

60338.8

60338-8

NO. 60338-8-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

JONAH WATKINS,

Appellant,

v.

DEPARTMENT OF EMPLOYMENT SECURITY,

Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT

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COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 JUN - 8 PM 4: 28

ORIGINAL

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I. INTRODUCTION

This supplemental brief is provided in response to this Court's April 15, 2009, ruling calling for additional briefing in light of the Washington Supreme Court's decision in *Spain v. Employment Security Department*, 164 Wn.2d 252, 185 P.3d 1188 (2008).¹ There, the Court determined that in addition to the specifically enumerated, or per se, "good cause" factors in RCW 50.20.050(2)(b)(i)-(x), the Commissioner has discretion under the preceding subsection, RCW 50.20.050(2)(a), to find "good cause" on a case-by-case basis. *Spain*, 164 Wn.2d at 260. While the court's decision in *Spain* has added an additional basis for claiming general "good cause" for voluntarily quitting, the Commissioner's holding that Mr. Watkins quit without good cause is still proper under the emergency rule promulgated to set forth the Commissioner's standards guiding her exercise of discretion. *See* WAC 192-150-170.²

Mr. Watkins cannot demonstrate that he has met the standards for granting benefits set forth in the emergency rule. Mr. Watkins asked his employer to make two alterations to his work schedule, including a

¹ On August 27, 2008, the court issued an Order Changing Opinion in *Spain* which deleted several lines of text from it. This Order is attached in the Appendix. As of the time of the filing of this brief, the version of this opinion available through Westlaw does not reflect the entry of this Order.

² The version of this regulation in effect at the time of the filing of this brief, promulgated through emergency rulemaking, is published in the Washington State Register at 09-07-025. It is attached in the Appendix for the convenience of the Court.

reduction in his hours of work. The employer accommodated his first two requests. However, it was only when Mr. Watkins further limited his hours of availability, stating he was no longer available to work the Saturdays that he had agreed to work, that the employer was forced to reconsider its staffing. In addition to the arguments set forth in the Brief of Respondent, Mr. Watkins cannot qualify for benefits because he initiated the reduction in hours that is the source of his complaint now. He cannot satisfy the standards set forth in WAC 192-150-170 because his reasons for leaving work were not work-connected; his reasons for leaving were not sufficiently compelling to cause a reasonable person to leave work; and he did not exhaust reasonable alternatives before quitting. *See* WAC 192-150-170(2). Also, despite his arguments to the contrary, even if compelling personal reasons can provide good cause to justify a voluntary quit, Mr. Watkins's reasons were not compelling. On this basis, the Court should affirm the Commissioner's decision denying benefits to Mr. Watkins.

II. STATEMENT OF THE ISSUE

In light of the Supreme Court's ruling in *Spain*, did the Commissioner properly hold that Mr. Watkins quit without good cause when he reduced his availability to work for the employer due to his

school schedule and made no effort to compromise in his demands before stating that he could not accept the employer's proposed terms of work?

III. COUNTERSTATEMENT OF FACTS

The Counterstatement of the Case set forth in the Brief of Respondent is incorporated in this brief. However, Mr. Watkins misapprehends the facts in his supplemental brief, asserting that the employer cut his hours. Supp. Br. Appellant at 6. This is not factually accurate, and thus clarification is necessary. In the fall of 2005, Mr. Watkins had been working what amounted to a full-time schedule. CP at 26, 31. He testified that when he was hired, the agreement was that his hours were "subject to change." CP at 33. In December, he and the employer agreed that he would reduce his hours so that he could attend school. In January, Mr. Watkins began working the reduced schedule to which he had agreed: Tuesday through Friday, 3 p.m. to 9:30 p.m., and Saturday from 9 a.m. to 5:30 p.m., plus on call. CP at 84 (FF 3, 4), 102.

However, in early January Mr. Watkins requested a change in the agreed-upon schedule, stating that he would need Thursdays off. The employer accommodated this request, and Mr. Watkins began working Monday through Wednesday and Friday, 3 p.m. to 9:30 p.m., and Saturday from 9 a.m. to 5:30 p.m., plus on call. CP at 26-27. In early March, he told the employer that he was not available on Saturdays,

proposing to decrease his hours from 34.5 hours to 26 hours, a self-imposed reduction of nearly 25%. CP at 27, 84 (FF 5). It was only in response to Mr. Watkins's second limitation of his availability since the beginning of the year—which he has never stated he was willing to compromise—that the employer evaluated its needs and stated that it could either employ him part-time for two days per week or full time. In sum, Mr. Watkins first proposed cutting his hours, not the employer.

