court is unwarranted.

II. COUNTERSTATEMENT OF THE ISSUES

For the reasons set forth below, the issues raised in the Employer's Petition for Discretionary Review are not appropriate for review under RAP 13.4(b). If review were accepted, however, the issues before this Court would be:

1. Misconduct requires that the claimant act willfully, such that she is aware she is violating or disregarding the rights of the employer. Does substantial evidence support the Commissioner's finding that Ms. Thomas did not act willfully where, based on a miscommunication attributable to the Employer, she was legitimately confused about what the Employer was requesting and was therefore unaware that she might be violating the rights of her employer when she did not comply?

2. Under RCW 50.04.294(2)(a), a claimant is disqualified from receiving unemployment benefits if she willfully refuses "to follow the reasonable directions or instructions of the employer." Did the Commissioner correctly conclude that the Employer failed to prove its order that Ms. Thomas immediately write an incident report was reasonable when it did not allow her to seek guidance or clarification on why she was being asked to write an incident report for an incident she had already contemporaneously documented?

III. COUNTERSTATEMENT OF THE FACTS[1]

Dorothy Thomas worked as a security officer for the Employer from December 2009 until June 2011, and was assigned to work at a United Parcel Service (UPS) warehouse. Commissioner's Record (CR) 78-79, 275; Finding of Fact (FF) 5.[2]

As part of her job, Ms. Thomas was required to keep a daily log of her observations and to complete incident reports for any observed safety hazards, criminal activities, or unprofessional conduct by employees. CR 88, 93, 275–76; FF 7, 8. Throughout her employment, Ms. Thomas talked to and properly submitted all required daily logs and incident reports to Dan Dose, her immediate supervisor. CR 94, 134, 275, 279; FF 9, 19. The logs became the property of UPS and were kept in Mr. Dose's office on-site. CR 94, 275; FF 9.

---

[1] As in their Court of Appeals briefing, the Employer's statement of the case contains either statements with no citation to the administrative record or cites the administrative record regardless of whether the point in the record is reflected in a finding of fact. *See generally* Pet. for Review at 2-8. In fact, several statements directly contradict an explicit finding made by the Commissioner. The question on appeal is not whether there is substantial evidence to support the findings the Employer wishes the trier of fact had made, but whether substantial evidence supports the findings the Commissioner actually made. The Department provides this counterstatement of the case to present the facts as found by the Commissioner based on the second administrative hearing, which are the basis for this Court's review. *See Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 406, 858 P.2d 494 (1993); *Smith v. Emp't Sec. Dep't*, 155 Wn. App. 24, 32, 226 P.3d 263 (2010).

[2] The superior court transmitted the Agency Board Record in this matter as a stand-alone document. *See* CP Index. The Agency Board Record (a.k.a. Commissioner's Record) is separately paginated from the Clerk's Papers and, therefore, will be cited to in this brief as "CR."

Ms. Thomas also frequently reported to UPS employee Doug Langston, who was in charge of the UPS contract and was next in line on the Employer's contact list after her immediate supervisor. CR 111, 134–35, 279; FF 19. As the Employer's representative testified, issues documented in incident reports were sometimes handled by Mr. Dose and sometimes handled by Mr. Langston. CR 110–11, 134, 279; FF 19. Matters that that could not be resolved by Mr. Dose were supposed to be directed by Mr. Dose to the Employer's operations manager, Steven Squire, who worked at the Employer's main office. CR 92–93, 276; FF 9.

During her time with the Employer, Ms. Thomas wrote incident reports on several UPS incidents. CR 94, 145–46, 276–77; FF 9, 10–12, 19. For example, Ms. Thomas overheard a UPS employee bragging about stealing a brand of expensive headphones. CR 136, 276; FF 10. Ms. Thomas wrote an incident report, which she gave to Mr. Dose, and which was sent to the UPS human resources office. CR 136–38, 276–77; FF 10. Nothing was done in response to Ms. Thomas's report. CR 137–39; FF 10. When the headphones continued to be stolen, Ms. Thomas called a UPS 800 number that was posted at the UPS site to report the continuing theft. CR 138; FF 10. Shortly thereafter, scanners were put into use, and theft of the headphones ceased. CR 138–39; FF 10.

