

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
10/9/2018 9:15 AM  
BY SUSAN L. CARLSON  
CLERK

NO. 96188-3

---

**SUPREME COURT OF THE STATE OF WASHINGTON**

---

KASANDRA GERIMONTE,

and

STATE OF WASHINGTON DEPARTMENT OF EMPLOYMENT  
SECURITY,

Respondents,

v.

VALLEY PINES RETIREMENT HOME,

Petitioner.

---

**DEPARTMENT'S ANSWER TO PETITION FOR REVIEW**

---

ROBERT W. FERGUSON  
Attorney General

CATHERINE KARDONG,  
WSBA #47144  
LEAH HARRIS, WSBA #40815  
Assistant Attorneys General  
Licensing and Administrative Law  
OID# 91021  
1116 West Riverside Avenue, Suite 100  
Spokane, WA 99201-1106  
(509) 456-6389  
[CatherineK1@atg.wa.gov](mailto:CatherineK1@atg.wa.gov)

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. COUNTERSTATEMENT OF THE ISSUES .....2

    A. Does substantial evidence in the record support the Commissioner’s findings that Ms. Gerimonte did not know she was under investigation when she was hired, was not charged criminally until seven or eight months after she was hired, and that there was no employer rule requiring her to immediately report charges filed in between background checks?.....2

    B. Did the Commissioner correctly conclude that Ms. Gerimonte’s conduct did not amount to statutory misconduct under the Employment Security Act?.....2

III. COUNTERSTATEMENT OF THE FACTS .....2

    A. State Law Prohibits Individuals with Certain Criminal Convictions and Pending Charges from Working with Vulnerable Persons .....2

    B. When Valley Pines Hired Ms. Gerimonte, Ms. Gerimonte Had No Criminal Convictions or Pending Charges .....3

    C. After She Was Hired, Ms. Gerimonte Was Charged with Theft and Entered a Diversion Program .....3

    D. Ms. Gerimonte Disclosed Her Pending Charges on the Second Background Check Authorization Form .....4

    E. The Department Found Ms. Gerimonte Did Not Commit Misconduct and Allowed Unemployment Benefits .....5

    F. The Superior Court Considered Additional Evidence, Made New Factual Findings, and Reversed the Commissioner’s Decision; Then the Court of Appeals Reversed the Superior Court and Reinstated the Award of Benefits .....7

IV.	REASONS WHY REVIEW SHOULD BE DENIED .....	8
	A. This Fact-Specific Case Does Not Involve an Issue of Substantial Public Interest That Should Be Determined By the Supreme Court.....	9
	B. The Court of Appeals’ Decision is Consistent with Established Precedent and Properly Concluded Ms. Gerimonte Did Not Commit Misconduct .....	13
V.	CONCLUSION .....	17

## TABLE OF AUTHORITIES

### Cases

<i>Anderson v. Employment Security Department</i> , 135 Wn. App. 887, 146 P.3d 475 (2006) .....	15
<i>Cuesta v. Employment Security Department</i> , 200 Wn. App. 560, 402 P.3d 898 (2017) .....	16
<i>Gerimonte v. Valley Pines Ret. Home</i> , No. 35173-4-III (Wash. Ct. App. June 7, 2018) .....	7, 8, 10, 11
<i>Johnson v. Emp't Sec. Dep't</i> , 64 Wn. App. 311, 824 P.2d 505 (1992) .....	12, 14, 16
<i>Macey v. Employment Security Department</i> , 110 Wn.2d 308, 752 P.2d 372 (1988).....	15, 16
<i>Millay v. Cam</i> , 135 Wn.2d 193, 955 P.2d 791, 795-96 (1998) .....	11
<i>Nelson v. Dep't of Emp't Sec.</i> , 98 Wn.2d 370, 655 P.2d 242 (1982).....	14, 15
<i>Nelson v. Emp't Sec. Dep't</i> , 31 Wn. App. 621, 644 P.2d 145 (1982) .....	12, 14
<i>Tapper v. Emp't Sec. Dep't</i> , 122 Wn.2d 397, 858 P.2d 494 (1993).....	12

