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

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MICHELLE KENNEDY,

Appellant,

v.

DEPARTMENT OF EMPLOYMENT SECURITY, STATE OF  
WASHINGTON,

Respondent.

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**DEPARTMENT'S RESPONSE BRIEF**

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## I. INTRODUCTION

Michelle Kennedy quit her job so that she could move across the country with her fiancé who had received a military transfer. The Employment Security Department denied Kennedy's application for unemployment benefits because she did not quit for good cause. Former RCW 50.20.050(2)(b)(iii)(B) established that a person has good cause to quit if his or her spouse receives a mandatory military transfer.<sup>1</sup> Former RCW 50.20.050(2)(a) and WAC 192-150-170 establish general good cause for persons who quit for certain work-related factors. Pursuant to this authority, the Commissioner properly determined that Kennedy did not meet any of the requirements for quitting for good cause. The Department's decision is a proper application of the law.

## II. COUNTERSTATEMENT OF THE ISSUE

Did the Commissioner properly find that Kennedy quit without good cause under former RCW 50.20.050(2)(a) and (b) and WAC 192-150-170 when she quit work in order to move with her fiancé who had received a military transfer?

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<sup>1</sup> The 2009 Legislature amended this subsection so that, for separations from employment that occur on or after September 6, 2009, good cause includes quitting to follow a spouse or domestic partner for any transfer of the spouse or domestic partner. Laws of 2009, ch. 493, § 3. The separation from employment at issue here occurred in March 2008.

### III. COUNTERSTATEMENT OF THE CASE

On March 13, 2008, Kennedy left her employment at Holland America Line to move to Kentucky with her fiancé. CR 13; 60; FF 4. Kennedy had been living with her fiancé, who was in the military, for about three years. CR 14; 60; FF 2. Kennedy and her fiancé were engaged to be married and had planned to marry in July 2007, however, Kennedy's fiancé was still deployed in Iraq. CR 15; 60; FF 2. In September 2007, Kennedy's fiancé returned from Iraq. CR 15; 60; FF 2. Kennedy and her fiancé resided together in their Tacoma home until late February 2008 when he received orders to report to Kentucky. CR 60; FF 3.

Kennedy informed her employer that she intended to quit. CR 14-15; 60; FF 4. On March 13, 2008, Kennedy quit work in order to move to Kentucky with her fiancé. CR 14-15; 60; FF 4. Kennedy and her fiancé married on April 25, 2008. CR 44, 60; FF 6.

The Department denied Kennedy's application for unemployment benefits because she voluntarily quit for a non-qualifying reason. CR 29-37. Kennedy appealed the Department's determination. CR 38. A hearing was held and the Administrative Law Judge (ALJ) ruled that Kennedy voluntarily quit work without good cause. CR 60; CL 1, 7. The

Commissioner affirmed, CR 76, and the superior court affirmed the Commissioner. This appeal followed.

#### IV. STANDARD OF REVIEW

Judicial review of Employment Security Department decisions relating to unemployment benefits is controlled by Washington's Administrative Procedure Act (APA). RCW 50.32.120; RCW 34.05.510. The court's review is generally confined to the agency record. RCW 34.05.558, .562. The Court of Appeals "sits in the same position as the superior court" on review of the agency action under the APA. *Tapper v. Empl. Sec. Dep't*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993). The appellate court reviews the Commissioner's Decision rather than the underlying initial order. *Id.* at 404–05 (citing RCW 34.05.464(4)).

The Commissioner's decision is presumed to be prima facie correct and the burden of proving otherwise rests upon the petitioner. RCW 50.32.150; RCW 34.05.570(1)(a); *Safeco Ins. Cos. v. Meyering*, 102 Wn.2d 385, 391, 687 P.2d 195 (1984). The court should grant relief only if "it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of." RCW 34.05.570(1)(d).

Kennedy has not challenged any of the Commissioner's findings of fact. As such, the Commissioner's factual findings are verities on appeal. *Fuller v. Empl. Sec. Dep't*, 52 Wn. App. 603, 606, 762 P.2d 367 (1988).

This appeal, therefore, presents solely questions of law, which are reviewed de novo by this Court. *Tapper*, 122 Wn.2d at 403.

## V. ARGUMENT

The Act specifies that a claimant who quits to follow a spouse who has received a mandatory military transfer establishes good cause. A fiancé is not a spouse under the Act. Kennedy was engaged, not married. Because the Act maintains requirements establishing when a person may quit to follow another and thereby receive benefits—the very situation at issue here—the inquiry must end. Thus, the Department properly denied Kennedy’s application for unemployment benefits.

