Supreme Court No. 92543-7

Court of Appeals No. 46656-2-II

SUPREME COURT
OF THE STATE OF WASHINGTON

Kimberly G. Luvaas,

Appellant,

v.

Department of Labor & Industries,

Respondent.

PETITION FOR REVIEW

James R. Walsh, WSBA #11997
Kevin D. Anderson, WSBA #42126
Attorneys for Appellant

Law Office of James R. Walsh
20201 Cedar Valley Road, Suite 140
Lynnwood, WA 98036
Phone: (425) 774-6883
Fax: (425) 778-9247

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Table of Cases

Statutes

Court Rules

Other Authorities

I. IDENTITY OF PETITIONER

Kimberly G. Luvaas, the injured worker/Claimant at the Board of Industrial Insurance Appeals, and the plaintiff/appellant at the Clallam County Superior Court and Division Two of the Court of Appeals, seeks review of the opinion entered by the Court of Appeals referenced in Section II below.

II. COURT OF APPEALS' DECISION

Ms. Luvaas asks this Court to review the opinion of the Court of Appeals, Division Two, which was filed on September 29, 2015. A copy of the unpublished opinion is attached as Appendix A. The Court of Appeals denied Ms. Luvaas's timely motion for reconsideration on October 27, 2015, which is attached as Appendix B.

III. ISSUE PRESENTED FOR REVIEW

Whether the Washington State Supreme Court's definition and focus of "receiving" as it pertains to RCW 51.08.178(1), per Department of Labor & Industries v. Granger, requires the inclusion of Ms. Luvaas's wages from DSHS in the calculation of her timeloss compensation rate for L&I claim #AM55825.

IV. STATEMENT OF THE CASE

A. Factual Background

On July 29, 2011, Ms. Luvaas suffered an industrial injury after working at one of her two jobs, Out On A Limb Landscaping. *See* Board Transcript at 8-9[1].

Besides her job at Out On A Limb Landscaping, Ms. Luvaas worked full time as a Care Provider through DSHS. *See* id. at 12. She entered into a contract with DSHS and her employment as a Care Provider began in July of 2009. *See* Board Exhibit 2. On July 5, 2011, Ms. Luvaas informed DSHS in writing of her intent to terminate the existing employment relationship between herself and DSHS. *See* Board Exhibit 3. Her written note indicated that her last working day would be July 28, 2011. Id. In authoring this note to DSHS, Ms. Luvaas took into consideration the days that she regularly did not work, which were weekends, and a weekend abutted the end of July immediately prior to switching over to August. *See* id.; *see* Board Transcript at 42-43, 47.

[1] Unfortunately, only a fraction of the Clerk's Papers were independently numbered by the Clallam County Superior Court. Documents submitted by the parties at the superior court level were numbered in the bottom right hand corner and numbered 2 through 49, and were referenced in briefing at Court of Appeals, Division Two as "Sup.Ct.Rec.". Following this section, records were Bates stamped 1 through 185, and were referenced in briefing at Court of Appeals, Division Two as "CP". Following this section was the Board of Industrial Insurance Appeal's Hearing Transcript which numbered 1 through 87, and was referenced as "Board Transcript" in briefing at Court of Appeals, Division Two. Following this section were exhibits that were admitted during the Board Hearing and numbered 1 through 6, and was referenced as "Board Exhibits" in briefing at Court of Appeals, Division Two.

With this note, it was her intent to comply with the contract she entered into with DSHS and the contractual term requiring 30 day written notice to terminate the contract for convenience, which therefore would have ended the contract between DSHS and Ms. Luvaas, and her work as a Care Provider, on or about August 5, 2011. Id.

Ms. Luvaas was compensated by DSHS for the entire month of July 2011. *See* Board Exhibit 4, 5. DSHS made payment to Ms. Luvaas for the month of July 2011 on August 3, 2011, which is the date that Ms. Luvaas took possession and delivery of her wages for her work as a Care Provider through DSHS. *See* Board Exhibit 4.