### Statutes

RCW 50.04.293 .....	11
RCW 50.04.294 .....	6, 8, 9, 10, 11
RCW 74.39A.056.....	2, 3, 12

**Rules**

RAP 13.4..... 2, 8, 9, 13

**Regulations**

WAC 388-113-0010..... 12, 13

WAC 388-113-0020..... 2

WAC 388-76-10165..... 4

WAC 388-76-10181..... 3

## 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. Here, the Commissioner of the Employment Security Department found that Kassandra Gerimonte was truthful on her job application with Valley Pines Retirement Home (Valley Pines) when she stated she had no criminal convictions or pending charges that would preclude her from working with vulnerable adults, and that Valley Pines did not have a rule or policy requiring employees to disclose criminal charges filed between background checks. The Court of Appeals, in an unpublished decision, declined to reweigh the evidence and make new findings when it affirmed the Commissioner's conclusion that Ms. Gerimonte did not commit statutory misconduct that disqualified her from unemployment benefits.

In seeking further review, Valley Pines once again asks the Court to revisit the record, reweigh the evidence, make new findings, and second-guess the Commissioner. It also asks the Court to wade into the legislative and rulemaking functions of the other branches of government. In short, Valley Pines asks for relief that this Court cannot provide. Because the Court of Appeals' decision does not conflict with Washington case law and

raises no issues of substantial public importance, further review by this Court is unwarranted.

## **II. COUNTERSTATEMENT OF THE ISSUES**

For the reasons set forth below, the issues raised in Valley Pines' Petition for Review do not warrant review under RAP 13.4(b). If review were accepted, however, the issues before this Court would be:

- A. Does substantial evidence in the record support the Commissioner's findings that Ms. Gerimonte did not know she was under investigation when she was hired, was not charged criminally until seven or eight months after she was hired, and that there was no employer rule requiring her to immediately report charges filed in between background checks?**
- B. Did the Commissioner correctly conclude that Ms. Gerimonte's conduct did not amount to statutory misconduct under the Employment Security Act?**

## **III. COUNTERSTATEMENT OF THE FACTS**

- A. State Law Prohibits Individuals with Certain Criminal Convictions and Pending Charges from Working with Vulnerable Persons**

Under state statute and the Washington Administrative Code, certain criminal convictions and pending charges disqualify individuals from working with vulnerable persons. Commissioner's Record (CR) 114 (Finding of Fact (FF) 3); RCW 74.39A.056; WAC 388-113-0020; WAC 388-76-10180. State law also requires applicants for such work to

undergo background checks to verify they do not have a history that would disqualify them. RCW 74.39A.056(1).

**B. When Valley Pines Hired Ms. Gerimonte, Ms. Gerimonte Had No Criminal Convictions or Pending Charges**

Ms. Gerimonte worked as a caregiver for Valley Pines Retirement Home from March 2014 through April 26, 2016. CR 26-27, 89, 113 (FF 2).<sup>1</sup> When Valley Pines hired Ms. Gerimonte in 2014, she authorized the employer to conduct a background check. CR 110, 114 (FF 6). On the background check authorization form, she indicated that she had not been convicted of any crimes and that she did not have any criminal charges pending against her. CR 110, 114 (FF 7, 8). The background check confirmed that she did not have any disqualifying convictions or pending charges.<sup>2</sup> CR 102-105, 114 (FF 9).

**C. After She Was Hired, Ms. Gerimonte Was Charged with Theft and Entered a Diversion Program**

Several months after she was hired, Ms. Gerimonte was charged with theft, which would disqualify her from working with vulnerable adults.

---

<sup>1</sup> 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."