In order to be eligible for unemployment benefits under former RCW 50.20.050(2)(a), claimants who voluntarily quit their jobs must show that they had “good cause” for quitting. A claimant could establish good cause for quitting if she quit for one of the enumerated factual scenarios in former RCW 50.20.050(2)(b), or if she quit for general good cause reasons under former RCW 50.20.050(2)(a) and WAC 192-150-170.<sup>2</sup>

To establish good cause under the voluntary quit provisions of former RCW 50.20.050(2)(b), a claimant must demonstrate that her reasons for quitting fall under one of eleven specifically enumerated

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<sup>2</sup> For the court’s convenience, copies of former RCW 50.20.050(2)(a) and WAC 192-150-170 are provided in the Appendix to this brief.

factual scenarios set forth in the statute. Former RCW 50.20.050(2)(b)(i)-(xi). These scenarios are generally referred to as the *per se* good cause factors. *See Spain v. Empl. Sec. Dep't*, 164 Wn.2d 252, 258, 185 P.3d 1188, 1191 (2008). For example, it is *per se* good cause to quit if a claimant quits as a result of twenty-five percent reduction in wages or usual hours. Former RCW 50.20.050(2)(b)(v), (vi). Similarly, it is *per se* good cause to quit if a claimant quits to follow her military spouse to a new labor market as a result of a mandatory military transfer. Former RCW 50.20.050(2)(b)(iii)(B) (the spousal military transfer provision).

The Washington Supreme Court has referred to these specifically enumerated reasons for quitting as “legislatively blessed.” *Spain*, 164 Wn.2d at 257-58. Because the Legislature chose to specifically enumerate these good cause reasons, it follows that the Legislature intentionally excluded scenarios that do not fit the enumerated scenarios. For example, if a claimant suffers a reduction in pay or hours that is less than twenty-five percent, he or she cannot invoke the protection of the “reduction in pay/hours” provision of the statute because the Legislature specifically set the benchmark for that provision at twenty-five percent. *See* former RCW 50.20.050(2)(b)(v), (vi). In the same manner, if a claimant quits to follow her military fiancé (not spouse) to a new labor market, she cannot invoke the spousal military transfer provision, as the Legislature

specifically limited that provision to claimants following spouses subject to mandatory military transfers. Former RCW 50.20.050(2)(b)(iii).

Under the voluntary quit provision of former RCW 50.20.050(2)(a) claimants are entitled to benefits if they have general good cause for quitting. Pursuant to this statute the Commissioner promulgated WAC 192-150-170 establishing factors for consideration when determining general good cause.<sup>3</sup> WAC 192-150-170 limits general good cause to work-related factors.

Here, it is undisputed that Kennedy voluntarily left her employment to move to Kentucky with her fiancé. CR 60; FF 4. Kennedy disputes the determination that she quit without good cause. However, the Commissioner properly determined that Kennedy quit without good cause.

**A. Kennedy Did Not Quit For One Of The Good Cause Factors Enumerated In Former RCW 50.20.050(2)(b)(i)-(xi)**

Kennedy argues that former RCW 50.20.050(2)(b)(iii)(B) applies to her. Br. of App. at 20-21. Former RCW 50.20.050(2)(b)(iii)(B) states that a person establishes good cause for quitting if he or she

(I) Left work to relocate for *the spouse's employment* that, due to a mandatory military transfer, is outside the existing labor market area; and (II) remained employed as long as was reasonable prior to the move.

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<sup>3</sup> The 2009 Legislature eliminated general good cause and specified that only the statutory reasons, listed in RCW 50.20.050(2)(b), are now sufficient. Accordingly, the emergency rule adopted by the Department in response to the decision in *Spain*, WAC 192-150-170, expired on July 7, 2009, and was not renewed.

(Emphasis added).