B. Procedural Background

Ms. Luvaas filed an application for benefits with the Department of Labor & Industries (Respondent) on or about December 7, 2011 due to the industrial injury she suffered on July 29, 2011. CP 31, 149. On May 4, 2012, the Department issued an order setting the "[w]age for job of injury based on monthly salary of $447.12." CP 22-23, 31. Ms. Luvaas filed a timely protest of the May 4, 2012 order with the Department on May 16, 2012. CP 31. In response, the Department issued an order on May 21, 2012 which affirmed the May 4, 2012 wage order. CP 24, 31. Ms. Luvaas filed a timely appeal to the May 21, 2012 affirm order on June 21, 2012 based on the premise, *inter alia*, that her monthly wages from

DSHS were not considered when calculating her timeloss compensation rate. CP 25. Ms. Luvaas's appeal was granted for consideration by the Board of Industrial Insurance Appeals (Board) on July 19, 2012. CP 30-31. Following hearings at the Board, the Industrial Appeals Judge issued a Proposed Decision and Order (PD&O) on August 9, 2013 which ultimately affirmed the Department's wage order of May 4, 2012. CP 11-20. Ms. Luvaas filed a timely Petition for Review (PFR) of the PD&O on September 5, 2013. CP 2-6. Ms. Luvaas's PFR was subsequently denied by the Board on September 26, 2013 which in turn made the PD&O a final decision and order of the Board. CP 1.

In response, Ms. Luvaas filed a timely appeal to Clallam County Superior Court on October 16, 2013. Sup.Ct.Rec. 46-47. Ms. Luvaas filed a motion for summary judgment with the superior court on May 15, 2014. Sup.Ct.Rec. 34-45. Respondent submitted responsive briefing to the superior court, along with a cross-motion for summary judgment of their own, on June 6, 2014. Sup.Ct. Rec. 26-33. Ms. Luvaas submitted responsive briefing to the superior court on July 11, 2014. Sup.Ct. Rec. 18-25. Oral argument on the competing motions for summary judgment was held at Clallam County Superior Court on the morning of August 8, 2014. Sup.Ct.Rec. 13. On August 13, 2014, the superior court denied Ms. Luvaas's motion for summary judgment and granted Respondent's cross-

motion for summary judgment which ultimately affirmed the Department's wage order of May 4, 2012. Sup.Ct.Rec. 13-17.

Ms. Luvaas submitted a Notice of Appeal to Court of Appeals, Division Two on September 11, 2014, which was timely filed on September 12, 2014. Sup.Ct.Rec. 5-6. Following briefing by the parties, Court of Appeals, Division Two filed an unpublished opinion on September 29, 2015 which upheld the lower court's decision. *See* Appendix A. Ms. Luvaas timely filed a motion for reconsideration, and specifically drew the Court's attention to Ms. Luvaas's argument regarding RCW 51.08.178(1) and the Washington State Supreme Court's definition and focus of "receiving". Court of Appeals, Division Two filed an order denying Ms. Luvaas's motion for reconsideration on October 27, 2015. *See* Appendix B.

V. ARGUMENT

A. The Court of Appeals' opinion disregards the definition and focus of "receiving" as it pertains to RCW 51.08.178(1) which was set forth in the Supreme Court case of Department of Labor & Industries v. Granger and therefore results in a conflict with previous decisions made by this Court.

This Court has defined the word "receiving" as it pertains to RCW 51.08.178(1) in Department of Labor & Industries v. Granger as well as in Harris v. Department of Labor & Industries. *See generally* Dep't of Labor

& Indus. v. Granger, 159 Wash.2d 752, 153 P.3d 839 (2007); *see generally* Harris v. Dep't of Labor & Indus., 120 Wash.2d 461, 843 P.2d 1056 (1993). It has determined that "receiving", as it pertains to RCW 51.08.178, means "**to 'take possession or delivery of' something**" and "that the proper focus under RCW 51.08.178's 'receiving at the time of injury' language is on the **payment made for the benefit and not on the eligibility**...." *See* Granger, 159 Wash.2d at 760-67 (emphasis added); *see also* Harris, 120 Wash.2d at 472 (*citing* Webster's Third New International Dictionary 1894 (1976) (emphasis added).

