NO. 91031-6

SUPREME COURT OF THE STATE OF WASHINGTON

JON C. JAMES,

Petitioner,

v.

WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT,

Respondent.

PETITIONER'S REPLY TO EMPLOYMENT SECURITY DPARTMENT'S ANSWER TO PETITION FOR REVIEW

Jonathan C. James
PO BOX 13261
Spokane Valley, WA 99213
(509) 342-8703
jon_opportunity@hotmail.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Agency Rules

I. PETITIONERS REPLY TO INTRODUCTION

Washington State individual's owning and operating businesses (employers) have state and federal laws to follow including but not limited to providing 'rest periods' during work shifts that exceed 4 hours, there are no exceptions. Likewise, the Respondent's have rules to follow when a individual employer adopt policies contrary to state and federal laws including but not limited to allowing a citizen to file a unemployment claim, pay 'conditional benefits', provide all received and/or considered employer 'Fact Finding Statements' regardless of separation issues (emphasis added) no exceptions.

State laws were not followed by the employer and the Respondent's failed to follow their own rules throughout the entire administrative process below.

II. PETITIONERS REPLY TO COUNTERSTATEMENT OF THE ISSUES

The issues cited by Respondents are for the most part correct however, respectfully requested to be reviewed chronologically to address the Respondent's Washington State Administrative Code (WAC) rules ignored that cause extreme prejudice.

1. Did the Court of Appeals correctly apply RCW 34.05.554(1)(b) to the 'conditional benefit' agency rules that have no adjudicative proceeding opportunity to raise the issue?
2. Did the Court of Appeals correctly apply RCW 34.05.554(1)(a)(b)(d)(ii) to the 'opportunity to be heard' agency rules that suppressed knowledge of employer evidence until the last feasible opportunity to seek relief from the agency was exhausted?

3. Can the Commissioner require a citizen to 'notify' her/his employer that she/he is conducting illegal activities contrary to state and federal laws to exclude RCW 50.20.050(2)(b)(viii) or (ix) agency relief?

III. PETITIONERS REPLY TO COUNTERSTATEMENT OF THE CASE

Mr. James did in fact quit his job after three weeks immediately qualifying him for "conditional benefits" pursuant to agency rule 192-120-050 WAC simply ignored by Respondent's.

Frustrated and financially crippled with no adjudicative process to raise the 'conditional benefit' issues Mr. James requested all the employer evidence received and/or to be considered by the agency pursuant to agency rule 192-120-040 WAC simply ignored by Respondent's.

Not knowing about the received and considered 'Expert Fact Finding' document by the agency Mr. James navigated through two administrative hearings, one of which the agency erased the hearing tapes exactly when the employer began to testify and two commissioner review hearings exhausting the last feasible opportunity to seek relief from the agency.

Next, at the Superior Court level the agency finally provided the 'Expert Fact Finding' document however all credibility fact finding hearings had been concluded. The Superior Court verbally ruled "it's certainly not the decision I would have came to" extremely concerned about what the agency had done to Mr. James moreover, with knowledge of the 'Expert Fact Finding' document.

Finally, the Court of Appeals gave no consideration to RCW 34.05.554(1)(a)(d)(ii) and the fact the 'Expert Fact Finding' document contradicted everything the Commissioner augmented in the thirteenth hour. Mr. James now respectfully requests this Court accept review as a matter of extreme public interest.

IV. REPLY TO RESPONDENTS REASONS WHY REVIEW SHOULD BE DENIED

Intentionally withholding social service benefits such as "conditional benefits" is a great matter of public concern. Additionally, withholding employer evidence that could have been used to argue credibility issues to suppress the intentional withholding of "conditional benefits" acts even greater matter of public concern reviewable pursuant to RAP 13.4

As for the new law (2004) requiring employees to notify a employer the employer herself/himself is conducting illegal activities contrary to state or federal laws before quitting, this issue is not only a matter of great public concern but, 14th Amendment equality as employers certainly are not required to notify employees of their illegal activities prior to terminating a employee-employer relationship.

A. The Court of Appeals failed to apply RCW 34.05.554(b) to the agency rule 192-120-050 WAC 'Conditional Payment of Benefits'

'Conditional benefits' are the first line of defense for citizens facing unsafe and illegal worksites employer require as it allows up to four weeks to vet a employer to see if any sustainable conditions exist. There is no room to deny these benefits by agency rule when a claimant has received benefits within the past four weeks.

The agency provides no adequate adjudicative proceeding to preserve and raise 192-120-050 WAC rights assumedly, because the agency can't deny these rights but, did so regarding Mr. James contrary to agency rule.