In addition to the headphone thefts, Ms. Thomas also documented and notified her supervisors of other incidents. CR 140–41, 146; FF 10–12. For example, she reported in writing that a UPS employee brought an AK-47 bayonet to work. CR 140–41; FF 10–11. She also reported a series of drug sales occurring on UPS property. CR 140–41; FF 10–11.

On June 8, 2011, Mr. Langston contacted Mr. Squire (Mr. Dose's supervisor) to note his displeasure that Ms. Thomas had notified UPS corporate headquarters about the headphones thefts two months prior via the posted on-site 800 number. CR 96–98, 277; FF 13. Mr. Langston alleged that Ms. Thomas's actions were outside the contract negotiated between UPS and the Employer. CR 96–98, 277; FF 13.

Although Ms. Thomas had been properly logging and reporting incidents to her immediate supervisor Mr. Dose, the June 8, 2011, phone call from Mr. Langston was the first time Mr. Squire heard of the alleged headphones theft ring. CR 80, 96–98, 279; FF 19. Mr. Dose had not been properly forwarding the incident reports written by Ms. Thomas to Mr. Squire. CR 186–88, 276; FF 9. Therefore, Mr. Squire was unaware of the contemporaneous incident reports Ms. Thomas had already written.

Based on the call he received from Mr. Langston, Mr. Squire called Ms. Thomas and informed her he was removing her from the UPS premises. CR 98–99, 278; FF 15. Mr. Squire and Ms. Thomas began

discussing the issues that were happening at the warehouse, and Mr. Squire requested that Ms. Thomas come in and discuss the headphone theft with him and the Executive Vice President of Employee Relations, William Cottringer, on June 10. CR 99, 147, 278; FF 15. On June 10, when Ms. Thomas arrived at the office, neither Mr. Squire nor Mr. Cottringer was present. CR 103, 278; FF 16.

In Mr. Squire's absence, the HR manager and CEO each confronted Ms. Thomas and demanded she immediately fill out an incident report on the spot. CR 278; FF 16. Rather than speaking with Mr. Dose about the incident reports Ms. Thomas had previously written, the Employer assumed that Ms. Thomas had not written an incident report on the headphone theft ring and had instead simply called the UPS 800 number. CR 186–88, 279; FF 20. Having already written and submitted a contemporaneous report on the incident, having reported the incident to UPS's corporate 800 number, and having previously scheduled a meeting to discuss the incident with Mr. Squire, Ms. Thomas was confused and scared about why the HR manager and CEO were demanding that she write a report. CR 158; FF 19; Conclusions of Law (CL) 9.[3]

[3] While labeled a conclusion of law, some statements in Conclusion of Law 8 and 9 are correctly considered findings of fact and should be reviewed as such. As a general matter, if a statement is that the evidence shows the occurrence or existence of something, then it is a finding of fact, but if the statement derives from a process of legal reasoning about the facts in evidence, it is a conclusion of law. *See State v. Niedergang*,

Ms. Thomas had anticipated speaking with Mr. Squire as previously scheduled so she could get clarification and guidance about what the incident report should contain. CR 158; FF 21, 22; CL 9. Nevertheless, the Employer informed Ms. Thomas that Mr. Squire was out and she needed to write the report prior to his return. CR 150, 155–56; FF 16. Unaware that the Employer did not know that she had already documented the incident, and legitimately confused about what she was being asked to do, she refused to write a report. CR 155, 158, 186–88; FF 16. As a result, the HR manager and CEO believed Ms. Thomas was altogether refusing to write an incident report on the theft ring. CR 186–88, 279; FF 20.[4] The Employer subsequently discharged her for "insubordination" for failing to write an incident report. CR 165, 282; CL 9.

After Ms. Thomas was discharged, she applied for unemployment benefits. The Department initially denied Ms. Thomas benefits, and she

---

43 Wn. App. 656, 658-59, 719 P.2d 576 (1986). In any event, a court will review a mislabeled finding or conclusion for what it is, in accordance with the proper standard of review. *See Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986) (appellate court reviews erroneously designated findings and conclusion for what they are).

