

NO. 42631-5-II

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

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ROBERT CAMPBELL,

Respondent.

v.

STATE OF WASHINGTON  
DEPARTMENT OF EMPLOYMENT  
SECURITY,

Appellant.

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**APPELLANT'S RESPONSE BRIEF**

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## **I. INTRODUCTION**

The Employment Security Department appeals a Thurston County Superior Court decision reversing the Commissioner of the Department's order denying Campbell unemployment benefits. The Commissioner held that Campbell's decision to voluntarily quit his job seven months before his wife was set to temporarily teach in Finland for only four months did not constitute good cause for quitting his full time high school teaching position. The Commissioner properly concluded that Campbell did not have good cause to quit under the Employment Security Act's "quit to follow" one's spouse provision because he did not work as long as was reasonable prior to the move, nor did he establish that he quit to relocate for the "employment" of his wife as defined by statute. RCW 50.20.050(2)(b)(iii). Because substantial evidence supports the findings of fact and the Commissioner's conclusions of law are in accordance with the Employment Security Act, the Department respectfully requests that the Court reverse the superior court's decision and affirm the Commissioner's decision.

## **II. STATEMENT OF THE ISSUES**

A person who voluntarily quits his job is eligible for unemployment benefits only if he quit with good cause. Under

RCW 50.20.050(2)(b)(iii), a person has good cause to quit if he quit to relocate for the employment of a spouse outside the labor market.

1. Where RCW 50.20.050(2)(b)(iii)(B) requires a person who quits his job to relocate for his spouse's employment to have "remained employed as long as was reasonable prior to the move" in order to qualify for benefits, did Campbell quit his job prematurely when he quit approximately seven months before his scheduled move?

2. Under RCW 50.20.050(2)(b)(iii)(A), which provides an unemployment benefits claimant has good cause to quit his job to relocate for his spouse's "employment," did Campbell have good cause to quit when he did not establish that his wife's Fulbright grant was "employment" as defined by the Employment Security Act?

### **III. STATEMENT OF THE CASE**

Campbell was employed as a high school Spanish and history teacher by the University Place School District from September 2004 until he resigned effective June 21, 2011. AR 11-12, 48.<sup>1</sup> In April 2010, he informed his employer that his wife had received a Fulbright grant to teach and do research in Finland for four months beginning in February 2011. AR 13, 17, 19. He requested a leave of absence for the second semester of

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<sup>1</sup> The superior court transmitted the Administrative Record in this matter as a stand-alone document. *See* CP Index. The Administrative Record is separately paginated from the Clerk's Papers and, therefore, will be cited to in this brief as "AR."

the next school year so that he could accompany his wife and three year old daughter to Finland, but his employer denied the request. AR 14. He then requested a leave of absence for the entire 2010–2011 school year, which the employer also denied. AR 14-15. The employer told Campbell that they denied his leave requests to protect the instructional program because they were unsure they would be able to find a qualified teacher to fill his position for such a limited absence. AR 16, 49. Rather than working until his family was scheduled to leave for Finland in February 2011, Campbell quit his job effective June 21, 2010, at the end of the 2009–2010 school year, seven months before his wife was scheduled to leave, and promptly applied for unemployment compensation. AR 12, 15, 48.

The Department denied his request for benefits, finding Campbell did not have good cause to quit his job, and Campbell appealed the decision and requested an administrative hearing. AR 33-39. Following the hearing, an administrative law judge (ALJ) affirmed the denial of benefits, finding Campbell did not satisfy the “quit to follow” one’s spouse prong of the voluntary quit statute because the statute contemplates following a spouse for permanent employment, not a temporary, four-month grant. AR 52-54. Campbell petitioned the Commissioner of the Department for review of the ALJ’s order. AR 60-62. The Commissioner

affirmed and modified the ALJ's order, stating that the evidence did not establish that the Fulbright grant equated with "employment" as defined by the Employment Security Act. AR 66-67. The Commissioner additionally concluded that because Campbell quit his job seven months before the family was scheduled to leave for Finland, he quit his job prematurely and, therefore, was without statutory good cause. AR 67. Accordingly, he was not eligible for unemployment benefits. *Id.*

Campbell appealed the Commissioner's decision to superior court. CP 4-9. The superior court reversed the Commissioner's decision, finding Campbell satisfied both prongs of the "quit to follow" one's spouse statute, RCW 50.20.050(2)(b)(iii): that he left work to relocate for the employment of his spouse outside the existing labor market area and remained employed as long as was reasonable prior to the move. CP 34-37. This appeal by the Department followed.