This Court is respectfully requested to remand this issue to the agency pursuant to RCW 34.05.554(2) because, the counsel of record certifies Mr. James indeed only worked for "three weeks" after collecting benefits automatically qualifying him to 'conditional benefits' still to this day as required by agency rule.

B. The Court of Appeals failed to apply RCW 34.05.554(a)(b)(d)(ii) to the agency rule 192-120-040 WAC 'Will I be interviewed before a decision about my eligibility is made?'

'Will I be interviewed before a decision is made?' and/or 'Opportunity to be heard' is the agency rule that guarantees some basic due process principles basically, requiring the agency to provide claimants all the employer evidence received and to be considered in determining eligibility.

In this case the only employer evidence was the 'Expert Fact Finding' statement as found in most cases. It was not provided as required by rule all the way up until the last feasible opportunity to seek relief from the agency expired.

This Court is respectfully requested to remand this issue to the agency pursuant to RCW 34.05.554(2) because, the 'Expert Fact Finding' contains material evidence/statements from the employer not known by the claimant moreover, the ALJ's or CRJ's.

C. The Court of Appeals failed to apply 34.05.554(a)(b) to the fact not providing 'rest periods' is contrary to state laws therefore, claimants are not required to notify.

Immediately, before Mr. James quit he was disciplined for taking 'rest periods' this fact has turned this case on it's head from day one as, he did in fact satisfy agency rule 192-150-135 WAC establishing good cause to quit.

It's because of this fact agency rules were not followed, evidence suppressed, hearing tapes erased resulting in the fabulous euphoria the Commissioner augmented in the thirteenth hour that alleges up to 1.5 hours of rest periods for Mr. James per 10 hour shift that is pure non-sense in any occupation especially, landscaping.

Much like all other issues, Mr. James simply did not know of the 'Expert Fact Finding' statement that contains the employer identifying 'rest periods' as taken at employee discretion entirely opposite of the Commissioner's fantastic augmentations that find and conclude 'rest periods' were limited to employers discretion.

The Respondent's moreover, the employer simply cannot have the cake and eat it too as both allege incompatible theories regarding state laws surrounding 'rest periods' was it employees discretion or employers discretion? It cannot be both as current found below.

It's interesting how these incompatible theories evolved that causes great public concern because, Mr. James grilled the employer in the first adjudicative proceeding setting the stage for the underlying issue, no 'rest periods' were indeed allowed.

Then the agency and employer turn to how could they have been allowed while camping on the one piece of evidence that destroys the latter theory, the 'Expert Fact Finding' document.

Fighting the Commissioner's augmentations has truly been pointless and impossible as relied upon by the agency and employer because the Administrative Procedures Act (APA) limits more like, prohibits credibility review except when RCW 34.05.554 provisos are met as is the case hereunder.

The APA albeit prevents this Court, the Court of Appeals and Superior Court from deciding credibility issue it does not prevent remanding the suppressed 'Expert Fact Finding' evidence back to the agency to decide credibility in light of the entire Agency Record that was never complete and knowledgeable to Mr. James, the ALJ's and CRJ's.

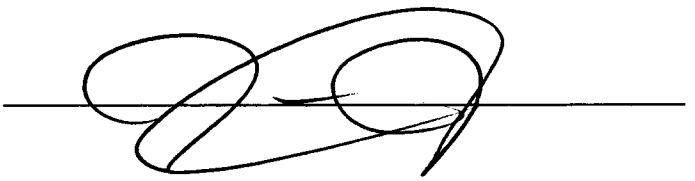
This Court is respectfully requested to accept review, SET ASIDE the Commissioners decision allowing an "opportunity to be heard" consistent to agency rules not the ability to suppress evidence and erase hearing tapes.

It truly has been troubling to say the least watching the agency and employer abuse state laws and rules to date.

CONCLUSION

Substantial public issues arise below. Mr. James respectfully requests this Court accept review en banc to curtail any further abuses of the APA.

RESPECTFULLY SUBMITTED THIS 26TH DAY OF JANUARY, 2015



PROOF OF SERVICE

I, Jonathan C. James certify that I caused a copy of this document-PETITIONER'S REPLY TO EMPLOYMENT SECURITY DEPARTMENT'S ANSWER TO PETITION FOR REVIEW-to be served on the date below as follows:

Personal delivery to:

Robert W. Ferguson
1116 W. Riverside Ave
Spokane, Washington 99201

Employment Security Department
130 S Arthur
Spokane, Washington 99201

US Mail postage prepaid to:

Supreme Court
PO BOX 40929
Olympia, WA 98504-0929

I certify under the penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED THIS 26TH DAY OF JANUARY, 2015 AT SPOKANE, WASHINGTON