When using this Court's definition of "receiving" instead of the actual word, RCW 51.08.178(1) would read in pertinent part:

> For the purpose of this title, the monthly wages the worker **[had taken possession or delivery of]** from all employment at the time of injury shall be the basis upon which compensation is computed...

See RCW 51.08.178(1) (emphasis added). The Court of Appeals' opinion dated September 29, 2015 does not properly apply the definition of "receiving" to RCW 51.08.178(1) as set forth by this Court in Granger. When Granger was reemphasized to the Court of Appeals via a motion for reconsideration, they again declined to follow the definition and focus established by this Court. Instead, the Court of Appeals' opinion of September 29, 2015 suggests that Ms. Luvaas needed to have earned,

became entitled to, or became eligible for wages from DSHS on July 29, 2011. This runs completely counter to the definition and focus given by this Court to the word "receiving".

More so, it is important to remember the purpose and intent of Title 51. The legislature has made their intent, as well as the statutory scheme, very clear when it comes to Title 51 and the workers' compensation system in the State of Washington. This was recognized by this Court in the Granger case: "The legislature has mandated that Title 51 RCW be 'liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries ... occurring in the course of employment.'" Granger, 159 Wash.2d at 757 (*quoting* RCW 51.12.010). The purpose of Title 51, the Industrial Insurance Act, is to provide sure and certain relief to injured workers. Dellen Wood Products v. Dep't of Labor & Indus., 179 Wash. App. 601, 615, 319 P.3d 847 (2014) (*quoting* RCW 51.04.010). "[W]here reasonable minds can differ over what [RCW 51.08.178(1)] mean[s], in keeping with the legislation's fundamental purpose, the benefit of the doubt belongs to the injured worker...." Cockle v. Dep't of Labor & Indus., 142 Wash.2d 801, 811, 16 P.3d 583 (2001); *see also* Double D Hop Ranch v. Sanchez, 133 Wash.2d 793, 798, 947 P.2d 727 (1997) (*citing* Rozner v. City of Bellevue, 116 Wash.2d 342, 804 P.2d 24 (1991)).

It is irrefutable that Ms. Luvaas received the payment made to her by DSHS on August 3, 2011. *See* Board Exhibit 4. Ms. Luvaas did not take possession or delivery of the aforementioned payment from DSHS, which was for the entire month of July 2011, prior to August 3, 2011. *See* id. Clearly, Ms. Luvaas received payment of her wages from DSHS after her industrial injury of July 29, 2011. Therefore, pursuant to RCW 51.08.178(1), the definition of "receiving" as set forth by this Court, and the liberal construction of Title 51, Ms. Luvaas's wages from DSHS that she took possession or delivery of on August 3, 2011 should be included in her timeloss compensation rate for her industrial injury of July 29, 2011. The Court of Appeals did not apply this Court's definition and focus of "receiving" to the matter at hand, nor did they abide by the purpose and intent of Title 51 which has been widely acknowledged by this Court. As a result, the Court of Appeals' opinion of September 29, 2015 is inconsistent with decisions made by this Court. *See* Wash. R. App. P. 13.4.

B. The Court of Appeals' opinion affects all workers in the state of Washington and the legislative directive that affords Title 51 to be liberally construed in favor of the injured worker and therefore creates an issue of substantial public interest that should be determined by this Court.

