91031-6

No. 44714-2-II

**COURT OF APPEALS OF**
**THE STATE OF WASHINGTON**
**DIVISION II**



JONATHAN C. JAMES,

Petitioner,

v.

WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT

Respondent,



# PETITION FOR REVIEW BY THE WASHINGTON STATE SUPREME COURT

Presented by:

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## TABLE OF AUTHORITIES

## I. Identity of Petitioner

Petitioner Jonathan C. James, respectfully requests this Court to review the Court of Appeals' decision referred to in section II.

## II. Citation to the Court of Appeals Decision

Mr. James seeks review of the Court of Appeals' unpublished decision James v. State of Washington Employment Security No. 44276-II (September 23, 2014) (Appendix (App.) A) and Refusal to Reconsider (October 29, 2014) (App. B) which affirmed the lower courts decisions that he as well as all other Washingtonians must break the law and/or sacrifice Employment Standards Rights before terminating employee/employer relationships for unemployment compensation purposes.

## III. Issues Presented for Review

The Washington State Employment Security Department (Respondents) first refused to provide aid to Mr. James conditionally as required by law and/or rule without cause. Then the Respondents refused to provide Mr. James with all of the evidence provided by his employer as required by law and/or rule without cause. Mr. James investigated and appealed the conspiratory acts under Ch. 50.20 RCW which provided exploited limited review of the Respondents interpretation and administration of job search monetary aid while suppressing the employers' falsified statements.

The issues presented for review are:

(1) Is a citizen NOT entitled to conditional benefits because of the job separation issues and personal efficacy of the Respondents interpreting and administering Ch. 50.20 RCW; 192-120-050 WAC?

(2) Is a citizen NOT entitled to all evidence used and/or considered against her/him because of the job separation issues and personal efficacy of Respondents until Superior Court proceeding are filed Ch. 50.20 RCW; 192-120-040 WAC?

(3) Should any citizen required to break the law and/or sacrifice Employment Standards Rights before terminating a employee-employer relationship Ch. 50.20 RCW; 192-150-130(2), - 135(2) WAC?

## IV. STATEMENT OF THE CASE

### A. Mr. James Seeks Conditional Benefits

Mr. James had received unemployment benefits within 4-weeks of his job separation at issue and the Respondents advised him they must pay him conditionally until a decision was made. Arbitrarily, the Respondents refused citing the issues he raised barred him from conditional benefits.

### B. Mr. James Seeks Employer Evidence

Mr. James requested all employers statements, documents and evidence gathered and used before a decision was made while, he was supposed to be receiving conditional benefits. Arbitrarily, the Respondents refused intentionally, suppressing a document entitled Employment Security Department Telephonic Fact-Finding Fact Finding Report that contained the employer alleging employees were entitled to take statutory required rest periods at their own discretion.

The Respondents did disclose/suppressed the document until both the Administrative Law Judge (ALJ) and Commissioners Review Judge (CRJ) held credibility administrative fact finding hearings.

### C. The Court of Appeals Affirms Decisions Below

The Court of Appeals construed Mr. James complaint as setting out four separate claims—first, that the Respondents failed to pay him conditionally as required by law, second that they failed to provide him evidence as required by law, third the Superior Court Agency Record does not support the finding of facts and conclusions of law, and finally, the requirement that a citizen must first knowingly break the law and/or sacrifice Employment Standards Rights as a condition of employment is inconsistent with 14th Amendment protections. Mr. James now Petitions this Court to review the Court of Appeals' Opinion.

## ARGUMENT

I

### ALLOWING THE RESPONDENTS TO WITHHOLD CONDITIONAL MONETARY JOB SEARCH BENEFITS REQUIRED TO BE PAID BY PRESCRIBED PROCEDURE/LAW IS A MATTER OF GREAT PUBLIC CONCERN

This petition raises important questions of law and policy regarding the administration and interpretation of responsibilities bestowed upon the Respondents under 192-120-050 WAC.

Normally, when a citizen has received job search assistance within the previous 4-weeks and separates from any employment circumstance she/he is entitled to conditional benefits regardless of the new issues except Mr. James.

This law/rule levels the playing field between employee and employer somewhat staying consistent with 14th Amendment protections as it allows a employee to freely investigate a prospective employer to determine if the conditions of employment are legal and/or safe. Alternatively, employers are typically, granted 90-days to vet prospective employees to determine if they are legal and/or safe.

Hereunder, Mr. James had no monetary resources to first search for optional employment as 192-120-050 WAC guarantees him moreover, fairly challenge the Respondents as they held his job search aid hostage without cause setting the stage for the evidentiary negligence that follows.

