NO. 91774-4

SUPREME COURT OF THE STATE OF WASHINGTON

JESSICA PEDERSON,

Petitioner,

v.

EMPLOYMENT SECURITY DEPARTMENT
FOR THE STATE OF WASHINGTON,

Respondent.

ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

DIONNE PADILLA-HUDDLESTON,
WSBA # 38356
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

Rules

Regulations

I. INTRODUCTION

Jessica Pederson accepted a three-day job at Chukar Fruit Company but quit after one day of employment because she did not think the job was a good fit. This is not a good cause reason to quit under the Employment Security Act, RCW 50.20.050(2), and the Commissioner of the Employment Security Department correctly concluded Pederson was ineligible for unemployment benefits. The Court of Appeals, in a published opinion, properly affirmed the Commissioner's decision and held that the three-day work situation satisfied the definition of employment under the Act and that an employee who quits such employment has the burden of establishing good cause to quit in order to be eligible for unemployment benefits. *Pederson v. Emp't Sec. Dep't*, No. 32410-9-III (Wash. Ct. App. May 15, 2015).

Pederson does not set forth any reason for review under RAP 13.4(b), and the petition does not meet those criteria. The decision is consistent with the Employment Security Act, and Pederson provides no argument why this case raises a conflict with existing case law, a significant constitutional issue, or an issue of substantial public importance. There are none, and mere disagreement with the court's decision is not grounds for review. The Court should deny Pederson's Petition for Review.

II. COUNTERSTATEMENT OF THE ISSUES

If this Court accepts review, the issues will be as follows:

> Did the Commissioner properly conclude, based on the unchallenged findings of fact, that Pederson did not have good cause to quit under the 25 percent reduction in wages or hours statute, where she accepted a three-day position and had two remaining days of employment, with the possibility of continued employment?

III. COUNTERSTATEMENT OF THE CASE[1]

Jessica Pederson was hired by Chukar Fruit Company (Chukar). Administrative Record (AR) 17-18, 47, 60 (Finding of Fact (FF) 2), 83 (Additional Finding of Fact (AFF) I). While she thought she had been permanently hired as a shipping coordinator, when she arrived for her first day, she learned she and others would be working for three days and the employer would then decide which of several candidates would fill the position. AR 18, 45, 83 (AFF I). Pederson began working and was paid for the first day of work. AR 17-19, 83 (AFF I).

During that day of work, Pederson's coworkers saw her resume, commented on her qualifications, and suggested she was overqualified for the position and should look for other work. AR 20-22, 83 (AFF II). After the first day, Pederson informed the employer the job was not a good fit

[1] Pederson's statement of the case cites to the Clerk's Papers and administrative record regardless of whether the point in the record is reflected in a finding of fact. *See* Pet. for Disc. Rev. at 1-3. The Department provides this counterstatement of the case to present the facts as found by the Commissioner, which are the basis for this Court's review should Pederson's Petition for Review be granted.

for her and quit. AR 21-22, 46, 84 (AFF III). If she had not quit, she could have continued working for at least two more days. AR 18, 84 (AFF IV).

Pederson applied for unemployment benefits, which the Employment Security Department denied. AR 34-40. After an administrative hearing, the administrative law judge (ALJ) determined Pederson voluntarily quit her job for good cause and was eligible for benefits. AR 60-63. The employer then filed a petition for review with the Department's Commissioner, who rejected some of the ALJ's findings of fact and conclusions of law, made additional findings and conclusions, and reversed the ALJ's order. AR 83-86. The Commissioner found that after Pederson discovered she would be working three days with other job candidates, Pederson began working rather than leaving without having engaged in any employment. AR 83 (AFF I). The Commissioner further found she then quit at the end of the first day, telling her employer she did not think the job was a good fit. AR 84 (AFF III). The Commissioner concluded Pederson was employed by Chukar and voluntarily quit her job without good cause. AR 84 (Additional Conclusion of Law II). Pederson appealed to Yakima County Superior Court. Clerk's Papers (CP) 1-14. Sitting in its appellate capacity, the superior court affirmed the Commissioner's decision. CP 26-28.

The Court of Appeals also affirmed the Commissioner's decision. *Pederson*, No. 32410-9-III, slip op. at 10. The court rejected Pederson's argument that she was never actually employed and instead concluded that since Pederson performed services for one full day and received payment for her work, she was "employed" within the meaning of the Employment Security Act. *Id.* at 7. The court further held that Pederson did not have good cause to voluntarily quit work because, as the Commissioner had found, if she had not quit, she could have continued working for at least two more days; the possibility that her employer might have dismissed her after that was merely conjectural. *Id.* Pederson's Petition for Review followed.

IV. REASONS WHY REVIEW SHOULD BE DENIED

The Court will grant review only if Pederson 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.