<sup>2</sup> The background check results did show that she had two past negative actions. CR 102-105, 114 (FF 9). One negative action was for an "arrest/fingerprinting" in 2013. CR 102. The other negative action was an arrest for assault in 2004 when Ms. Gerimonte was fifteen years old. CR 101-102. Neither of these are automatically disqualifying actions. WAC 388-76-10180. Jim Lowell, the manager at Valley Pines, investigated those negative actions further and performed an employment suitability determination in which he determined that according to adult family home regulations, she was not disqualified from employment. CR 101, 114 (FF 9); WAC 388-76-10181.



CR 115 (FF 14). The charges were based on conduct from early January 2014, but they were not filed until late 2014 or early 2015—after she had completed the initial background check form and was hired by Valley Pines. CR 68, 95-96, 114-115 (FF 13). Ms. Gerimonte entered into a court-authorized diversion program. CR 55-56, 115 (FF 14). Upon successful completion of the program, the charges would be dropped and Ms. Gerimonte would have no criminal convictions on her record. CR 55 56, 115 (FF 14). Because Valley Pines did not have any rule or policy which required Ms. Gerimonte to report her involvement with the diversion program to her employer, she did not notify her employer when she was charged. CR 115 (FF 14).

**D. Ms. Gerimonte Disclosed Her Pending Charges on the Second Background Check Authorization Form**

In April 2016, Ms. Gerimonte completed another background check authorization form, as required by state regulation. CR 49, 114 (FF 10); *see* WAC 388-76-10165. Because she had not yet completed the diversion program, she truthfully indicated that she had charges pending against her. CR 49, 56-58, 94, 114 (FF 12), CR 115 (FF 14). The background check results confirmed that she had three disqualifying pending charges. CR 95, 114-115 (FF 13). After receiving the results, Valley Pines terminated Ms. Gerimonte. CR 50, 83-89, 115 (FF 15).

**E. The Department Found Ms. Gerimonte Did Not Commit Misconduct and Allowed Unemployment Benefits**

Ms. Gerimonte applied for unemployment benefits. CR 50, 83 89, 115 (FF 15). The Department initially determined that she was terminated for work-connected misconduct and denied her application. CR 78, 113 (FF 1). Ms. Gerimonte appealed the initial determination. The Administrative Law Judge (ALJ) reversed the decision and allowed Ms. Gerimonte unemployment benefits. CR 2, 113 (FF 18), CR 117.

At the hearing, witness testimony conflicted on material points. One conflict centered around the timing of when Ms. Gerimonte was charged with theft. Ms. Gerimonte testified that the conduct for which she was charged occurred in January 2014 and that she was not charged until “just about a year later.” CR 44, 52-53. Her mother testified that she “wasn’t officially charged until seven to eight months later.” CR 68. In contrast, James Lowell, the manager for Valley Pines, testified that Ms. Gerimonte was charged with theft in January 2014, before she was hired. CR 43. The other conflict involved whether Valley Pines informed Ms. Gerimonte about the regulatory requirements for criminal and pending charges. Mr. Lowell testified that, while there was no written policy or handbook, he was sure they reviewed the regulatory requirements necessitating the background check when she was hired. CR 47-49. But Ms. Gerimonte

testified that she was never informed, verbally or in writing, about these requirements upon hire. CR 52, 61.

The ALJ considered this conflicting testimony and resolved the two issues in Ms. Gerimonte's favor. Specifically, the ALJ found that Ms. Gerimonte was unaware she was being investigated when she completed the 2014 background check authorization form, had no pending charges at that time, did not learn of the charges until 2015, and was truthful on both her background checks. CR 115 (FF 14), 116 (CL 10). The ALJ further found that "the claimant was unaware of any employer policy or rule requiring her to divulge her participation in a diversion program. Indeed, the employer provides no oral or written policies ... to its new employees." CR 116-117 (CL 11). Regarding the diversion program, the ALJ found that Ms. Gerimonte had entered the program and that the charges would be dropped when she completed it. CR 115 (FF 14). Accordingly, the ALJ found that Ms. Gerimonte's actions were not misconduct that disqualified her from unemployment benefits because they were not in willful or wanton disregard of the rights, title, and interests of the employer. CR 117 (CL 11, 12); RCW 50.04.294(1).