When the plain language of a statute is unambiguous a court may not second guess the legislature's intent or engage in statutory construction. *Dep't of Licensing v. Cannon*, 147 Wn.2d 41, 57, 50 P.3d 627 (2002). Courts must construe a statute according to its plain language and give effect to the legislative intent. *Cherry v. Mun. of Metro. Seattle*, 116 Wn.2d 794, 799, 808 P.2d 746 (1991). In considering a statute, a court must assume that the legislature means exactly what it says, and must give words their plain and ordinary meaning. *Stone v. Sw. Suburban Sewer Dist.*, 116 Wn. App. 434, 438, 65 P.3d 1230 (2003). Statutory construction is unnecessary and improper when the wording of a statute is unambiguous. *Kinnan v. Jordan*, 131 Wn. App. 738, 751, 129 P.3d 807 (2006). A statute is ambiguous if its language is susceptible to more than one meaning. *City of Yakima v. Int'l Ass'n of Fire Fighters, Local 469*, 117 Wn.2d 655, 669–70, 818 P.2d 1076 (1991).

The Act does not define the word “spouse.” “Unless contrary legislative intent is indicated, words are given their ordinary, dictionary meaning.” *City of Bellevue v. Lorang*, 140 Wn.2d 19, 24, 992 P.2d 496 (2000). Black's Law Dictionary defines “spouse” as: “One's husband or wife by lawful marriage; a married person.” Black's Law Dictionary (8th ed. 2004). Likewise, Merriam Webster defines “spouse” as: “married

person.” *Merriam Webster’s Dictionary*, available at <http://www.merriam-webster.com/dictionary/spouse> (visited November 2, 2009).

The language of former RCW 50.20.050(2)(b)(iii)(B) is plain and unambiguous. The statute plainly states “spouse.” Here, Kennedy and her fiancé were not married, were not spouses, at the time that Kennedy voluntarily left her job. This finding is undisputed. Therefore, Kennedy fails to meet the requirements of former RCW 50.20.050(2)(b)(iii)(B).

Kennedy apparently argues that the statute does not require persons to be spouses at the time of the relocation. This argument defies the plain language of the statute and logic. The statute provides that the relocation must be due to “the spouse’s employment”; it does not provide, “the future spouse’s employment.” To follow Kennedy’s argument, anytime a person moves to follow someone else, he or she might be entitled to unemployment benefits if at anytime in the future they were to marry or if, when the person quits work, he or she intends to marry the followed person at some time in the future. This court should reject Kennedy’s invitation to expand the term spouse to include any “future, potential, or likely spouse.” Neither the plain language of the statute nor logic supports Kennedy’s argument. *See* former RCW 50.20.050(2)(b)(iii)(B).

Kennedy's argument would also contravene the well-established judicial doctrine of *expressio unius est exclusio alterius*: the expression of one is the exclusion of the other. "Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature." *Landmark Development, Inc. v. City of Roy*, 138 Wn.2d 561, 571, 980 P.2d 1234, 1239 (1999). Here, the Legislature's inclusion of certain, specific items in the list of per se good cause factors implies that other similar items in that category were meant to be excluded.

A court must assume that the Legislature meant what it stated. *Geschwind v. Flanagan*, 121 Wn.2d 833, 841, 854 P.2d 1061 (1993). The Legislature included a provision for military transfers in the statute, but qualified it by stating that only *spousal* military transfers fall within its purview. In so qualifying the provision, the Legislature specifically meant to exclude all other types of military transfers. Just as a claimant who suffers a nineteen or twenty percent reduction in wages or hours is unable to invoke the protections of former RCW 50.20.050(2)(b)(v)-(vi), a claimant who quits to follow her military fiancé to a new labor market is unable to invoke the spousal military transfer provision. Therefore,

Kennedy is unable to establish good cause under former RCW 50.20.050(2)(b) because her fiancé was not her spouse.

**B. Kennedy Did Not Quit For One Of The General Good Cause Factors Of Former RCW 50.20.050(2)(a) And WAC 192-150-170**

Under former RCW 50.20.050(2)(a), claimants are also entitled to benefits if they can show that they had a general “good cause” for quitting. Former RCW 50.20.050(2)(a). In *Spain*, the Supreme Court held that the Commissioner is authorized under former RCW 50.20.050(2)(a), to look to the individual facts of each case, without regard to the statutory list of per se factors in former RCW 50.20.050(2)(b), to determine whether a claimant had “good cause” to quit. Former RCW 50.20.050(2)(a); *Spain*, 164 Wn.2d at 259-60.

The Commissioner promulgated WAC 192-150-170 to set forth standards for Department adjudicators, administrative law judges, and Commissioner’s review judges to apply when considering whether a given claimant had good cause to quit employment. WAC 192-150-170 establishes that a person has good cause for leaving employment if (1) the separation arose primarily for reasons connected with his or her employment, (2) those work-connected reasons were of such a compelling nature that they would have caused a reasonably prudent person to leave

work, and (3) he or she first exhausted all reasonable alternatives before quitting, unless exhaustion would prove futile.