IV. ARGUMENT

A claimant for benefits who has voluntarily quit work must demonstrate good cause in order to be eligible for benefits. Under *Spain*, good cause includes the per se reasons set forth in RCW 50.20.050(2)(b) (2006).³ It also includes good cause as determined by the Commissioner “based upon the individual facts of the case”. *Spain*, 164 Wn.2d at 260–61. Under the rule that the Commissioner has promulgated which sets forth the standards by which she will consider the individual facts of the case, Mr. Watkins did not quit work with good cause. Under RCW 50.20.050(2)(a), he is not eligible for unemployment benefits.

³ In its 2009 session, the Legislature amended RCW 50.20.050, significantly revising the structure of the statute. See Laws of 2009, ch. 493, § 3. Citations to RCW 50.20.050 in the briefing of this matter refer to RCW 50.20.050 (2006), the version of the statute effective when Mr. Watkins made his application for benefits.

A. Mr. Watkins Cannot Establish Good Cause For Quitting Under RCW 50.20.050(2)(a) Because He Fails To Show That Continuing With His Employment Would Have Worked An Unreasonable Hardship On Him

Mr. Watkins alleges that he left work because staying in his position would have worked an unreasonable hardship on him. Supplemental Brief of Appellant (Supp. Br. Appellant) at 3–9. His reason for leaving work which he alleges amounts to hardship is the employer’s unwillingness to change his work schedule to accommodate the demands of school. However, Mr. Watkins had quit school before his separation from employment. CP at 85 (CL 6), 91, 103.⁴ Thus, this could not have been a hardship that compelled him to quit.

Under the Department’s regulation,

In addition to the good cause reasons listed in RCW 50.20.050(2)(b), other work-connected circumstances may constitute good cause *if you can show* that continuing in your employment would work an unreasonable hardship on you. “Unreasonable hardship” means *a result not due to your voluntary action* that would cause a reasonable person to leave that employment. The circumstances must be based on existing facts, not conjecture, and the reasons for leaving work must be significant.

Examples of work-connected unreasonable hardship circumstances that may constitute good cause include, but are not limited to, those where:

⁴ A parenthetical following a citation to the Clerk’s Papers reflects an enumerated Finding of Fact (FF) or Conclusion of Law (CL) entered by the administrative law judge who presided over the evidentiary hearing in this matter.

(A) Repeated behavior by your employer or co-worker(s) creates an abusive working environment.

(B) You show that your health or physical condition or the requirements of the job have changed and the work is no longer suitable under RCW 50.20.100 because your health would be adversely affected by continuing in that employment.

WAC 192-150-170(3) (emphasis added).⁵ Thus, the burden of demonstrating good cause rests with Mr. Watkins. Additionally, in order to demonstrate good cause for quitting, Mr. Watkins must demonstrate that continuing in his employment with the employer would work an unreasonable hardship on him. He cannot make such a showing.

The Commissioner held that Mr. Watkins voluntarily quit work because he was the moving party in the job separation. When he limited his availability to work because of the demands of his school schedule, continuing work with the employer was nevertheless available to him. CP at 84 (FF 8). He declined it. He then agreed to work a temporarily reduced schedule with the employer until the employer could hire a new employee to fill his hours. CP at 84 (FF 8). Prior to his final day of work with the company, he discontinued his school attendance. CP at 85 (CL 6), 97, 103. Nevertheless, he made no effort to renegotiate his hours with

⁵ This language is drawn from the version of the regulation adopted as an emergency rule on March 9, 2009. Wash. St. Reg. 09-07-025. The version of the regulation attached to Mr. Watkins's supplemental brief is no longer effective at the time of the filing of this brief.

the employer, subsequently ending his work there. Under these circumstances, Mr. Watkins cannot show that continuing in his work with the employer would have worked an unreasonable hardship on him.

Additionally, Mr. Watkins's reasons for quitting work are not comparable to the examples provided in WAC 192-150-170(3)(A) and (B). The examples of an abusive working environment and adverse impact on health, though not exclusive, set a standard for work-connected unreasonable hardship as a condition that could have an adverse impact on physical or mental health. Mr. Watkins can make no such allegation on the facts set forth here: a disagreement over scheduling and hours of availability caused by his repeated limitation of his days and hours of availability. His situation does not meet the standard set by the examples of "unreasonable hardship" in WAC 192-150-170(3)(A) and (B).