Valley Pines petitioned the Commissioner for review of the initial order, attaching a document showing charges were filed in October 2014. CR 125-130. Because Valley Pines had not offered this document as

evidence at the administrative hearing, the Commissioner declined to consider this new document as evidence. CR 134. The Commissioner adopted the ALJ's findings of fact and conclusions of law and affirmed the initial order. CR 134-35. Valley Pines petitioned the Commissioner for reconsideration, again attaching new documents. CR 140-44, 146-172. The Commissioner denied reconsideration. CR 176.

**F. The Superior Court Considered Additional Evidence, Made New Factual Findings, and Reversed the Commissioner's Decision; Then the Court of Appeals Reversed the Superior Court and Reinstated the Award of Benefits**

Valley Pines appealed to the Spokane County Superior Court. CP 1 12. The superior court reversed the Commissioner's decision, reweighing the evidence, making new findings of fact, and relying on evidence that was not admitted to the administrative tribunal. Based on the new findings, the superior court held that Ms. Gerimonte was discharged from work for statutory misconduct and was, therefore, ineligible for unemployment benefits. CP 40-43 (CL 7).

Ms. Gerimonte and the Department appealed to the Court of Appeals. CP 44-51, 53-59. In an unpublished opinion, the Court of Appeals reversed the superior court and reinstated the award of benefits. *Gerimonte v. Valley Pines Ret. Home*, No. 35173-4-III (Wash. Ct. App. June 7, 2018) (unpublished). The Court found that the superior court erred

by reweighing the evidence and making new findings. *Gerimonte*, slip op. at 11. It held that substantial evidence supported the Commissioner's findings that Ms. Gerimonte lacked knowledge of any criminal investigation in 2014, that she was not charged criminally until 2015, and that Valley Pines did not have a policy directing her to immediately report charges filed against her while employed. *Gerimonte*, slip op. at 8-9. The Court further held that, in turn, those findings supported the Commissioner's conclusion that Ms. Gerimonte did not commit misconduct under the Employment Security Act, RCW 50.04.294; at most, her actions were negligent or a bad faith error in judgment, which does not disqualify a person from unemployment benefits. *Gerimonte*, slip op. at 10; RCW 50.04.294(3).

#### **IV. REASONS WHY REVIEW SHOULD BE DENIED**

Rule of Appellate Procedure 13.4(b) sets forth the criteria governing this Court's acceptance of review of a Court of Appeals decision. While not citing directly to the RAP, Valley Pines argues this case involves an issue of substantial public interest and that the Court of Appeals' decision conflicts with other appellate cases. RAP 13.4(b)(1), (2), (4). It is wrong. Valley Pines merely asserts its disagreement with the outcome and asks this Court to amend the definition of statutory terms, which is relief this Court cannot provide.

The Court of Appeals correctly applied the Employment Security Act's misconduct statute, RCW 50.04.294, and established case law to the specific facts of this case. Ms. Gerimonte's conduct does not disqualify her from unemployment benefit eligibility. The Court of Appeals correctly held Ms. Gerimonte's conduct was not willful misconduct when she truthfully completed the background check authorization forms, but failed to disclose pending charges that were filed between background checks when there was no employment policy that required her to do so. Because Valley Pines has not established grounds for review under RAP 13.4(b), this Court should deny review.

**A. This Fact-Specific Case Does Not Involve an Issue of Substantial Public Interest That Should Be Determined By the Supreme Court**

While Valley Pines does not identify RAP 13.4(b)(4) as a basis for review, it substantively argues that this case involves an issue of substantial public interest. It does not. The Court of Appeals appropriately reviewed the Commissioner's findings for substantial evidence and the conclusions of law for legal error. This does not implicate any issue of substantial public interest. Yet Valley Pines argues this case implicates the public interest because the Supreme Court should "clarify between misconduct in a normal unemployment case and one to protect vulnerable adults," expand "[t]he definition of 'pending charges' ... to include any activity that could result

in charges,” and “define a separate category” of misconduct when the claimant works with vulnerable adults. Pet. for Review 5, 6, 7. But these are legislative and rulemaking functions, not options for judicial relief.