[4] As further evidence of the CEO's and HR's lack of knowledge regarding Ms. Thomas's prior reports, the Commissioner pointed out that the employer's Employment Security questionnaire alleged that Ms. Thomas "had verbally reported accusations of an internal theft ring and then when directed by [the HR manager] to write a required incident report, she refused, and then when CEO Schaeffer gave her the same order she refused again." The Commissioner also pointed to CEO Schaeffer's testimony that he had assured UPS he would get an incident report so that they would not have to rely on just "verbal hearsay." CR 279; FF 20.

appealed. Following a hearing, an Administrative Law Judge (ALJ) issued an Initial Order which set aside the Department's Determination Notice and concluded the Employer failed to prove Ms. Thomas was discharged for misconduct. CR 250–55. The Employer appealed the ALJ's decision to the Commissioner of the Department. CR 257–61. Believing that the hearing was too narrowly focused, the Commissioner remanded for a complete rehearing and decision de novo. CR 269–72. After a complete rehearing, a different ALJ issued a new Initial Order also finding the Employer failed to prove Ms. Thomas was discharged for misconduct. CR 274–84. The ALJ found the Employer failed to carry its burden of proving its order to Ms. Thomas that she immediately write another incident report was reasonable under the circumstances, and Ms. Thomas's actions were not a willful disregard of her Employer's interests. CR 278; FF 16; CL 8, 9. Rather, Ms. Thomas's actions were at worst the kind of error in judgment the statute deems not to be misconduct. CR 278; FF 16; CL 8, 9.

The Employer appealed the ALJ's decision to the Commissioner. CR 286–93. In affirming the ALJ and adopting the ALJ's findings and conclusions, the Commissioner specifically noted the Employer failed to carry its burden of showing that Ms. Thomas was discharged for statutory misconduct, as that term is defined in RCW 50.04.294. CR 296–97. The

Employer appealed to King County Superior Court, which affirmed the Commissioner's decision.

The Employer then appealed to the Court of Appeals, which also affirmed the Commissioner's decision in a published decision. *Kirby v. Emp't Sec. Dep't*, __ Wn. App. __, 320 P.3d 123 (2014). The court held substantial evidence supported the Commissioner's finding that Ms. Thomas was unaware she was disregarding the employer's rights because she was legitimately confused by the break in communication that was attributable to the Employer. *Id.* at 129. The court also held the Employer failed to show its request for Ms. Thomas to immediately write the report was reasonable under the circumstances. *Id.* The Employer's motion for reconsideration was denied, and this petition followed.

IV. REASONS WHY REVIEW SHOULD BE DENIED

The Court will grant review only if the Employer demonstrates one or more of the four exclusive criteria enumerated in RAP 13.4(b):

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

The Employer seeks review under RAP 13.4(b)(1), (2), and (4). However, the Employer's petition fails to cite a single case interpreting the Employment Security Act with which the Court of Appeals decision conflicts and fails to address any issues of substantial public interest. Instead, the Employer simply reiterates its disagreement with the court's opinion, which was based largely on a sufficiency of the evidence review. This is insufficient to justify review under RAP 13.4(b).

In any event, the Court of Appeals correctly applied the Act and established case law, holding the claimant's conduct was not willful when she was legitimately confused based on the Employer's miscommunication and that the Employer failed to prove its order was reasonable under the particular circumstances. Because the Employer has not established grounds for review under RAP 13.4(b), this Court should deny review.

A. The Court of Appeals Decision is Consistent with Established Precedent and Properly Concluded Ms. Thomas Was Not Discharged for Misconduct

The Employer asks the Court to accept review "because the [Court of Appeals] opinion is in conflict with a decision of the Supreme Court and another Court of Appeals." Pet. for Review at 8. However, the

Employer does not cite a single appellate case with which the Court of Appeals decision conflicts. The Employer simply repeats its challenge to the Commissioner's findings of facts and the ultimate conclusion that it failed to prove Ms. Thomas was discharged for misconduct. Nonetheless, the Court should decline review because the Commissioner's decision—and the Court of Appeals opinion affirming that decision—are in line with Washington case law.

The purpose of the Employment Security Act ("Act") is to provide compensation to individuals unemployed through no fault of their own. *Tapper*, 122 Wn.2d at 407–08. Accordingly, the Act must be liberally construed in favor of granting benefits to unemployed claimants. RCW 50.01.010; *Tapper*, 122 Wn.2d at 407–08.

A discharged claimant is entitled to unemployment benefits unless the employer proves the claimant was fired for work-connected misconduct as defined in the Act. RCW 50.20.066(1); WAC 192-150-200(1). Misconduct includes the following:

> (a) Willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee;
> (b) Deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;
> (c) Carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee; or

> (d) Carelessness or negligence of such degree or recurrence to show an intentional or substantial disregard of the employer's interest.