Here, Kennedy does not argue that she left work for any reason other than to move with her fiancé. Therefore, she does not meet any of the prongs required in WAC 192-150-170 to establish good cause and as such she fails to establish a general good cause reason for quitting under former RCW 50.20.050(2)(a).

Kennedy argues that she had good cause for quitting under former RCW 50.20.050(2)(a) because she believes that one sentence in the *Spain* opinion establishes that quitting to follow one's spouse to a new labor market is general good cause to quit one's job. Br. of App. at 10-11. Kennedy's argument fails for two reasons. First, as explained above Kennedy quit to follow her fiancé, not her spouse. Second, Kennedy misinterprets the *Spain* court's holding.

The *Spain* court concluded that the Commissioner has always had discretion under the current statute to find good cause on a case-by-case basis. *Spain*, 164 Wn.2d at 259-60. In support of its position, the court cited two older cases standing for that general principle, *Ayers v. Empl. Sec. Dep't*, 85 Wn.2d 550, 536 P.2d 610 (1975) and *In re Bale*, 63 Wn.2d 83, 385 P.2d 545 (1963). *Id.* Both of these cases involved claimants who had quit their jobs to follow their spouses to a new labor market. But the

*Spain* court did not cite these cases for their underlying facts; rather, the court adopted an overarching principle: the Commissioner has, and has always had, discretion to find good cause on a case-by-case basis, independent of the per se good cause factors. *Spain*, 164 Wn.2d at 258-59. Kennedy's reliance on the underlying facts of *Ayers* and *In re Bale* is therefore misplaced, as those cases were cited simply for principle of law on which the cases were decided and not for the proposition that a spousal transfer is always good cause as a matter of law.

Moreover, the question before the *Spain* court was simply whether the list of per se good cause factors in former RCW 50.20.050(2)(b) was an exclusive list, not whether spousal transfers constitute good cause under former RCW 50.20.050(2)(a). Therefore, the court could not and did not rule on the issue. Kennedy's position would essentially be judicially creating a twelfth good cause factor under former RCW 50.20.050(2)(b).

Adopting Kennedy's argument would also render the list of good cause factors in former RCW 50.20.050(2)(b) superfluous. Under Kennedy's argument, claimants who are unable to meet the requirements of one of the per se factors in former RCW 50.20.050(2)(b)(i)-(xi) would simply circumvent the list and claim that their situation falls under the general good cause provisions of former RCW 50.20.050(2)(a). For

example, if a claimant suffered a reduction in pay or hours that was less than twenty-five percent, he or she could claim that although the facts do not rise to the level set by the Legislature in the per se list, they nevertheless are sufficient grounds to quit and obtain benefits under the general good cause provision of former RCW 50.20.050(2)(a). This result would contravene the spirit of the statute and render meaningless the specific limitations the Legislature has enumerated in the voluntary quit arena.

This Court must construe the language of the Act as a whole, harmonizing the per se and general voluntary quit provisions. Kennedy's reasoning creates an artificial conflict between the per se good cause provision and the general good cause provision. Therefore, Kennedy's argument should be rejected.

**C. This Court Need Not Decide The Question Of Whether WAC 192-150-170 Is Valid Because The Issue Is Moot**

WAC 192-150-170 was an emergency rule adopted by the Department in response to the decision in *Spain*. The rule expired on July 7, 2009, and was not renewed. Therefore, this court should not accept Kennedy's invitation to determine its validity because such a determination is moot.

An appeal is moot if it is not possible for the court to provide effective relief and if it presents purely academic issues. *Klickitat Cy. Citizens Against Imported Waste v. Klickitat Cy.*, 122 Wn.2d 619, 632, 860 P.2d 390 (1993). A court may consider a moot issue if the case involves a question of continuing and substantial public interest. *Id.* In making this determination, the court considers (1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable for future guidance; (3) whether the issue is likely to recur; and (4) whether there is genuine adverseness and quality advocacy on the issues. *Id.*

WAC 192-150-170 has expired, thus any inquiry by this court into its validity would be purely academic. Moreover, this issue does not involve substantial public interest: there is no issue of a public nature, an authoritative determination is not necessary for future guidance, and the issue will not recur. This court should not review the validity of WAC 192-150-170 because it no longer has effect and thus the issue is moot.