There was and still is no excuse why the Respondents have withheld Mr. James conditional benefits, benefits he would still have rights to until all judicial proceedings expire including but, not limited to this petition of the Court. Ultimately, an Injunctive Order/Stay is respectively requested to be issued by this Court summarily to compensate Mr. James for what he is and was entitled to aid his lop sided legal challenges and job search efforts still ongoing.

II

**ALLOWING THE RESPONDENTS TO WITHHOLD/SUPRESS EMPLOYER EVIDENCE REQUIRED TO BE DISCLOSED BY LAW/PROCEDURE IS A MATTER OF GREAT PUBLIC CONCERN**

Next, after crippling Mr. James monetarily without cause the Respondents withhold/suppress the employers ONLY fact finding statements after disclosing all of Mr. James' fact finding statements to the employer contrary to 192-120-040 WAC.

Mr. James had no idea what the Respondents are relying on at this stage of the administrative process.

Because, Mr. James and the ALJ did not have the original employers evidence they both could not gauge credibility and challenge the facts the Respondents initially relied upon and later mutate. This court is respectfully requested to Order a Remand of the case directing a new fact finding hearing directing the withheld/suppressed employer facts be admitted and considered for credibility purposes as a matter of pure/proper due process.

III

**REQUIRING CITIZENS TO NOTIFY AND ALLOW TIME TO CORRECT ILLEGAL/UNSAFE REQUIRED CONDITIONS OF EMPLOYMENT IS A MATTER OF GREAT PUBLIC CONCERN**

In 2004 the Washington State Employment Security Department (Respondents) began to administer and enforce Washington State Administrative Code (WAC) 192-150-130(2); - 135(2) that requires all Washington State workers to commit various crimes and sacrifice employment standards rights before they can separate from employers with good cause. At bottom the aforementioned WAC's unfairly require Washington State workers to first notify their individual employer of the employers' known required illegal and/or unsafe acts then continue the acts while, the worker knows firsthand they won't stop.

Mr. James' employer testified Mr. James was disciplined for "disappearing" from work for short periods of time when actually Mr. James was taking and/or notifying the employer of his rest periods rights consistent with what the Respondents intentionally suppressed.

The employer testified fact displays Mr. James first, notifying his employer he is entitled to some form of rest periods by breaking employer policy and second, that NO rest periods were allowed glean to disciplinary acts of the employers foreman that support the policy of no rest periods.

Putting the Respondents intentional suppression of conditional benefits and evidence aside this Court is left with 192-150-130(2); -135(2) new requirements that in short require employee NOT employers to bend over backwards to preserve employment regardless of law and rights.

192-150-130(2); - 135(2) WAC do not explain how a employee must first notify a employer he/she is requiring illegal activities and/or a sacrifice to Employment Standard Rights to safety just that it must occur creating a playground of vagueness for employers and the Respondents alike, certainly exploited hereunder.

In this case it appears the Respondents and employer assume Mr. James is required to notify his employer of the actual Employment Standards found within 296-126-092(4)(5) WAC and ES.C.6.

This is a fallacy as found within Empl. Sec. Comm'r Dec.2d 958 (WA), 2010 WL 6795724 where a claimant quit with good cause because he was not receiving pay rights pursuant to 296-126-023(4). Thereunder, the claimant did not advise his employer it was his right to have regular pay periods as 296-126-023(4) requires, he just asked for his pay and did not get it timely, tantamount to what Mr. James did by breaking his employers policy that no rest periods are allowed, period yet he took some anyway fed up with his knowledge he could prove he actually was not allowed rest periods any other way than by getting disciplined.

Much like the claimant in Empl. Sec. Comm'r Dec.2d 958 (WA), 2010 WL 6795724, Mr. James kept his mouth shut, worked without any rest periods and quit after seeing if the employer would allow them.

Mr. James upset both the employer and the Respondents as he set the employer up as 192-150-135(2) requires of him much like a employee who is required to falsify client billing or trade certificates at the requirement of the employer.

Mr. James nor any other Washington employee should be forced to defraud a employers client, falsify trade certificates, sacrifice a safe work place under a employers condition of employment, then notify, and allow time to correct it's ludicrous yet, Mr. James did just that as did the claimant found within Empl. Sec. Comm'r Dec.2d 958 (WA), 2010 WL 6795724 grossly overlooked by the absence of the employer initial suppressed evidence.

This Court is respectfully requested to strike down the requirement, a employee must notify a employer who requires breaking the law and/or requiring a sacrifice of Employment Standard Rights as it is contrary to 14th Amendment protections and common sense. While at the same time recognizing why? the Respondents intentionally provided aid to the employer hereunder, as they knew Mr. James established a form of notification as he did try to take a rest period consistent to what his employer first stated giving rise to all the cover up that followed that mutated into some non-sense his employer did provide rest periods to the tune of 1.5 hrs a day when only required by law to provide 20 minutes.