RCW 50.04.294(1). The Act provides specific examples of behavior that constitute misconduct. RCW 50.04.294(2). The Employer unsuccessfully argued one of these grounds below: that Ms. Thomas committed "[i]nsubordination showing a *deliberate*, *willful*, or *purposeful* refusal to follow the *reasonable* directions or instructions of the employer." RCW 50.04.294(2)(a) (emphasis added).

Misconduct does not include "(a) Inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity; (b) Inadvertence or ordinary negligence in isolated instances; or (c) Good faith errors in judgment or discretion." RCW 50.04.294(3); *Macey v. Emp't Sec. Dep't*, 110 Wn.2d 308, 318, 752 P.2d 372 (1988).

1. Consistent with Washington case law, the Court of Appeals properly concluded the Employer failed to establish Ms. Thomas acted willfully where her actions resulted from a gap in communication attributable to the Employer.

The Court of Appeals properly held that Ms. Thomas's refusal to write another report was not willful because she was confused about what she was being asked to do. *Kirby*, __ Wn. App. __, 320 P.3d at 129. A finding of misconduct requires that a claimant's action be willful or wanton. RCW 50.04.294(1)(a); WAC 192-150-205(1). An employer who

discharges an employee for insubordination must also prove the employee engaged in a "deliberate, willful, or purposeful" refusal. RCW 50.04.294(2)(a). The Department has defined the term "willful" as "*intentional* behavior done *deliberately* or *knowingly*, where you are *aware that you are violating or disregarding the rights of your employer* or a co-worker." WAC 192-150-205(1) (emphasis added). "'Wanton' means malicious behavior showing extreme indifference to a risk, injury, or harm to another that is known or should have been known to you. . . ." WAC 192-150-205(2).

The Court of Appeals appropriately followed Washington precedent and recognized that an employee acts with willful disregard "when the employee '(1) is aware of his employer's interest; (2) knows or should know that certain conduct jeopardizes that interest; but (3) nonetheless intentionally performs the act, willfully disregarding its consequences.'" *Kirby*, __ Wn. App. __, 320 P.3d at 127 (citing *Hamel v. Emp't Sec. Dep't*, 93 Wn. App. 140, 146-47, 966 P.2d 1282 (1998)). Therefore, "a showing of misconduct must be established by evidence that the employee was aware that he or she was disregarding the employer's rights." *Kirby*, __ Wn. App. __, 320 P.3d at 129.

Here, the Court of Appeals properly reviewed the Commissioner's decision in light of the whole record and found substantial evidence to

support the finding that "the parties did not have the same understanding of what the claimant was being asked to do." *Id.* (quoting ALJ's Initial Order). Ms. Thomas was legitimately confused by a breakdown in communication, which the Commissioner found was attributable to the Employer. *Id.* Ms. Thomas's supervisor had not been properly forwarding incident reports to the Employer's main office as required by company policy. As a result, the CEO believed he was asking Ms. Thomas for the first written documentation of her allegations. *Id.* On the other hand, Ms. Thomas did not know the CEO was unaware of her earlier written documentation or that he believed she was refusing to submit a report at all. *Id.*

The court acknowledged "the facts do not establish that she was aware that she disregarding the rights and interests of her employer" and a finding of misconduct was not appropriate because "she did not intentionally jeopardize those interests by refusing to write the report." *Id.* The Commissioner thus correctly concluded Ms. Thomas was not fired for misconduct, and was eligible for benefits.

The Employer contends that the Court of Appeals decision creates a confusion defense to insubordination, and will embolden employees in the future to disregard employer directives. Pet. for Review at 12-13. The Employer overstates the future application of the court's decision. The

Court of Appeals did not articulate a new standard for misconduct, but rather issued a fact-specific ruling giving appropriate deference to the Commissioner on witness credibility and the weight given to the evidence. *Kirby*, __ Wn. App. __, 320 P.3d at 127-28. The court stated:

> Because [Ms. Thomas] had already documented the incident and submitted the logs and reports to her immediate supervisor when it occurred and the thefts had been resolved, Thomas's refusal to write another one on the spot cannot be viewed as an intent to disregard her employer's interest in having the report written. While [the Employer] is correct that subjective motivations and intent to harm the employer are irrelevant, a showing of misconduct must be established by evidence that the employee was aware that he or she was disregarding the employer's rights.