Pederson ignores these criteria. In any event, review is unwarranted. The Court of Appeals correctly applied the Employment Security Act. The

decision does not conflict with any other decision of the Supreme Court or Court of Appeals. Further, the opinion raises neither a constitutional issue nor an issue of substantial public interest. Pederson's Petition consists primarily of argument about why she disagrees with the Court of Appeals' decision with little or no reference to the record, and the record does not support her arguments. Accordingly, the Court should deny review.

A. Consistent with the Employment Security Act and Precedent, the Court of Appeals Properly Held Pederson's Work Was Employment, and Pederson Fails to Establish any Conflict Justifying Review

Pederson makes no assertion that the Court of Appeals' decision conflicts with existing case law. *See* RAP 13.4(b)(1)-RAP 13.4(b)(2). Even if this argument were properly presented, there is no such conflict.

The Court of Appeals properly decided Pederson's case in accordance with the Employment Security Act and case law. Under the Act, "an individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount." RCW 50.20.050(2). "Employment" is defined as:

> [P]ersonal services, of whatever nature unlimited by the relationship of master and servant as known to the common

> law or any other legal relationship . . . performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied.

RCW 50.04.100. "Wages" means "the remuneration paid by one employer during any calendar year to an individual in its employment under this title." RCW 50.04.320. Further, remuneration is "all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium other than cash." RCW 50.04.320(4)(a). "Thus, 'a work situation satisfies the definition of "employment"' under the statute '(1) if the worker performs personal services for the alleged employer and (2) if the employer pays wages for those services.'" *Pederson*, No. 32410-9-III, slip op. at 7 (quoting *Penick v. Emp't Sec. Dep't*, 82 Wn. App. 30, 39, 917 P.2d 136 (1996)).

Here, the Court of Appeals correctly held Pederson was employed within the meaning of the Act. *Id.* Pederson worked at Chukar for one full day performing personal services for Chukar, and Chukar paid her for that day of work. *Id.* (citing AR 47). The Court of Appeals properly rejected Pederson's assertion that a "working interview" cannot be employment. *See* Pet. for Rev. at 4-5. She cites no statutory basis or legal precedent that supports a working interview, for which an employee was paid, or that a temporary position, should not be considered employment. Therefore, that argument is not a reason for this Court to review the case.

The court's decision is also consistent with prior case law regarding the test to determine if a worker performed personal services. *See e.g.*, *Affordable Cabs v. Emp't Sec. Dep't*, 124 Wn. App. 361, 368, 101 P.3d 440 (2004) (the test to determine if the worker performed personal services is whether services performed were clearly for alleged employer or for its benefit). The court was rightfully unpersuaded that Pederson having worked only one day was material or fell outside the statutory definition of employment. Further, it is undisputed Pederson received wages from Chukar for the work she performed since she received a paycheck. AR 17-18. Therefore, the Court of Appeals properly held Pederson was in Chukar's employment, even if only for one day. Pederson does not, and cannot, show that the decision created a conflict warranting review. To the contrary, the decision is consistent with the Act and precedent.

Because the court correctly determined Pederson's work amounted to employment, the court also properly held the burden was on Pederson to establish good cause to quit. *Pederson*, No. 32410-9-III, slip op. at 9-10. To be eligible for benefits under RCW 50.20.050(2), a claimant who voluntarily quits her job has the burden of showing that she had "good cause" for quitting. RCW 34.05.570(1)(a); *Anderson v. Emp't Sec. Dep't*, 135 Wn. App. 887, 893, 146 P.3d 475 (2006). A claimant can establish

good cause only if she quit for one of the 11 exclusive reasons enumerated in RCW 50.20.050(2)(b). RCW 50.20.050(2)(a); *Darkenwald v. Emp't Sec. Dep't*, 183 Wn.2d 237, 246, 350 P.3d 647 (2015). Here, the Court of Appeals properly held Pederson did not establish she had good cause to quit. *Pederson*, No. 32410-9-III, slip op. at 9-10. Although she originally believed she had been hired for a full-time position, she still accepted the job and started working after learning it might end after three days. When she quit, she was scheduled to work two more days. AR 18, 22, 46. It was Pederson's choice, not the employer's, to forgo working all the days for which she was scheduled. Thus, the Court of Appeals correctly applied the statute and precedent to decide Pederson did not have statutory good cause to quit.

In her Petition for Review, Pederson asserts she had good cause to quit under RCW 50.20.050(2)(b)(v) and RCW 50.20.050(2)(b)(vii) because her usual compensation or usual hours were reduced by 25 percent or more.[2] She is incorrect. Pet. for Review at 9. She accepted an

[2] "Usual compensation" is the wages actually paid to the employee, or if payment has not yet been made, the compensation agreed upon between the employee and employer as part of the hiring agreement. WAC 192-150-115(1), WAC 192-150-115(2). For a reduction in wages to constitute good cause, employer action must have caused the reduction in compensation. WAC 192-150-115(3). The percentage of reduction is based on the employee's most recent pay grade, salary, or other benefit she received or has accepted on a permanent basis. WAC 192-150-115(5).