**CONCLUSION**

Much like Mr. James as well as all other Washingtonians both are now required to first break the law and/or sacrifice the Employment Standard Rights to a safe work place pursuant to 192-150-130(2); -135(2) the Respondents are also required to pay conditional benefits pursuant to 192-120-050 WAC and during that time provide a fair "Opportunity to be heard" that requires all the employer evidence 192-150-040 to which the Respondents intentionally failed to do all in the name of hiding the fact Mr. James did in fact notify his employer of rest period rights by simply taking them only to be punished as he assumed he would be, nevertheless he did "notify" his employer and his employer failed to correct.

Most if not all Washington citizens know that they will be punished when and while the "notify" there employers' of illegal activities and/or unsafe working conditions the employer requires, as is the case hereunder.

We the citizen workforce of Washington can't stand by and watch employers say and/or do anything while government agencies such as the Respondents aid employers illegal activities and/or unsafe workplaces, it's just not right and a matter of grave concern too Mr. James and should be a matter of grave concern to this Court who has previously shown concern with 192-150-130(2); - 135(2) (2004).

Dated this 21st day of November, 2014

Jon C. James / Pro Se

# Appendix A

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

JON C. JAMES,

Appellant.

v.

STATE OF WASHINGTON EMPLOYMENT SECURITY DEPARTMENT,

Respondent.

No. 44714-2-II

UNPUBLISHED OPINION

MELNICK, J. — Jon James appeals the trial court's order affirming the Employment Security Department's (Department) denial of unemployment benefits. None of the errors he alleges require reversal. The agency's findings are supported by substantial facts in the record and it correctly applied the law to the facts. We affirm.

## FACTS

James quit his job with a landscaping company. He applied for unemployment benefits. The Department denied James benefits because he voluntarily quit without good cause.

James appealed the denial to an administrative law judge (ALJ). He argued that he quit with good cause for two reasons: illegal activities on the jobsite and safety concerns. The ALJ heard testimony from both James and the employer. James alleged that his employer did not allow employees to take statutorily required breaks and that his employer failed to address safety issues, such as employees riding in the bucket of a bobcat and installing the wrong backflow valve. The employer testified that James never mentioned concerns about safety or breaks

before he quit and that the employer addressed the bobcat and backflow valve issues when they arose.

The ALJ found the employer more credible than James. He also found that James did not report his concerns about breaks or safety issues to the employer before quitting. Accordingly, the ALJ concluded that James failed to show good cause for quitting. The ALJ affirmed the Department's denial of benefits.

James appealed the ALJ's decision to the Department's commissioner. The commissioner adopted the ALJ's findings of facts and conclusions of law and entered the following augmented findings of fact:

> [N]one of claimant's job duties required continuous labor, that is, there was significant down time, ten to fifteen minutes five times a day, to change tools or tasks. The employer contends that the landscaping industry is not subject to the statutory scheduled break requirement because of the nature of the work. The project claimant worked on for the employer was supervised by a general contractor, who notified the employer of safety issues, which the employer corrected immediately. The employer was aware that the project was subject to Occupation Health and Safety Administration rules and strove to abide by them to keep the job.

Administrative Record at 148. The commissioner concluded that James failed to establish good cause for quitting because he did not notify the employer of any alleged problems or give the employer reasonable time to correct them. Additionally, the commissioner determined that the safety issues James raised were immediately addressed and the nature of the work provided for adequate breaks. James petitioned for reconsideration. The commissioner denied the petition.

James appealed to the superior court. The court reviewed the commissioner's record and heard argument from the parties. The court upheld the commissioner's findings of fact and conclusions of law and affirmed the commissioner's decision. James appeals.

ANALYSIS

The Administrative Procedure Act (APA), chapter 34.05 RCW, governs judicial review of the final decision of the Department's commissioner. RCW 50.32.120; *Verizon Nw., Inc. v. Emp't Sec. Dep't*, 164 Wn.2d 909, 915, 194 P.3d 255 (2008). We review de novo the commissioner's findings and decision, not the superior court's decision or the underlying ALJ order. *Engbrecht v. Emp't Sec. Dep't*, 132 Wn. App. 423, 427, 132 P.3d 1099 (2006).

The commissioner's decision is prima facie correct and the burden is on the challenging party to show otherwise. RCW 50.32.150. RCW 34.05.570(3) lists the circumstances under which this court can grant relief from an agency order. James appears to argue that the order exceeded the agency's statutory authority, the agency engaged in unlawful procedures, the agency erroneously interpreted the law, and the order is not supported by substantial evidence. RCW 34.05.570(3)(b)-(e). Issues not raised before the agency may not be raised on appeal. RCW 34.05.554(1).