#### **IV. STANDARD OF REVIEW**

Campbell seeks judicial review of the administrative decision of the Commissioner of the Employment Security Department. Judicial review of the Commissioner's decisions is governed by the Washington Administrative Procedures Act (APA) pursuant to RCW 34.05.510 and RCW 50.32.120. The court of appeals sits in the same position as the superior court and applies the APA standards directly to the administrative

record. *Smith v. Emp't Sec. Dep't*, 155 Wn. App. 24, 32, 226 P.3d 263 (2010). The court reviews the decision of the Commissioner, not the underlying decision of the ALJ—except to the extent the Commissioner's decision adopted any findings and conclusions of the ALJ's order. *Id.*; *Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 406, 858 P.2d 494 (1993). Because Campbell sought review of Commissioner's decision in the superior court, and pursuant to this Court's General Order 2010-1, Campbell has the burden of demonstrating the invalidity of the Department's decision.

The court's review is limited to the agency record. RCW 34.05.558. The Commissioner's decision is considered prima facie correct, and the burden of demonstrating its invalidity is on the appellant. RCW 50.32.150; RCW 34.05.570(1)(a). 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).

**A. Review of Factual Matters**

Judicial review of disputed issues of fact must be limited to the agency record. RCW 34.05.558. The court must uphold an agency's findings of fact if they are supported by substantial evidence. *Wm. Dickson Co. v. Puget Sound Air Pollution Control Agency*, 81 Wn. App.

403, 411, 914 P.2d 750, 755 (1996). Substantial evidence is evidence that is “sufficient to persuade a rational, fair-minded person of the truth of the finding.” *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). Evidence may be substantial enough to support a factual finding even if the evidence is conflicting and could lead to other reasonable interpretations. *Fred Hutchinson Cancer Research Ctr. v. Holman*, 107 Wn.2d 693, 713, 732 P.2d 974 (1987). The reviewing court should “view the evidence and the reasonable inferences therefrom in the light most favorable to the party that prevailed” at the administrative proceeding below. *Tapper v. Emp’t Sec. Dep’t*, 122 Wn.2d 397, 407, 858 P.2d 494 (1993). Campbell has not assigned error to any of the Commissioner’s findings. Accordingly, they are verities on appeal. RAP 10.3(g); *Tapper*, 122 Wn.2d at 407.

The court may not substitute its judgment for that of the agency on the credibility of the witnesses or the weight to be given to conflicting evidence. *Smith*, 155 Wn. App. at 35; *Davis v. Dep’t of Labor & Indus.*, 94 Wn.2d 119, 124, 615 P.2d 1279 (1980). The Commissioner “is authorized to make his own independent determinations based on the record and has the ability and right to modify or to replace an ALJ’s findings, including findings of witness credibility.” *Smith*, 155 Wn. App. at 36 n.2.

**B. Review of Questions of Law**

Questions of law are subject to de novo review. *Tapper*, 122 Wn.2d at 403. However, where an agency has expertise in a particular area, the court should accord substantial weight to the agency's decision. *Wm. Dickson Co.*, 81 Wn. App. at 407; *Markam Group, Inc. v. State Dep't of Emp't Sec.*, 148 Wn. App. 555, 561, 200 P.3d 748 (2009).

**C. Mixed Questions of Law and Fact**

Whether a claimant had good cause to quit his job is a mixed question of law and fact. When reviewing a mixed question of law and fact, the court must make a three-step analysis. *Tapper*, 122 Wn.2d at 403. First, the court determines which factual findings below are supported by substantial evidence. *Id.* Second, the court makes a de novo determination of the correct law, and third, it applies the law to the facts. *Id.* As with review of pure issues of fact, the court does not reweigh credibility or demeanor evidence when reviewing factual inferences made by the Commissioner before interpreting the law. *Wm. Dickson Co.*, 81 Wn. App. at 411. In addition, the court is not free to substitute its judgment of the facts for that of the agency. *Tapper*, 122 Wn.2d at 403.