B. Mr. Watkins Does Not Meet The Conditions Required For Establishing Good Cause Under WAC 192-150-170(2)

In order to establish good cause for quitting work under RCW 50.20.050(2)(a) due to an unreasonable hardship, a claimant must meet the conditions set forth in WAC 192-150-170(2)(i). Because Mr. Watkins fails to do so, the Court should affirm the Commissioner's holding that he failed to establish good cause.

WAC 192-150-170(2) provides, in part:

Other factors constituting good cause -- RCW 50.20.050

(2)(a). The department may determine that you had good cause to leave work voluntarily for reasons other than those listed in RCW 50.20.050(2)(b).

(i) For separations under subsection (3) below [i.e. if Claimant can show that continuing in employment would work an unreasonable hardship], all of the following conditions must be met to establish good cause for voluntarily leaving work:

(A) You left work primarily for reasons connected with your employment; and

(B) These work-connected reasons were of such a compelling nature they would have caused a reasonably prudent person to leave work; and

(C) You first exhausted all reasonable alternatives before you quit work, unless you are able to show that pursuing reasonable alternatives would have been futile.

These standards are drawn from the voluntary quit law as it stood prior to amendment in 2003. *See* Brief of Respondent at 30. As discussed in Respondent's brief, Mr. Watkins does not meet his burden because he fails to meet any of the three factors above.

1. Mr. Watkins Did Not Leave Work For Reasons Connected With His Employment But Due To Personal Reasons

In order to establish good cause, an employee must demonstrate that he or she left work primarily for reasons connected with his employment. WAC 192-150-170(2)(i)(A); *see Terry v. Empl. Sec. Dep't*, 82 Wn. App. 745, 750, 919 P.2d 111 (1996) (interpreting RCW 50.20.050(3) (1992)). "The presence of personal reasons for leaving employment does not preclude the employee from claiming

benefits, however, the employee must have left work *primarily* for work-related reasons.” *Terry*, 82 Wn. App. at 750 (internal quotation marks omitted) (emphasis added). The reasons for initiating the separation must be external and separate from the claimant, not personal factors subjective to the claimant. *Anheuser Busch, Inc. v. Goewert*, 82 Wn. App. 753, 761–62, 919 P.2d 106 (1996).

Here, Mr. Watkins initiated the separation from employment due to personal reasons: he wanted to pursue his schooling (though, as noted above, Mr. Watkins had withdrawn from school prior to his separation from the employer). CP at 23–24, 85 (CL 6), 97, 103. The reasons for the separation were not external and separate from Mr. Watkins as in the case of an employer action, but instead involved Mr. Watkins’s self-imposed limitations on his availability, subjective to him. *See id.* The desire to make more time to pursue school is not a work-connected factor, and thus Mr. Watkins fails to meet his burden under this good cause requirement.

2. Mr. Watkins Did Not Leave Work For Compelling Reasons

Mr. Watkins also had the burden of proving that a reasonably prudent person in his situation would have been compelled to terminate his employment. WAC 192-150-170(2)(i)(B). A “compelling reason” is one that “forces or constrains a person to quit her employment against her

will.” *Terry*, 82 Wn. App. at 751. However, work factors generally known and present at the time the employee accepted employment have not historically constituted good cause to quit. RCW 50.20.050(3) (2002). They should not constitute good cause here either. In this case, Mr. Watkins’s reason for limiting his hours was the pursuit of his education. While this is a laudable pursuit, it is not a compelling reason to initiate a separation from employment in that it is not a reason that forces or constrains a person to quit his employment against his will. *See Terry*, 82 Wn. App. at 751.

Additionally, Mr. Watkins was never guaranteed specific hours or shifts under his employment agreement. CP at 31, 85 (CL 5). The fact that the employer repeatedly attempted to accommodate Mr. Watkins’s requests for reduced hours but was forced to reevaluate its staffing with a final limitation cannot properly be interpreted as a reason that forces or constrains a person to quit his employment against his will. *See Terry*, 82 Wn. App. at 751. Rather, Mr. Watkins demanded a schedule that was reduced from the schedule upon which he and the employer had agreed. CP at 27–28; 34; 36–37; 84 (FF 5).