The scope of the Court of Appeals’ decision was narrow. The Court considered whether substantial evidence supported the Commissioner’s findings and whether those findings supported the conclusion that Ms. Gerimonte did not commit work-connected misconduct, as defined by the Employment Security Act, RCW 50.04.294. *Gerimonte*, slip op. at 6-8. The Commissioner found that Ms. Gerimonte had no disqualifying incidents on her background check upon hire, that she did not learn she was being investigated for theft until 2015, and that there was no employer policy specifying that she had to disclose the charges between background checks. CR 114-15 (FF 9, 14). The Court of Appeals correctly found that substantial evidence in the administrative record supported those findings, and it was not its role to entertain new evidence or reweigh evidence presented to the fact finder. *Gerimonte*, slip. op. at 8-9, 11. And, based on those substantiated findings, the Court of Appeals made no error when it found that Ms. Gerimonte did not commit misconduct as defined in the Act. *Id.* at 10. The Court’s decision is limited by the administrative record and standards of review. It does not present any larger issues of substantial public interest that would necessitate further review by this Court.

Valley Pines suggests that the Court of Appeals' straightforward application of the law to the facts means there is something wrong with the Employment Security Act. It asks this Court to accept review to "clarify between misconduct in a normal unemployment case and one to protect vulnerable adults" and to "define a separate category [of misconduct] for this protected class." Pet. for Review 5, 7. But the legislature defined misconduct in a way that applies generally to all employers and work situations; it has chosen not to establish separate categories of misconduct based on the specific type of employment, as Valley Pines asks the Court to do here. RCW 50.04.293; RCW 50.04.294. "Courts do not amend statutes by judicial construction, nor rewrite statutes 'to avoid difficulties in construing and applying them.'" *Millay v. Cam*, 135 Wn.2d 193, 203, 955 P.2d 791, 795-96 (1998) (citations omitted). Supreme Court review is not the proper forum for the relief Valley Pines seeks.<sup>3</sup>

Valley Pines further argues that the Supreme Court should hear this appeal to expand the definition of "pending charges" in Department of Social and Health Services (DSHS) regulations to include any activity that

---

<sup>3</sup> Valley Pines also argues, for the first time in its Petition for Review, that it should really be considered Ms. Gerimonte's supervisor, while the State is the true employer. Petition for Review at 9. It argues that unemployment insurance taxes should fall on the entity that ordered Appellant's discharge (the State, through its regulations) and not the party carrying out the requirements (Valley Pines). Petition for Review at 9. Even if this argument were properly raised on appeal, the Court should decline to consider it. The question in this case is whether Ms. Gerimonte is eligible for unemployment benefits, not where liability for those benefits should fall.



could potentially, someday, result in charges. Pet. for Review 6. But the legislature specifically tasked DSHS with adopting rules to implement the statute requiring background checks for long-term care workers. RCW 74.39A.056(4). DSHS accordingly defined “pending charge” to mean, “a criminal charge for a disqualifying crime has been filed in a court of law.” WAC 388-113-0010. Valley Pines in essence asks this Court to amend DSHS’s rule in order to establish certain policy advocated by a litigant. Administrative policy making, however, is not the province of this Court.

Importantly in this case, an individual may be eligible for unemployment benefits even if the employer was justified in discharging them. Case law consistently holds that “misconduct which justifies an employee’s discharge does not necessarily disqualify the employee from unemployment compensation.” *Johnson v. Emp’t Sec. Dep’t*, 64 Wn. App. 311, 314-15, 824 P.2d 505 (1992); *Nelson v. Emp’t Sec. Dep’t*, 31 Wn. App. 621, 623, 644 P.2d 145 (1982) (“The issue is not whether Ms. Nelson’s guilty plea justified her discharge but whether it constituted misconduct ... to justify denial of unemployment compensation benefits.”); *Tapper v. Emp’t Sec. Dep’t*, 122 Wn.2d 397, 412, 858 P.2d 494 (1993) (“The question of discharge is independent of the question of misconduct.”). When Ms. Gerimonte was hired, she had no “pending charges” as currently