**V. ARGUMENT**

This Court should affirm the Commissioner's decision because substantial evidence supports the findings of fact, and there are no errors

of law. The Commissioner properly concluded Campbell did not satisfy either of the prongs of the “quit to follow” statute that would have allowed him to establish good cause to quit his job and, therefore, his eligibility for unemployment benefits.

Neither the terms of the Employment Security Act (the Act) nor the policy supporting it provide for payment of unemployment benefits to Campbell. The Act was enacted to provide compensation to individuals who are “involuntarily” unemployed “through no fault of their own.” RCW 50.01.010; *Tapper*, 122 Wn.2d at 408. If a claimant is to qualify for benefits, the reason for the unemployment must be external and apart from the claimant. *Cowles Publ’g Co. v. Emp’t Sec. Dep’t*, 15 Wn. App. 590, 593, 550 P.2d 712, 715 (1976). Accordingly, a person is ineligible to receive unemployment benefits when he leaves employment voluntarily, unless he had good cause to quit. RCW 50.20.050(2). A claimant may establish good cause only under one of eleven enumerated per se reasons listed in RCW 50.20.050(2)(b). The burden of establishing good cause to quit is on the benefits claimant; this burden never shifts during the course of proceedings. *Townsend v. Emp’t Sec. Dep’t*, 54 Wn.2d 532, 534, 341 P.2d 877 (1959); *In re Anderson*, 39 Wn.2d 356, 365, 235 P.2d 303 (1951).

Campbell concedes that he quit his job voluntarily. Therefore, the only question is whether he had good cause to quit. Whether a claimant had good cause to quit his job is a mixed question of law and fact. *Terry v. Dep't of Emp't Sec.*, 82 Wn. App. 745, 748, 919 P.2d 111, 114 (1996).

**A. Campbell did not satisfy either of the prongs of the “quit to follow” statute.**

The voluntary quit statute, RCW 50.20.050(2), sets forth the criteria for establishing good cause and places the burden on claimants to show that they meet the specific criteria in the statute. To qualify for benefits under the statute, claimants must meet one of the specifically enumerated, or per se, factors in RCW 50.20.050(2)(b)(i)-(xi). Here, Campbell argues that he had good cause to quit his job under the “quit to follow” section of the statute, even though he quit his full time job as a teacher seven months before his scheduled move to follow his wife to her temporary position in Finland. RCW 50.20.050(2)(b)(iii).

The “quit to follow” statute sets forth a two-prong test as to whether a person quit his employment with good cause. Importantly, the claimant must have “remained employed as long as was reasonable prior to the move.” RCW 50.20.050(2)(b)(iii)(B). The claimant also must have “[l]eft work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area.”

RCW 50.20.050(2)(b)(iii)(A). Campbell satisfied neither prong. Accordingly, this Court should affirm the Commissioner's decision.

**1. Campbell did not remain employed as long as was reasonable prior to the move.**

As discussed, in order to establish good cause, the “quit to follow” statute requires that the claimant “remained employed as long as was reasonable prior to the move.” RCW 50.20.050(2)(b)(iii)(B). Campbell argues that this only required him to remain employed as long as *reasonable*, not as long as *possible*, implying that it was not possible for him to continue working until he moved (or at least for the first semester of the 2010–2011 school year). Opening Br. at 13. Because Campbell quit approximately seven months before his family's scheduled departure for Finland, not only did he not work as long as possible, but he also did not remain employed for as long as reasonable.