Moreover, the changes that the employer proposed were work conditions generally known to Mr. Watkins when he accepted employment, and thus should not form a valid basis for good cause. The

Commissioner found that Mr. Watkins was hired with the understanding that he was not guaranteed specific hours or shifts, and that he would work “on-call” the hours the employer had for him to work. CP at 83 (FF 2). This finding is supported by the testimony of Mr. Vannoy, a supervisor who interviewed Mr. Watkins for his hire, that Mr. Watkins was guaranteed no specific hours that he would work; neither was he guaranteed any number of shifts. CP at 31. Mr. Watkins also testified: “My understanding was just to work on call and to work as needed, on an as-needed basis as Mr. Vannoy brought up, and that my hours were subject to change.” CP at 33.⁶ Thus, the fact that the employer altered the number of hours available to Mr. Watkins based on its employment needs was a factor generally known to Mr. Watkins at the time of his hiring. The employer’s proposed change in hours therefore cannot form the basis for good cause under WAC 192-150-170(2)(i)(B).

As discussed above in the Counterstatement of Facts, Mr. Watkins’s assertion that the employer cut his hours is not factually accurate. He had been working what amounted to a full-time schedule in the fall of 2005, but testified that when he was hired, the agreement was

⁶ Mr. Watkins also testified that his manager told him his hours were always subject to change. CP at 40. The employer’s general manager, Ms. DeGagne, testified that Mr. Watkins worked on an as-needed basis. CP at 26. Mr. Davenport, who supervised Mr. Watkins directly, also testified that he worked on an as-needed basis. CP at 45.

that his hours were “subject to change.” CP at 33. While he and the employer agreed that he would reduce his hours so that he could attend school, this reduction occurred by agreement in January. However, when he told the employer that he was not available on Saturdays, he proposed to decrease his hours from 34.5 hours to 26 hours. CP at 27, 84 (FF 5). In response to this limitation on availability the employer made a counterproposal, stating it could either employ him part-time for two days per week or full time. Even if Mr. Watkins’s reasons for leaving work could be considered work-related under WAC 192-150-170(2)(i)(A), the Court should hold that they were not so compelling as to cause a reasonably prudent person to leave work under subparagraph (B) because continuing work was still available to him. Additionally, even if personal reasons could provide good cause (contrary to the rule), the Court need not reach that question because Mr. Watkins’s reason for quitting is not compelling.

Moreover, the employer’s response to Mr. Watkins’s proposed reduction in schedule simply amounts to the employer reasonably declining an employee’s request to go from full-time to part-time. Mr. Watkins has cited no authority to support the proposition that this is an example of an employer imposing an unreasonable hardship on an employee. The Court should decline to adopt such a holding here.

3. Mr. Watkins Did Not Exhaust All Reasonable Alternatives Prior To Limiting His Schedule With No Flexibility

A claimant has the burden of establishing that exhaustion of remedies would have been futile. WAC 192-150-170 sets forth the third condition for establishing good cause as follows, addressing the claimant: “You first exhausted all reasonable alternatives before you quit work, *unless you are able to show that pursuing reasonable alternatives would have been futile.*” WAC 192-150-170(2)(i)(C) (Emphasis added). Under the regulation, Mr. Watkins failed to carry his burden to demonstrate that he exhausted all reasonable alternatives prior to limiting his schedule and initiating the separation from employment. He fails to show that, after informing the employer that he could no longer work on Saturdays, he negotiated in any way to meet the employer’s staffing needs. In fact, even after he stopped going to school, he declined to make any attempt to preserve his employment and failed to inform the employer that he was available to work full-time as of March 29, 2006. *See* CP at 23–24, 85 (CL 6), 97, 103. The evidence in the record demonstrates that Mr. Watkins placed limitations on his availability to the employer and made no attempt to negotiate. Thus, he failed to demonstrate that he exhausted reasonable alternatives, and therefore cannot demonstrate good cause for initiating the separation from employment.

C. If The Court Holds That Mr. Watkins May Be Able To Establish Good Cause, Remand To The Department Is The Appropriate Remedy

If the Court holds as a matter of law that Mr. Watkins may be able to demonstrate good cause for limiting his availability to the employer and thereby initiating the job separation, the proper remedy is remand to the Department. In *Spain*, the court held that RCW 50.20.050(2)(a) requires the Department to adjudicate separations not falling under (2)(b) on a case-by-case basis. *Spain*, 164 Wn.2d at 260–61. Such a holding is reasonably read to place such adjudications within the discretion of the Commissioner. *See id.* Indeed in *Spain* and *Batey* (the case consolidated with *Spain* before the court), the remedy the court provided in the claimants’ cases was a remand to the Department to determine whether the claimants had good cause to leave their jobs “based on the individual facts” of the cases.