defined in WAC 388-113-0010 and was eligible to work with vulnerable persons. Although later, criminal charges were filed against her that disqualified her from performing the work she was hired to do, that did not in and of itself disqualify her from receiving unemployment benefits. The Court of Appeals decision does not consider the appropriateness of terminating Ms. Gerimonte; it is limited to whether, based on this particular factual scenario, her actions disqualified her from receiving unemployment compensation.

This case addressed only whether the Employment Security Department's Commissioner correctly determined whether Gerimonte was eligible for unemployment benefits under employment security law. Valley Pines' request for further review to amend or adopt new definitional provisions under that law, or to expand existing regulatory definitions, should be denied by this Court.

**B. The Court of Appeals' Decision is Consistent with Established Precedent and Properly Concluded Ms. Gerimonte Did Not Commit Misconduct**

RAP 13.4(b) (1) and (2) allow for review if the petitioner can establish that there is a conflict between the decision being appealed and another Washington appellate decision. None of the cases Valley Pines relies on conflicts with the Court of Appeals' decision.

Valley Pines relies on *Johnson v. Employment Security Department*, 64 Wn. App. at 316, for the proposition that a superior court can substitute its own judgment for the agency's. Pet. for Review 4. However, *Johnson* unremarkably states that a reviewing court may substitute its own judgment for the agency's when reviewing an issue of law under the de novo standard, not when reviewing factual findings. *Johnson*, 64 Wn. App. at 316. *Johnson* also explains that the reviewing court should "accord the agency's legal conclusion substantial weight because the issue falls within its expertise." *Id.* In this case, the superior court substituted its own judgment for the factual findings, which was inappropriate and is not supported by *Johnson* or other case law. In fact, the *Johnson* court affirmed the Commissioner's decision, whereas here the superior court had reversed it. *Johnson*, 64 Wn. App. at 317. The standard of review described in *Johnson* does not conflict with the review undertaken by the Court of Appeals and so does not warrant this Court's review.

Valley Pines' reliance on *Nelson v. Employment Security Department*, 31 Wn. App. at 622, is even more misplaced because this Court later reversed the Court of Appeals' decision. *Nelson v. Dep't of Emp't Sec.*, 98 Wn.2d 370, 655 P.2d 242 (1982). There, a cashier was discharged after she was arrested for shoplifting during non-working hours and off her employer's premises. *Id.* at 371. The question was whether her conduct was

sufficiently connected with her work to amount to statutory misconduct. *Id.* at 372. This Court held it was not because there was no indication in the record that the claimant’s conduct “in fact violated any rules or regulations of the employer or a code of behavior agreed to between the employer and the employee.” *Id.* at 375. Similarly here, there was nothing in the record to show that Valley Pines had any rule or regulation requiring Ms. Gerimonte to immediately notify it of criminal charges that were filed between background checks. CR 47-49, 114 (FF 5). *Nelson* supports the Commissioner’s decision.

Valley Pines also attempts to equate this case with *Anderson v. Employment Security Department*, 135 Wn. App. 887, 146 P.3d 475 (2006). Pet. for Review 5. But in *Anderson*, the employee actively and intentionally concealed from his employer a conflict of interest that violated his employer’s known ethics rules, which he knew would negatively impact the employer. *Id.* Thus *Anderson* is distinguishable from this case where Ms. Gerimonte simply did not inform her employer of the charges filed between background checks when there was no policy requiring her to do so.

Next, Valley Pines cites *Macey v. Employment Security Department*, 110 Wn.2d 308, 752 P.2d 372 (1988), which involved an employee who intentionally lied on his employment application, to suggest that Ms. Gerimonte did the same. Pet. for Review 6-7. Once again, Valley

Pine invites the Court to reweigh the evidence and make new findings. The Commissioner, however, found that Ms. Gerimonte was truthful in her background check paperwork, and substantial evidence in the record supports that finding. CR 116 (CL 10). Accordingly, this case is factually distinguishable from *Macey* and does not justify review.