Title 51, and the benefits that flow therefrom, is the sole remedy for a worker in the state of Washington should an injury occur on the job. Timeloss compensation, a temporary and reduced wage replacement, is a benefit afforded an injured worker who has their claim accepted by the Department of Labor & Industries. *See* RCW 51.08.178. The lifeblood of the state of Washington is the worker, whose only legal recourse, should they get hurt on the job, is Title 51. Any opinion by a lower court, especially an opinion inconsistent with decisions of this Court as evidenced above, that incorrectly applies a provision of Title 51 clearly creates an issue of substantial public interest. *See* Wash. R. App. P. 13.4. An incorrect interpretation of RCW 51.08.178 has the potential to impact every single worker in the state of Washington and must be remedied by this Court.

VI. CONCLUSION

Ms. Luvaas respectfully requests that the Supreme Court accept this matter for review pursuant to RAP 13.4, reverse the Court of Appeals and superior court, and remand this matter to the Department of Labor &

Industries with an order directing the Department to include Ms. Luvaas's wages from DSHS in the calculation of her timeloss compensation rate under L&I claim #AM55825.

RESPECTFULLY SUBMITTED this 25th day of November, 2015.

James R. Walsh, WSBA #11997
Kevin D. Anderson, WSBA #42126
Attorneys for Appellant/Petitioner

APPENDIX A

Filed
Washington State
Court of Appeals
Division Two

September 29, 2015

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

KIMBERLY G. LUVAAS, Appellant, v. DEPARTMENT OF LABOR & INDUSTRIES, Respondent.	No. 46656-2-II UNPUBLISHED OPINION

JOHANSON, C.J. — Kimberly G. Luvaas appeals the superior court's order denying her motion for summary judgment and granting summary judgment in favor of the Department of Labor and Industries (L&I) on her workmen's compensation claim. She argues that the court erred in not finding that she was an employee of the Department of Social and Health Services (DSHS) on the date of her industrial injury and in failing to include her wages from DSHS in her wage calculation. We hold that (1) under RCW 51.08.178(1)'s plain language, Luvaas's DSHS wages could be considered only if she was employed by DSHS at the time of her injury, and (2) there is no question of fact that Luvaas was not employed by DSHS at the time of her injury. Accordingly, we affirm the superior court.

FACTS

I. DSHS CONTRACT AND LUVAAS'S TERMINATION NOTICE

On June 25, 2009, Luvaas signed a contract with DSHS to provide client services from July 1, 2009 through June 30, 2012. The contract included the following termination clause:

> **Termination for Convenience**. DSHS may terminate this Contract in whole or in part when it is in the best interest of DSHS by giving the Contractor at least thirty (30) calendar days' written notice. The Contractor may terminate this Contract for convenience by giving DSHS at least thirty (30) calendar days' written notice addressed to DSHS at the address listed on page 1 of this Contract.

Administrative Record (AR) Ex. 2 at 8.

According to Luvaas, sometime in June 2011, she informed someone[1] at DSHS that she was going to stop providing client services. But when DSHS was unable to find a replacement, Luvaas "verbally agreed that [she] would stay on another month" to give DSHS time to find someone. AR Report of Proceedings (May 29, 2013) at 42. In a subsequent letter dated July 5, Luvaas informed DSHS that she would not provide any client services after July 28. DSHS received this notice on July 8. As of July 28, Luvaas had worked all of her allotted hours, and she provided no client services after that date.

II. Injury, Claim, and Initial Notice of Decision

On July 29, Luvaas injured herself while working for a landscaping company. Luvaas filed for workmen's compensation benefits based on the July 29, 2011 injury. In a claim form, Luvaas stated that as of July 28, 2011,[2] she had two jobs, but she also stated that "7-28-11 was [her] last day for [DSHS]." AR at 26. She also submitted a copy of her invoice to DSHS showing that she had provided 178 hours of service from July 1 through July 31, 2011. An electronic funds transfer remittance "advice" also noted that the pay period for her final DSHS check was from July 1 to July 31.