**D. This Court Need Not Decide The Question Of Whether WAC 192-150-170 Is Valid Because The Commissioner's Decision Is Based On Statutory Grounds**

In addition to the foregoing reason, this Court need not reach Kennedy's argument regarding the validity of WAC 192-150-170 because

the Commissioner's decision is based on statutory grounds. Kennedy's case involves a military transfer, which is a factual scenario already addressed by the per se list of good cause factors in former RCW 50.20.050(2)(b)(i)-(xi)—spousal military transfer. As Kennedy's case already falls under one of the per se good cause scenarios of RCW 50.20.050(2)(b), albeit failingly, this Court need not address whether Kennedy's situation also meets the good cause standard in WAC 192-150-170.

As mentioned above, if an unemployment claimant suffered a twenty-three percent reduction in pay, he or she would be denied benefits as the reduction in pay would not meet the legislatively codified twenty-five percent threshold. *See* former RCW 50.20.050(2)(b)(v). Likewise, if a claimant left work to relocate with his or her non-military spouse, he or she would be denied benefits, as the Legislature has mandated that only military transfers be recognized. Former RCW 50.20.050(2)(b)(iii)(B).<sup>4</sup> It would certainly produce an untenable result if these claimants, unable to establish good cause under one of the per se good cause factors, were then permitted to claim general good cause under RCW 50.20.050(2)(a) and

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<sup>4</sup> After September 6, 2009, claimants are not disqualified from benefits for leaving work to relocate with their spouse who received a nonmilitary transfer. Laws of 2009, ch. 493, § 3.

WAC 192-150-170, since each claimant's factual scenario has already been considered and decided by the Legislature in the list of per se factors.

Here, Kennedy chose to quit her work to follow a man *to whom she had no legal connection recognized under the statute* when the man was militarily transferred. As the Legislature decided that only *spousal* military related transfers constitute good cause, she does not qualify for benefits under the Act. Thus, former RCW 50.20.050(2)(a) and WAC 192-150-170 do not apply and this court need not address the validity of WAC 192-150-170.

**E. WAC 192-150-170 Is Consistent With The Language And Policy Of The Act**

Assuming arguendo that this court reaches Kennedy's challenge to WAC 192-150-170, that rule is an appropriate exercise of the Commissioner's regulatory power. Thus, the Court should leave it undisturbed.

Duly enacted regulations are presumed to be valid. *Weyerhaeuser Co. v. Dep't of Ecology*, 86 Wn.2d 310, 314, 545 P.2d 5 (1976). The burden of overcoming this presumption rests on the challenger. RCW 34.05.570(1)(a); *Kabbae v. Dep't of Soc. & Health Servs.*, 144 Wn. App. 432, 192 P.3d 903 (2008). "[T]he court shall declare [a] rule invalid only if it finds that: The rule violates constitutional provisions; the rule

exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.” RCW 34.05.570(c).

A challenger to a rule must show “compelling reasons” why the regulation conflicts with the statute’s intent and purpose. *H & H P’ship v. Dep’t of Ecology*, 115 Wn. App 164, 168, 62 P.3d 510 (2003). Thus, a court’s review of a regulation should go no further than ascertaining whether the regulation is reasonably consistent with the provisions of the statute it purports to implement. *Weyerhaeuser Co.*, 86 Wn.2d at 314. Moreover, the court should give substantial weight to the Commissioner’s construction of the statutory language and legislative intent, as the Employment Security Act is within the Department’s expertise. *Macey v. Empl. Sec. Dep’t*, 110 Wn.2d 308, 313, 752 P.2d 372 (1988).

In this case, the Legislature delegated broad rulemaking authority to the Commissioner to enact regulations necessary to carry out the administration of the Act. RCW 50.12.010.<sup>5</sup> The declared purpose of the Act is to set aside funds for the benefits of persons unemployed through no fault of their own. RCW 50.10.010. This can be achieved by placing

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<sup>5</sup> RCW 50.12.010(1) provides in part: “The commissioner shall administer this title. He shall have the power and authority to adopt, amend, or rescind such rules and regulations ... as he deems necessary or suitable to that end.”

reasonable limitations on the disbursement of funds, with the goal of extending the availability of a limited amount of funds.