Finally, Valley Pines quotes *Cuesta v. Employment Security Department*, 200 Wn. App. 560, 569, 402 P.3d 898 (2017), for the oft-repeated principle that the operative inquiry for determining misconduct is the fault of the employee. Pet. for Review 7-8. While fault is taken into consideration, the actions of the employee must still meet the statutory definition of disqualifying misconduct for benefits to be denied. As stated above, Washington courts—including the ones Valley Pines relies on—have repeatedly noted that “misconduct which justifies an employee’s discharge does not necessarily disqualify the employee from unemployment compensation.” *Johnson*, 64 Wn. App. at 314-15; *Cuesta*, 200 Wn. App. at 569 (“the fact that Cuesta’s acts were sufficient grounds to justify discharge ... does not necessarily mean that they are sufficient grounds to constitute statutory misconduct ...”). There is no conflict with *Cuesta*.

Valley Pines fails to identify any case with which the Court of Appeals’ decision conflicts.

**V. CONCLUSION**

The Court of Appeals decision raises no issue justifying review by this Court. The Department respectfully asks the Court to deny review.

RESPECTFULLY SUBMITTED this            day of October, 2018.

ROBERT W. FERGUSON  
Attorney General

s/Catherine Kardong  
CATHERINE KARDONG, WSBA #47144  
LEAH HARRIS, WSBA # 40815  
Assistant Attorneys General  
Licensing and Administrative Law  
OID# 91021  
1116 West Riverside Avenue, Suite 100  
Spokane, WA 99201-1106  
(509) 456-6389  
[CatherineK1@atg.wa.gov](mailto:CatherineK1@atg.wa.gov)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused the foregoing Department's Answer to the Petition for Review with the Clerk of the Court using the electronic filing system and I certify that I served all parties, or their counsel of record, a true and correct copy of this document by United States Mail, postage prepaid, at the following addresses:

MONICA A. HOLLAND  
UNEMPLOYMENT LAW PROJECT  
35 WEST MAIN AVENUE #370  
SPOKANE WA 99201

JOHN TIRPAK  
UNEMPLOYMENT LAW PROJECT  
1904 3<sup>RD</sup> AVENUE #604  
SEATTLE WA 98101

TIMOTHY J. HARKINS  
ATTORNEY AT LAW  
1304 WEST COLLEGE AVENUE  
SPOKANE WA 99201-2006

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

DATED this 9<sup>th</sup> day of October, 2018, at Spokane, Washington.

s/Mary C. Miller  
MARY C. MILLER  
Legal Assistant III

**AGO/LICENSING AND ADMINISTRATIVE LAW DIV**

**October 09, 2018 - 9:15 AM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 96188-3  
**Appellate Court Case Title:** Kasandra Gerimonte, et al. v. Employment Security Department  
**Superior Court Case Number:** 16-2-03746-6

**The following documents have been uploaded:**

- 961883\_Answer\_Reply\_20181009091213SC921980\_7590.pdf  
This File Contains:  
Answer/Reply - Answer to Petition for Review  
*The Original File Name was Departments Answer to the Petition for Review.pdf*

**A copy of the uploaded files will be sent to:**

- jtirpak@ulproject.org
- monica@ulproject.org
- tharkins@prh.comcastbiz.net

**Comments:**

---

Sender Name: Mary Miller - Email: Marym5@atg.wa.gov

**Filing on Behalf of:** Catherine Kardong - Email: CatherineK1@atg.wa.gov (Alternate Email: SpoCoA@atg.wa.gov)

Address:  
1125 Washington St. SE  
PO Box 40110  
Olympia, WA, 98504-0110  
Phone: (360) 753-2702

**Note: The Filing Id is 20181009091213SC921980**