---

[1] Luvaas was not sure who she spoke to or whether the notice was oral or in writing, but she testified that she had provided some kind of notice in June.

[2] In her original claim, Luvaas asserted that the injury occurred on July 28, but she later corrected that date to show that the injury occurred on July 29.

On May 4, 2012, L&I issued a notice of decision setting the wages for the job injury at a monthly salary of $447.12; this rate included the wages from only Luvaas's landscaping job. Luvaas protested the May 4 wage order, but L&I affirmed the order.

III. Appeal to the Board of Industrial Insurance Appeals

Luvaas then appealed the May 4 wage order to the Board of Industrial Insurance Appeals. She argued, inter alia, that L&I had erred when it failed to consider her monthly DSHS wages.

After denying the parties' motions for summary judgment, an industrial appeals judge (IAJ) held a full hearing on the appeal. In addition to Luvaas's testimony, the IAJ considered testimony from DSHS employee Rodney Gilliand and L&I claims consultant supervisor Angel Travis.

Luvaas asserted that she was employed by both the landscaping company and DSHS at the time of her July 29, 2011 injury, and she testified consistently with the facts set out above. But she admitted that she did not provide or intend to provide any client services for DSHS after July 28, 2011.

The IAJ issued a proposed decision and order affirming the May 4, 2012 wage order. The IAJ concluded, in relevant part, that Luvaas's work with the landscaping company was her "sole employment at the time of [her] injury" because she had terminated her contract with DSHS, completed her billable hours for DSHS, and did not intend to return to work for DSHS before the date of her injury. AR at 19. The proposed decision and order became a final order when the Board denied Luvaas's petition for review.

IV. Appeal to Superior Court

Luvaas then appealed the final order to the superior court and moved for summary judgment, arguing, inter alia, that L&I should have considered her DSHS wages. L&I filed a cross

motion for summary judgment. Concluding that Luvaas's final date of employment with DSHS was July 28, 2011, the superior court denied Luvaas's summary judgment motion and granted L&I's motion, affirming the May 4, 2012 wage order. The superior court commented, "Since there were no lost wages or income from DSHS to replace after July 28, 2011, there would be no purpose to awarding time loss compensation based upon wages or income from DSHS during this time frame." Clerk's Papers at 10. Luvaas appealed to this court.

ANALYSIS

Luvaas argues that the superior court erred when it denied her summary judgment motion and granted L&I's summary judgment motion.[3] She asserts that she was still employed by DSHS at the time of her injury because (1) DSHS paid her for the entire month of July, (2) her employment contract with DSHS was still in effect on the date of her industrial injury because she did not give DSHS written notice of her intent to terminate the contract at least 30 days before the date of her injury, and (3) she worked until the last day of the month based on her regular schedule, which did not include Friday through Monday. Accordingly, she contends that her DSHS monthly wages should have been included in the wage calculation. We disagree.

I. STANDARD OF REVIEW AND STATUTORY INTERPRETATION

We review the superior court's decision on summary judgment in an industrial insurance appeal as we would in any other civil case.[4] *Hill v. Dep't of Labor & Indus.*, 161 Wn. App. 286,

[3] Luvaas contends that she is not claiming that there are any genuine issues of material fact that bar summary judgment. Instead, she argues she was entitled to summary judgment.

[4] On an appeal of a decision by the Board, the superior court considers the evidence and testimony presented to the Board. *See* RCW 51.52.115. We, in turn, review the superior court's decision based on that record.

292, 253 P.3d 430 (2011) (citing RCW 51.52.140); *Malang v. Dep't of Labor & Indus.*, 139 Wn. App. 677, 683, 162 P.3d 450 (2007). "Summary judgment is proper only when the pleadings, depositions, and admissions in the record, together with any affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Campos v. Dep't of Labor & Indus.*, 75 Wn. App. 379, 383, 880 P.2d 543 (1994) (citing CR 56(c); *Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990)). We consider all facts and reasonable inferences from those facts in the light most favorable to the nonmoving party; we review all questions of law de novo. *Cowlitz Stud Co. v. Clevenger*, 157 Wn.2d 569, 573, 141 P.3d 1 (2006).