Id. at 129. This is consistent with the definition of misconduct under the Act and the case law interpreting it. The Employer's actions created confusion and prevented Ms. Thomas from understanding what she was being asked to do. Under these specific facts, the court appropriately determined Ms. Thomas's "failure to give more of an explanation or to attempt to write something down" was more properly characterized as a good faith error in judgment. *Id.* at 128.

The Employer asks this Court to create new law, by inserting common law employment principles into the analysis of the Act and asserting Ms. Thomas committed misconduct because she breached her "duty of loyalty." Pet. for Review at 15-16. However, the issue before the

Court of Appeals was not the validity or invalidity of Ms. Thomas's employment termination; it was her unemployment benefit eligibility under Title 50 RCW. *Johnson v. Emp't Sec. Dep't*, 64 Wn. App. 311, 314–15, 824 P.2d 505 (1992); *Tapper*, 122 Wn. 2d at 412 (noting that an employer's decision to discharge an employee is distinct from the Department's decision to grant or deny unemployment benefits). The Act does not impose a "duty of loyalty" on claimants to be eligible for unemployment benefits. Even assuming Ms. Thomas's actions breached her duty of loyalty under common law employment principles, it would only mean her actions were possible grounds for *termination.* It provides no guidance on whether Ms. Thomas is eligible for unemployment benefits under the Act.

The Employer further argues the "tribunal and appellate court erred by not requiring Thomas to prove her refusal was justified." Pet. for Review at 11-12. The Employer's attempt to shift the burden to the claimant is also unfounded because the Act contains no burden-shifting provision. Without question, the Act and case law establish that it is the employer's burden to prove the discharge was the result of misconduct on the part of the employee. RCW 50.20.066; *Nelson v. Emp't Sec. Dep't*, 98 Wn.2d 370, 374–75, 655 P.2d 242 (1982) (employer must establish

misconduct connected with one's work by a preponderance of the evidence).

Consistent with established case law, the Court of Appeals properly determined Ms. Thomas's actions were the result of confusion attributable to the Employer's lack of communication among management. Under these particular facts, the claimant's actions were properly characterized as a good faith error in judgment, which is specifically excluded from the definition of statutory misconduct. *Kirby*, __ Wn. App. __, 320 P.3d at 130; RCW 50.04.294(3)(c). Further review is unwarranted.

2. The Court of Appeals correctly held the Employer failed to prove its order was reasonable under the circumstances.

The Court of Appeals also properly determined the Employer failed to carry its burden of proving its request to write another report was reasonable under the circumstances. "[E]ven if [the Employer] could show Ms. Thomas's refusal to write the report was an intentional and willful refusal," the Employer still failed to establish "that the order to write the incident report was reasonable." *Kirby*, __ Wn. App. __, 320 P.3d at 129. Under the plain language of the Act, a claimant commits insubordination only if an employer proves the claimant deliberately,

willfully, or purposefully refused to follow the *reasonable* directions of the employer. RCW 50.04.294(2)(a) (emphasis added).

The Employer suggests the Court of Appeals created a new standard for reasonableness and erroneously made a new finding that the employer's instruction was unreasonable. Pet. for Review at 4-5, 9-11. This is not the case. Rather, the court evaluated the unchallenged factual findings:

> [Ms. Thomas] had already submitted reports on the incident that were prepared at the time it occurred, which were more accurate and should have been forwarded to her supervisors. But she was now being required to write another report without any context or guidance about what the report should contain, and without the benefit of first reviewing reports she already made at the time of the incident to ensure she was giving accurate information and sufficient detail. She was also required to do so after first being told that she would be meeting with a supervisor about the report and then told she could not meet with that supervisor before writing the report.

Id. at 130. Based on these unchallenged findings, the court held they supported the Commissioner's conclusion that "when viewed in context, the CEO's request for Thomas to immediately write an incident report on the spot was not reasonable." *Kirby*, __ Wn. App. __, 320 P.3d at 129. In doing so, the Court of Appeals did not make a new finding that the instruction was unreasonable but rather block-quoted the ALJ's entire reasonableness conclusion of law. *See Id.*

While the Employer disagrees with the court's conclusion that it failed to prove its request was objectively reasonable, mere disagreement with the court is not grounds for review. The standard proposed by the Employer for the Court to adopt "a test that reflects an employer's prerogative," Pet. for Review at 4-5, 9-11, would undermine the Act's purpose and run counter to the mandate of liberal construction in favor of granting unemployment benefits.