The Administrative Procedure Act provides:

In reviewing matters within agency discretion, the court shall limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency. The court shall remand to the agency for modification of agency action, unless remand is impracticable or would cause unnecessary delay.

RCW 34.05.574(1). Here, if this Court holds that Mr. Watkins may be able to establish good cause under RCW 50.20.050(2)(a) and WAC 192-

150-170, the Court should decline Mr. Watkins's invitation to exercise the discretion that the legislature has placed in the agency and remand the matter to the Department for the exercise of discretion.

Moreover, should the Court so hold, the Court should decline to award attorney fees to Mr. Watkins because such an act would not amount to a reversal of the Commissioner's Decision. *See Hamel v. Empl. Sec. Dep't*, 93 Wn. App. 140, 148, 966 P.2d 1282 (1998) (citing RCW 50.32.160). Indeed, when the Commissioner decided this case, her decision was consistent with *Starr v. Employment Security Department*, 130 Wn. App. 541, 123 P.3d 513 (2005), the controlling law at the time. Remanding for the exercise of discretion does not amount to a reversal or modification of the Commissioner's Decision.

V. CONCLUSION

Based on the foregoing, the Department respectfully requests that this Court affirm the Commissioner's Decision.

RESPECTFULLY SUBMITTED this 8th day of June, 2009.

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Assistant Attorney General
WSBA No. 38069
Attorneys for Respondent

APPENDIX A

THE SUPREME COURT OF WASHINGTON

Nos. 79878-8, 80309-9

SARA D. SPAIN, Petitioner,

v.

THE EMPLOYMENT SECURITY DEPARTMENT,
Respondent.

ORDER

CHANGING OPINION

KUSUM L. BATEY, Respondent,

v.

THE EMPLOYMENT SECURITY DEPARTMENT,
Petitioner, SNOHOMISH COUNTY CENTER FOR
BATTERED WOMEN, Additional Party.

FILED
SUPREME COURT
STATE OF WASHINGTON
2008 AUG 27 A 10:35
BY RONALD R. DANIEL
CLERK

It is hereby ordered that the opinion of the Court filed in the above cause on June 19, 2008, be changed as follows:

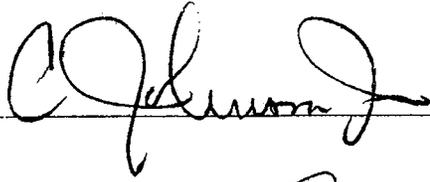
1. In the 14th line from the top of page 9, footnote reference number ⁶ is deleted. Footnote 6 at the bottom of page 9 is deleted. Subsequent footnotes are renumbered accordingly.
2. The paragraph beginning with the words "Instead, we discern" in the 5th line from the bottom of page 8 and ending with the words "resolving this issue." in the 14th line from the top of page 9 is deleted.

Dated this 27th day of August, 2008.

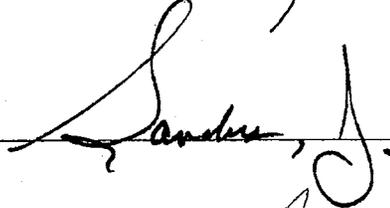
Garry L. Crawford
Chief Justice

539/146

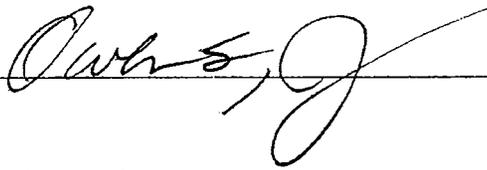
APPROVED:



Madsen, J.



Chamber, J.



Fairhurst, J.



Stephens, J.

APPENDIX B

WSR 09-07-025

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed March 9, 2009, 8:42 a.m. , effective March 9, 2009, 8:42 a.m.]

Effective Date of Rule: Immediately.

Purpose: On June 19, 2008, the supreme court of Washington overturned the court of appeals, holding that the list of good cause reasons for voluntarily leaving work in RCW 50.20.050 (2)(b) is not exclusive. Instead, the department has the authority to consider whether other reasons constitute good cause for leaving work under RCW 50.20.050 (2)(a) for the purpose of eligibility for unemployment benefits. The emergency rule implements the court's decision.