Statutory construction is a question of law that we review de novo. *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001) (citing *Stuckey v. Dep't of Labor & Indus.*, 129 Wn.2d 289, 295, 916 P.2d 399 (1996)). Our primary goal when engaging in statutory construction is to carry out the legislature's intent. *Cockle*, 142 Wn.2d at 807 (citing *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804 P.2d 24 (1991)). If a statute is plain and unambiguous, its meaning must be derived from the language itself. *Dep't of Transp. v. State Employees' Ins. Bd.*, 97 Wn.2d 454, 458, 645 P.2d 1076 (1982).

II. EMPLOYMENT STATUS AT TIME OF INJURY

"Under Washington's Industrial Insurance Act, Title 51 RCW . . ., time-loss and loss of earning power compensation rates are determined by reference to a worker's wage at the time of injury." *Gallo v. Dep't of Labor & Indus.*, 155 Wn.2d 470, 481, 120 P.3d 564 (2005) (citing RCW 51.08.178; *Cockle*, 142 Wn.2d at 807). Because the purpose of time-loss compensation is to reflect

the worker's lost earning capacity, the time-loss compensation is based on the worker's "wages" as defined in RCW 51.08.178(1). This statute provides, in part,

> For the purposes of this title, the monthly wages the worker was receiving from all employment *at the time of injury* shall be the basis upon which compensation is computed unless otherwise provided specifically in the statute concerned. In cases where the worker's wages are not fixed by the month, they shall be determined by multiplying the daily wage the worker was receiving *at the time of the injury* [by a number determined by the number of days the employee usually worked in a week].

RCW 51.08.178(1) (emphasis added).

Luvaas argues that the statute's requirement that L&I consider "'the monthly wages the worker was receiving from all employment,'" L&I was required to consider her DSHS wages earned in the month of her injury. Br. of Appellant at 6 (quoting RCW 51.08.178(1)). L&I argues that the plain language of the statute establishes that it could consider Luvaas's DSHS wages only if she was employed by DSHS at the time of injury.[5] We agree with L&I.

The statute's plain language requires L&I to consider the monthly wages that Luvaas was receiving "from all employment at the time of injury." If she was not employed by DSHS at the time of the injury, she was not receiving any wages from DSHS at that time.[6] RCW 51.08.178(1). Accordingly, we must next examine whether there was a question of fact as to whether Luvaas was employed by DSHS at the time of her injury.

---

[5] L&I also argues that *Department of Labor & Industries v. Avundes*, 140 Wn.2d 282, 996 P.2d 593 (2000), supports its argument that it could consider only the work Luvaas was engaged in on the date of the injury. *Avundes* is not instructive here because our Supreme Court's analysis was focused on whether RCW 51.08.178(1) or (2) applied, not whether L&I had to consider all monthly wages regardless of whether the claimant was actually employed by an employer on the date of the injury. 140 Wn.2d at 290.

[6] We note that because we base our decision on the plain language of the statute, there is no need for us to liberally construe the statute in Luvaas's favor.

III. EMPLOYMENT STATUS

Luvaas argues that she was still employed under the DSHS contract on July 29, 2011, because her contract with DSHS required her to give at least 30 days written notice if she was terminating the contract and she was injured less than 30 days after she gave written notice. We disagree.