First, James argues that the Department erred when it failed to grant him conditional benefits under WAC 192-120-050. James did not raise this issue before the agency and he cannot raise it now on appeal. RCW 34.05.554(1).

James next argues that the Department erred by conducting a labor standards investigation and granting a "meal and rest period variance." Appellant's Br. at 6. There is no evidence in the record that the Department engaged in a labor standards investigation or granted a "variance" regarding meal times and rest periods. The Department's review was limited to determining whether James qualified for unemployment benefits.

Next, James alleges deficiencies in the agency's procedures. He contends that the record of his hearing was erased and that certain "Expert Fact Finding"[1] documents were not disclosed to the ALJ or commissioner. Appellant's Br. at 7. Neither of these issues entitles him to relief. James is correct that there was a problem with the recording of his first hearing before the ALJ. However, he was granted another hearing de novo. Additionally, contrary to James's assertions, the "Expert Fact Finding" documents were included in the commissioner's record.

The majority of James's remaining arguments involve challenges to the commissioner's findings of fact. We review the commissioner's findings of fact for substantial evidence in light of the whole record. RCW 34.05.570(3)(e); *Smith v. Emp't Sec. Dep't*, 155 Wn. App. 24, 32, 226 P.3d 263 (2010). "Substantial evidence is evidence that would persuade a fair-minded person of the truth or correctness of the matter." *Smith*, 155 Wn. App. at 32-33. Unchallenged findings are verities on appeal. *Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 407, 858 P.2d 494 (1993). We defer to the agency's judgment regarding witness credibility and the weight of evidence. *Affordable Cabs, Inc. v. Emp't Sec. Dep't*, 124 Wn. App. 361, 367, 101 P.3d 440 (2004). We determine de novo whether the agency correctly applied the law to the factual findings. *Affordable Cabs, Inc.*, 124 Wn. App. at 367.

Generally, an employee cannot receive unemployment benefits if he voluntarily quits without good cause. RCW 50.20.050(2)(a). But an employee may still be eligible for benefits if he quit because of illegal activities on the jobsite or because a lack of safety in the workplace. RCW 50.20.050(2)(b)(viii), (ix); WAC 192-150-130(2), -135(2). These exceptions require the employee to report his concerns to the employer and allow a reasonable period of time for the

[1] These documents include interviews with the employer during the Department's initial investigation of James's claim.

employer to correct the problem before quitting. RCW 50.20.050(2)(b)(viii), (ix); WAC 192-150-130(2), -135(2).

James appears to challenge the commissioner's findings that (1) the nature of the work allowed for breaks throughout the day and (2) the employer immediately corrected safety issues. These findings are supported by substantial evidence in the record. The employer testified that, because of the nature of the work, there are at least five 10-15 minute breaks throughout the workday. James asserts that these facts are not true. But the commissioner determined that the employer had more credibility than James. We defer to the commissioner's judgment regarding witness credibility. *Affordable Cabs, Inc.*, 124 Wn. App. at 367. The employer also testified that safety concerns James referenced at the hearing were corrected immediately after they occurred. This evidence is not contradicted in the record. The agency's findings are supported by substantial evidence.

Moreover, even if James had shown that the findings were not supported by substantial evidence, the agency still correctly applied the law to the remaining findings. The commissioner found James did not report his concerns about breaks or safety issues to his employer before quitting. RCW 50.20.050(2)(b)(viii) and (ix) require that, in order to be eligible for unemployment benefits, the employee must report his concerns to the employer before quitting. James did not do so here. Therefore, the commissioner correctly determined that he did not quit for good cause and he is not entitled to unemployment benefits.[2]

Finally, James contends that WAC 192-150-130 and 192-150-135 are unconstitutional. He does not provide any meaningful argument or citation to authority in support of this

[2] James urged both this court and the agency to determine whether his employer in fact violated regulations regarding safety and break times. But this is outside the scope of this case. At all levels, this review was limited to whether the Department properly denied James unemployment benefits.

contention. Accordingly, we do not address this argument. RAP 10.3(a)(6); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

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.

Melnick, J.

Melnick, J.

We concur:

Johanson, C.J.

Johanson, C.J.

Bjorgen, J.

Bjorgen, J.

Appendix B

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

JON C. JAMES,

Appellant,

v.

STATE OF WASHINGTON, EMPLOYMENT SECURITY DEPARTMENT,

Respondent.

No. 44714-2-II

ORDER DENYING MOTION FOR RECONSIDERATION



**APPELLANT** moves for reconsideration of the Court's **September 23, 2014** opinion.

Upon consideration, the Court denies the motion. Accordingly, it is

**SO ORDERED.**

**PANEL:** Jj. Johanson, Bjorgen, Melnick

**DATED** this 29th day of October, 2014.

**FOR THE COURT:**

Johanson, C.J.
CHIEF JUDGE

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