**a. The policy of the Employment Security Act requires claimants to take reasonable steps to preserve their employment.**

Inherent in the Employment Security Act is a policy requiring claimants to take reasonable steps to preserve their employment. *See Robinson v. Emp't Sec. Dep't*, 84 Wn. App. 774, 779, 930 P.2d 926 (1996). For example, the purpose of the Act is to alleviate “involuntary” unemployment. RCW 50.01.010. If one quits due to an illness or

disability, he or she must have first exhausted all reasonable alternatives prior to quitting in order to qualify for benefits. RCW 50.20.050(2)(b)(ii)(A). If one quits due to worksite deterioration or illegal activities, the claimant must have first reported the issues to the employer, and the employer must have failed to correct the issues. RCW 50.20.050(2)(b)(viii)-(ix). As Campbell explains, “[i]n determining legislative intent, we interpret language at issue within the context of the entire statute.” Opening Br. at 15-16 (citing *In re Sehome Park Care Ctr, Inc.*, 127 Wn.2d 774, 778, 903 P.2d 443 (1995)).

In *In re E.S. Lansberry*, Emp’t Sec. Comm’r Dec.2d 641 (1980),<sup>2</sup> the claimant worked as a high school secretary but received a reprimand stating she would be changed from her secretarial position. The principal told her he would do his best to find employment for her in some other capacity in the school system. *Id.* Although the claimant could have worked in the same position until another was found for her or until the end of the year, she resigned knowing there was continuing work for her. *Id.* Because the claimant failed to request a transfer to other work that would have been suitable for her and resigned before the employer had the

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<sup>2</sup> Appendix A. Under RCW 50.32.095, the Commissioner may designate certain Commissioner’s decisions as precedent, which serve as persuasive authority for this Court. *Martini v. State, Emp’t Sec. Dep’t*, 98 Wn. App. 791, 795, 990 P.2d 981, 984 (2000). All of the Commissioner’s decisions cited in this brief have been so designated by the Commissioner.

opportunity to pursue other opportunities, the Commissioner concluded she quit prematurely, and the quit was, therefore, without good cause. *Id.*

In *Johns v. Dep't of Emp't Sec.*, 38 Wn. App. 566, 686 P.2d 517 (1984), a claimant, who had transferred departments due to philosophical differences with a new supervisor, became unsatisfied with his salary and unsuccessfully attempted to upgrade his position. The claimant had the opportunity to return to his former position, and his "supervisor suggested that [he] take some time off to get his health and attitude back and then resolve his employment dilemma." *Id.* at 571. Instead, the claimant terminated his employment without pursuing this less drastic option. *Id.* The court concluded that the claimant had not fully exhausted his employment alternatives; therefore, he did not have good cause to quit. *Id.*

In the present case, the school district's denial of Campbell's requests for leaves of absence did not preclude him from working until his scheduled departure in February 2011. Like the claimant in *Lansberry*, who quit in anticipation of being transferred to a different position despite the availability of continuing work, Campbell could have continued working for the school district until January or February 2011 rather than quitting in June 2010. Campbell's requests for leaves of absence were his efforts to preserve his employment for *after* he returned from Finland, not

before he left for Finland. He was trying to ensure that he would have a job upon his return. AR 15, 34. Like the claimant in *Johns*, Campbell had a less drastic option available to him to preserve his employment before the move: work until shortly before his departure, or at least for the first semester of the 2010–2011 school year. Despite his argument at the administrative hearing that he would have worked until February, “but the employer decided otherwise,” it was Campbell’s decision alone to voluntarily quit his job on the last day of the 2009–2010 school year. AR 23. Because Campbell quit his job seven months before he was scheduled to leave for Finland knowing that continuing work was available to him, he did not take reasonable steps to preserve his employment, and it cannot be said he was “involuntarily” unemployed during the months he claimed benefits.

Finally, it should be noted that Campbell’s wife’s job for which he quit to follow her was a temporary, four-month position. AR 13, 17, 19. While it is understandable that Campbell would not want his family to separate for even four months, quitting full-time, long-term employment for such a temporary, short-term position is not the type of personal choice the unemployment compensation fund is intended to subsidize.

**b. Campbell did not preserve his employment for as long as was reasonable, and allowing a claimant to quit seven months prior to the move would create an exception to the rule.**

Beyond the policy underlying the purpose of the Act is the plain language of the statute itself. Here, Campbell did not remain employed “as long as was reasonable prior to the move” because he quit seven months before the scheduled move. RCW 50.20.050(2)(b)(iii)(B).