Citation of Existing Rules Affected by this Order: Repealing WAC 192-16-009.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.20.010.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The court's ruling was effective immediately. A proposed rule-making notice has been filed with a hearing scheduled for April 7, 2009. The hearing was scheduled as late as possible under the CR-102 filing to permit the legislature to consider amending RCW 50.20.050 as a result of the supreme court decision. Several such bills are currently under consideration. Pending possible action by the legislature, the emergency rule is being extended.

Date Adopted: March 9, 2009.

Paul Trause

Deputy Commissioner

NEW SECTION

WAC 192-150-170 Meaning of good cause -- RCW 50.20.050(2). (1) **General.** RCW 50.20.050(2) provides that you will not be disqualified from receiving unemployment benefits when you voluntarily leave work for good cause. The Washington Supreme Court in *Spain v. Employment Security Department* held that the factors listed in RCW 50.20.050 (2)(b) are not the only circumstances in which an individual has good cause for voluntarily leaving work. While these are considered *per se* or stand alone good cause reasons, the court held that the department is required under RCW 50.20.050 (2)(a) to consider whether other circumstances constitute good cause for voluntarily leaving work.

(2) **Other factors constituting good cause -- RCW 50.20.050 (2)(a).** The department may

determine that you had good cause to leave work voluntarily for reasons other than those listed in RCW 50.20.050 (2)(b).

(i) For separations under subsection (3) below, all of the following conditions must be met to establish good cause for voluntarily leaving work:

(A) You left work primarily for reasons connected with your employment; and

(B) These work-connected reasons were of such a compelling nature they would have caused a reasonably prudent person to leave work; and

(C) You first exhausted all reasonable alternatives before you quit work, unless you are able to show that pursuing reasonable alternatives would have been futile.

(ii) **Substantial involuntary deterioration of the work.** As determined by the legislature, RCW 50.20.050 (2)(b), subsections (v) through (x), represent changes to employment that constitute a substantial involuntary deterioration of the work.

(3) **Unreasonable hardship.** In addition to the good cause reasons listed in RCW 50.20.050 (2)(b), other work-connected circumstances may constitute good cause if you can show that continuing in your employment would work an unreasonable hardship on you. "Unreasonable hardship" means a result not due to your voluntary action that would cause a reasonable person to leave that employment. The circumstances must be based on existing facts, not conjecture, and the reasons for leaving work must be significant.

Examples of work-connected unreasonable hardship circumstances that may constitute good cause include, but are not limited to, those where:

(A) Repeated behavior by your employer or co-worker(s) creates an abusive working environment.

(B) You show that your health or physical condition or the requirements of the job have changed and the work is no longer suitable under RCW 50.20.100 because your health would be adversely affected by continuing in that employment.

(4) **Commissioner Approved Training.** After you have been approved by the department for Commissioner Approved Training, you may leave a temporary job you have taken during training breaks or terms, or outside scheduled training hours, or pending the start date of training, if you can show that continuing with the work will interfere with your approved training.

□

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192- 16-009 Disqualification for leaving work voluntarily -- Meaning of good cause for claims with an effective date prior to January 4, 2004 -- RCW 50.20.050(1).

NO. 60338-8-I

**COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON**

JONAH WATKINS,

Appellant,

v.

STATE OF WASHINGTON
DEPARTMENT OF
EMPLOYMENT SECURITY,

Respondent.

DECLARATION OF
SERVICE

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 JUN 8 PM 4:28

I, MATTHEW TILGHMAN-HAVENS, declare as follows:

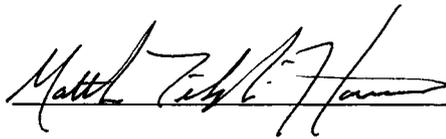
1. That I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years old, and not a party to the above-entitled action.

2. That on the 8th day of June, 2009, I caused to be served by personal delivery a true and correct copy of Respondent's Brief, to:

MARCUS LAMPSON
UNEMPLOYMENT LAW PROJECT
1904 THIRD AVENUE, SUITE 604
SEATTLE, WA 98101

I DECLARE UNDER PENALTY OF PERJURY
UNDER THE LAWS OF THE STATE OF WASHINGTON
that the foregoing is true and correct.

Dated this 8th day of June, 2009, in Seattle, Washington.



A handwritten signature in cursive script, appearing to read "Matt Kelly", is written over a horizontal line.