Pursuant to the Commissioner's authority, and in light of the *Spain* decision, the Commissioner promulgated a regulation limiting the general good cause inquiry under RCW 50.20.050(2)(a) to work-related reasons. WAC 192-150-170. This limitation is consistent with the Legislature's recognition that there are times when non-work-related circumstances may be sufficiently compelling so as to cause one to voluntarily quit one's job. These circumstances include the death or illness of a family member, situations involving domestic violence, and mandatory military transfers. Former RCW 50.20.050(2)(b)(ii), (iii), (iv). These situations may create an absence of meaningful choice for the worker about whether to continue his or her employment, and the Legislature has specifically included them as bases for receiving benefits. However, there are virtually thousands of non-work-related reasons which might present a worker with a difficult choice involving the question of whether to quit his or her job. Consistent with the Act, the Commissioner chose not to extend the limited non-work-related provisions of former RCW 50.20.050(2)(b).

In *Department of Labor and Industries v. Kantor*, 94 Wn. App. 764, 783, 973 P.2d 30, 40 (1999), the court found that a Department of Labor and Industries (L&I) regulation defining the term "medically

necessary,” did not, in the absence of a statutory definition, exceed L&I’s statutory mandate. In that case, a statute granted L&I the authority to ensure that workers receive only “proper and necessary medical and surgical services.” *Kantor*, 94 Wn. App. at 783. Pursuant to delegated rule-making authority, L&I promulgated a regulation defining the term “medically necessary,” a term the Legislature had failed to define by statute. *Id.* The court held that L&I acted pursuant to its mandate, and found that the definition was consistent with the agency’s obligation to regulate the efficiency and quality of care provided to covered workers. *Id.*

Similarly, here, the Commissioner has defined a term left undefined by the Legislature—the term good cause is not defined in the voluntary quit statute. *See Spain*, 164 Wn.2d. at 260-61. Consistent with the purpose of the Act, in WAC 192-150-170 the Commissioner limited good cause to work-related factors. This definition serves the policy of preserving the integrity of the unemployment fund and carries out the obligation to enact regulations “necessary” to administer the Act. *See* RCW 50.12.010.

Finally, Kennedy’s statutory construction argument is without merit. Kennedy argues that the Legislature’s decision to remove the “work-connected factors” language from the post-2004 version of the

voluntary quit statute necessarily implies that the Legislature intended to get rid of such a limitation in the area. Br. of App. at 17-18. However, the Legislature did not simply “remove” the limitation. Rather, it replaced it with a refined list of both non-work-related and work-related reasons for quitting one’s job. *See* former RCW 50.20.050(2)(b)(i)-(xi). Thus, the voluntary quit statute still contains both work-related and non-work-related exceptions for obtaining benefits. The Legislature did not, therefore, remove the work-related requirement from the statute, it simply modified it. Moreover, nothing in the statutory amendments limited the Commissioner’s ability to set forth standards through rulemaking.

Kennedy has failed to show compelling reasons why this Court should invalidate WAC 192-150-170. The regulation is an appropriate exercise of properly delegated rulemaking authority, which sets forth reasonable standards to assess good cause for voluntarily quitting work. The Department asks the Court to uphold the regulation.

## **VI. CONCLUSION**

The Commissioner determined that Kennedy voluntarily quit her employment without good cause under the relevant statute and therefore was not eligible to receive unemployment benefits. Substantial evidence supports this decision and it contains no errors of law. Therefore, the

Department respectfully asks that this Court affirm the Commissioner's decision.

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of  
November, 2009.

ROBERT M. MCKENNA  
Attorney General

A handwritten signature in black ink, appearing to read "Jennifer S. Steele", written over the printed name below.

JENNIFER S. STEELE  
Assistant Attorney General  
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Attorneys for Respondent

NO. 39574-6-II

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

MICHELLE L KENNEDY,

Appellant,

v.

STATE OF WASHINGTON  
DEPARTMENT OF  
EMPLOYMENT  
SECURITY,

Respondent.

DECLARATION OF  
SERVICE

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DIVISION II  
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STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

I, ROXANNE IMMEL, 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-entitled action.

2. That on the 2 day of November 2009, I caused to be served by mailing a true and correct copy of Department's Response Brief, with proper postage affixed thereto to:

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

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COURT OF APPEALS  
STATE OF WASHINGTON  
2009 NOV -2 PM 4:32

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

Dated this 2 day of November 2009 in Seattle,  
Washington.



A handwritten signature in cursive script, reading "Roxanne J. Hume", is written over a horizontal line.