"Usual hours" is based on the hours of work agreed on by the employer and employee as part of the individual hiring agreement. WAC 192-150-120(1)(a).

offer of three days of work. The employer did not change the job after she started; Pederson quit. Her disagreement with the court's decision and application of straightforward statutory language does not present an issue that warrants the Court's review.

B. Pederson Fails to Establish a Significant Constitutional Question Justifying Review

Pederson makes no assertion that the Court of Appeal's presents a significant constitutional question. *See* RAP 13.4(b)(3). There is no such question.

C. The Court of Appeals' Decision Provides Sufficient Guidance on the Issues Involved, and Pederson Fails to Show Why this Court Should Grant Review

Pederson does not cite to RAP 13.4(b)(4) as a basis for granting review. Regardless, review is not warranted. The statutory definitions of "good cause" and "employment" provide sufficient guidance to the public on the issues raised by Pederson's petition. The court's decision does not alter the analysis for determining either whether a claimant was in "employment" or whether the claimant voluntarily quit. To the contrary, the decision is a straightforward application of the definition of "employment" to the facts of the case. There is no need for this Court to grant review to further clarify this issue. At most, Pederson simply seeks

---

Furthermore, to establish good cause for quitting due to a reduction in hours, the reduction must have been caused by the employer's action. WAC 192-150-120(2).

to reargue her case, which does meet the criteria for review under RAP 13.4(b)(4).

For the first time in her Petition, Pederson argues that Chukar's alleged change in her employment from full-time to a "working interview" made the position not "suitable work." Pet. for Review at 9; *see* RCW 50.20.110; *Darkenwald*, 183 Wn.2d at 246, FN 3 (Citing RCW 34.05.554(1) and RAP 2.5(a), the Court declined to consider the appellant's arguments raised for the first time on appeal.). This argument does not excuse her decision to quit and misapprehends the function of the "suitable work" provision. RCW 50.20.110 provides, in relevant part, that:

> Notwithstanding any other provisions of this title, no work shall be deemed to be suitable and benefits shall not be denied under this title to any otherwise eligible individual for refusing to accept new work under any of the following conditions:
> ...
>
> (2) if the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or ...

RCW 50.20.110(2). This provision simply addresses when an unemployment benefits claimant is eligible for benefits despite rejecting an offer of work. It has no application to Pederson's circumstances since the unchallenged findings are that when she arrived for her first day and learned she and others would be working for three days, she *accepted*

those terms by beginning work, was paid for the day of work, and then quit. AR 17-19, 45, 83 (AFF I).

V. CONCLUSION

Pederson does not cite any ground on which this Court should accept review under RAP 13.4(b). She makes no showing that the Court of Appeals' decision conflicts with a decision of the Supreme Court or another division of the Court of Appeals. She makes no showing that there is a significant question of law under the constitution, or that there is an issue of substantial public interest that this Court should determine. To the contrary, the Court of Appeals' decision is consistent with the Employment Security Act and prior case law and raises no issue that justifies review by this Court. Therefore, the Department asks the Court to deny review.

RESPECTFULLY SUBMITTED this 14th day of September, 2015.

ROBERT W. FERGUSON
Attorney General

DIONNE PADILLA-HUDDLESTON,
WSBA # 38356
Assistant Attorney General
Attorneys for Respondent

PROOF OF SERVICE

I, Katie Moceri, 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-titled action.

2. That on the 14th day of September 2015, I caused to be served a true and correct copy of **Answer to Petition for Review**, as follows to:

Via ABC Legal Messenger:

George T. Hansen
Hansen Law, PLLC
917 Pitcher St.
Yakima, WA 98901

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 14th day of September 2015, in Seattle, Washington.

KATIE MOCERI, Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Moceri, Katie (ATG)
Cc: Padilla-Huddleston, Dionne (ATG); georgehansenlaw@hotmail.com
Subject: RE: Jessica Pederson v Employment Security Dept., No. 91774-4-Answer to Petition for Review

Received on 09-14-2015

Supreme Court Clerk's Office

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: Moceri, Katie (ATG) [mailto:KatieB2@ATG.WA.GOV]
Sent: Monday, September 14, 2015 2:34 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Padilla-Huddleston, Dionne (ATG) <DionneP@ATG.WA.GOV>; georgehansenlaw@hotmail.com
Subject: RE: Jessica Pederson v Employment Security Dept., No. 91774-4-Answer to Petition for Review

Dear Clerk,

Attached for filing is the Answer to Petition for Review in *Jessica Pederson v Employment Security Dept., No. 91774-4*

The attorney for the Petitioner is receiving this email as a courtesy copy. A hard copy will also be delivered via legal messenger.

Sincerely,
Katie Moceri
Legal Assistant to April Benson, Leah Harris, and Dionne Padilla-Huddleston
Attorney General's Office
Licensing & Administrative Law Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7676 Main
(206) 587-4215 Direct
(206) 389-2800 Fax