The Employer has not demonstrated that the Court of Appeals decision is in conflict with a previous appellate decision. Thus, the Court should deny the Petition for Discretionary Review.

B. This Case Does Not Involve an Issue of Substantial Public Interest That Should Be Determined by the Supreme Court

The Employer also asserts its petition for review involves an issue of substantial public interest. Pet. for Review at 8. But again, the Employer fails to cite or articulate any issue of substantial public interest. Nor does the Employer explain why any issues that may be implicated in this appeal rise to the level that they "should be determined by the Supreme Court." RAP 13.4(b)(4).

In determining whether an issue involves a sufficient public interest meriting review, the Court considers the public or private nature of the question, the need for future guidance provided by an authoritative

determination, and the likelihood of recurrence. *See Eide v. Dep't of Licensing*, 101 Wn. App. 218, 210-11, 3 P.3d 208 (2000) (describing public interest factors in analogous RAP 2.3(d) standard). Because the Court of Appeals decision follows established precedent, is fact-specific in nature, and prior case law provides sufficient guidance for any issues raised in this appeal, there is no substantial public interest that must be determined by this Court. Thus, further review is unwarranted.

V. CONCLUSION

The Court of Appeals decision is consistent with prior case law and raises no issue justifying review by this Court. The Department respectfully asks the Court to deny review.

RESPECTFULLY SUBMITTED this 3rd day of July 2014.

ROBERT W. FERGUSON
Attorney General

AAG #35555

for JEREMY GELMS
WSBA # 45646
Assistant Attorney General
Attorneys for Respondent

PROOF OF SERVICE

I, ROXANNE IMMEL, hereby state and declare as follows:

1. That I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, and not a party to the above-entitled action.

2. That on the 3rd day of July 2014, I caused to be served a true and correct copy of **Answer to Petition For Review**, by ABC Legal messenger with courtesy copy via e-mail to:

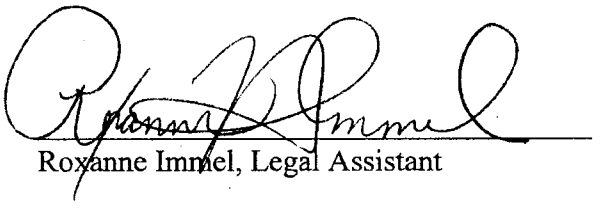
AARON ROCKE
ROCKE LAW GROUP, PLLC
101 YESLER WAY, SUITE 603
SEATTLE, WA 98104
aaron@rockelaw.com

Original e-filed by e-mail

supreme@courts.wa.gov

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON that the foregoing is true and correct.

DATED this 3rd day of July 2014, in Seattle, Washington.



Roxanne Immel, Legal Assistant

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, July 03, 2014 11:49 AM
To: 'Immel, Roxanne (ATG)'
Cc: aaron@rockelaw.com; Gelms, Jeremy (ATG)
Subject: RE: Kirby v. State of Washington Department of Employment Security, No. 90287-9 -- Answer to Petition for Review

Rec'd 7-3-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Immel, Roxanne (ATG) [mailto:RoxanneI@ATG.WA.GOV]
Sent: Thursday, July 03, 2014 11:45 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: aaron@rockelaw.com; Gelms, Jeremy (ATG)
Subject: Kirby v. State of Washington Department of Employment Security, No. 90287-9 -- Answer to Petition for Review

Dear Clerk,

Attached for filing is Respondent's Answer to Petition for Review by the Department of Employment Security in *Kirby v. State of Washington Department of Employment Security*, No. 90287-9.

The attorney for the Petitioner is receiving this email as a courtesy, with a paper copy being delivered by ABC Legal messenger.

Sincerely,
Roxanne Immel
Legal Assistant for Eric Peterson, Jeremy Gelms, & Marya Colignon
Attorney General's Office
Licensing & Administrative Law Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
roxannei@atg.wa.gov
(206) 464-7676 Main
(206) 389-2191 Direct
(206) 389-2800 Fax