The evidence unequivocally established that Luvaas unilaterally terminated her employment relationship with DSHS after July 28, 2011—in fact, Luvaas herself testified that she did not provide or intend to provide any further services under the DSHS contract after that date. Furthermore, if Luvaas's unilateral termination of her employment amounted to a breach of contract, it does not mean Luvaas was still employed by DSHS because a party breaching a contract cannot demand performance from a nonbreaching party. *See Kofmehl v. Baseline Lake, LLC*, 177 Wn.2d 584, 595, 305 P.3d 230 (2013) (party breaching a sales contract cannot benefit from his own breach of that contract); *Parsons Supply, Inc. v. Smith*, 22 Wn. App. 520, 523, 591 P.2d 821 (1979) (acknowledging "general rule that a breaching party cannot demand performance from the nonbreaching party"). The fact Luvaas chose the July 28 date instead of July 31 because her regular work schedule would not have included July 29 through 31 does not alter the fact she

specifically stated she was terminating her employment on July 28. Thus, the superior court did not err when it found that Luvaas was not employed by DSHS on July 29.[7]

Because there is no question of fact that Luvaas terminated her DSHS employment the day before her injury and L&I could consider only the wages from employers for whom Luvaas was working as of the date of her injury, the superior court did not err when it granted DSHS summary judgment and affirmed the Board's decision.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Johanson, C.J.
JOHANSON, C.J.

We concur:

Worswick, J.
WORSWICK, J.

Melnick, J.
MELNICK, J.

[7] Luvaas also argues that any attempt on her part to alter the contract by stating she was ending her relationship with DSHS on July 28, 2011, rather than 30 days after the written notice, is irrelevant and, apparently, ineffectual, because the contract prohibits unilateral modification of the contract. And she asserts that DSHS's acquiescence to the July 28, 2011 termination date cannot be construed as waiving "a supposed 'breach' of the contract by Ms. Luvaas," because the contract specifies that only the DSHS chief administrative officer or designee had the authority to waive any term or condition of the contract. Br. of Appellant at 15. Because we hold that Luvaas unilaterally terminated her employment with DSHS as of July 28, we do not discuss whether this was a modification of the contract or whether DSHS had waived any contractual requirements.

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

KIMBERLY G. LUVAAS,

Appellant,

v.

DEPARTMENT OF LABOR AND INDUSTRIES,

Respondent.

No. 46656-2-II

ORDER DENYING MOTION FOR RECONSIDERATION

APPELLANT moves for reconsideration of the Court's **September 29, 2015** opinion. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Johanson, Worswick, Melnick

DATED this 27th day of October, 2015.

FOR THE COURT:

Johanson, C.J.
CHIEF JUDGE

cc: Kevin Daniel Anderson
James R. Walsh
James P Mills

IN THE IN THE COURT OF APPEALS, DIVISION II OF THE STATE OF WASHINGTON

KIMBERLY G. LUVAAS Plaintiff/Petitioner	Cause No.: **46656-2-II** Hearing Date:
vs. **DEPARTMENT OF LABOR & INDUSTRIES** Defendant/Respondent	DECLARATION OF SERVICE OF **PETITION FOR REVIEW**

The undersigned hereby declares: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

On the **25th day of November, 2015** at **10:37 AM** at the address of **OFFICE OF THE ATTORNEY GENERAL, 1250 PACIFIC AVE SUITE 105, TACOMA, WA 98401**; this declarant served the above described documents upon **JAMES MILLS** by then and there personally delivering **1** true and correct copy(ies) thereof, by then presenting to and leaving the same with **JAMES MILLS**, **Who accepted service, with identity confirmed by verbal communication, a brown-haired white male approx. 35-45 years of age, 5'10"-6'0" tall and weighing 160-180 lbs with glasses and a beard.**.
No information was provided or discovered that indicates that the subjects served are members of the United States military.

Service Fee Total: **$ 89.50**

Declarant hereby states under penalty of perjury under the laws of the State of Washington that the statement above is true and correct.

DATED 11/25/2015.

Trenton Bellesen, Reg. # PC # 25931, Pierce

ORIGINAL PROOF OF SERVICE

For: **Walsh, James R.**
Ref #: **LUVAAS (L&I)**

Tracking #: **0009474101**