In *In re Thelma J. Burkholder*, Emp’t Sec. Comm’r. Dec.2d 315 (1977),<sup>3</sup> the claimant, who was employed as a registered nurse, lived with her husband in Walla Walla, WA, when her husband was accepted into medical school in Seattle to begin in September 20, 1976. She quit her job on July 1, 1976. *Id.* They then drove to Seattle to purchase a home, signed a purchase and sale agreement on August 6, returned to Walla Walla for about three days, then went on a three-week vacation on the claimant’s accrued leave. *Id.* The Commissioner stated that the claimant, who worked rotating days, could have used her days off or vacation days to look for a home and then return to work for a few weeks; instead, she quit on July 1. *Id.* The Commissioner further stated, “[A] fairly narrow time frame between the quit and the move is needed in order to show ‘good cause’ in cases of quitting to follow a [spouse].” *Id.* Because she

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<sup>3</sup> A copy has been attached as Appendix B.

quit her job before it was necessary, she did not have good cause to quit when she did. *Id.*

Here, Campbell quit his job *long* before his spouse's new job necessitated that he resign, much longer than the claimant in *Burkholder*. He did not leave a "fairly narrow time frame between the quit and the move." *Burkholder*, Emp't Sec. Comm'r. Dec.2d 315 (1977). Although Campbell's actions may have been considerate of his employer, they do not provide for benefits under the Act and should be seen as abuse of the unemployment compensation system, particularly when it is clear he did not intend to seek or accept full-time, long-term employment during the months he claimed benefits.<sup>4</sup> AR 33-34. The purpose of the

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<sup>4</sup> Although the ALJ did not explore his work search efforts further, Campbell may well have been ineligible for benefits because he was not able to, available for, and willing to immediately accept any suitable work offered to him. RCW 50.20.010(1)(c)(ii). In his appeal letter, Campbell makes clear that he would not accept a full-time teaching contract while unemployed and that he planned on "working as a substitute when possible until January" and only seek full-time employment upon his return from Finland. AR 33-34. An individual's self-imposed limitations on his or her availability constitutes a voluntary withdrawal from the employment market—the individual is no longer exposed unequivocally to the labor market for which he or she is suited—usually rendering that individual ineligible for unemployment benefits. *See, e.g., Arima v. Emp't Sec. Dep't*, 29 Wn. App. 344, 351, 628 P.2d 500 (1981); *In re Bridgette Wolanski*, Emp't Sec. Comm'r Dec.2d 860 (1997). (A copy has been attached as Appendix C.)

Additionally, had Campbell continued working until moving, he would not have been ineligible for benefits during the summer months of 2010 if the school intended to continue employing him, and there is nothing in the record to suggest it did not. The Act provides that:

[b]enefits shall not be paid [on any and all service in an instructional capacity for educational institutions] . . . for any week of unemployment which commences during an established and customary vacation period . . . if such individual performs such services for any

unemployment compensation system is to assist those who involuntarily lose their jobs, not to those who voluntarily quit for their own personal convenience. RCW 50.01.010.

Campbell asks this Court to read the statutory requirement that a claimant work as long as reasonable so broadly that he essentially seeks an exception to the rule for school teachers. First, schools are not unique in requiring employees with particular skill sets, nor are they the only type of employer who must deal with the ramifications of an employee's departure. A teacher who plans to take an extended family leave in the middle of a school year (for a new baby, for example) need not quit his or her job at the end of the previous school year. There is nothing in the record to establish that being a teacher precluded Campbell from waiting to quit in January or February 2011.

Even if school districts could be distinguished from other employers in their need to maintain staff continuity, the exception Campbell seeks would create an unworkable, employer-by-employer inquiry regarding how long is "reasonable" for a claimant to remain employed. The Commissioner and courts would be forced to determine

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educational institution in the period immediately before such vacation period . . . and there is a reasonable assurance that such individual will perform such services . . . in the period immediately following such vacation period.

RCW 50.44.050(3).

what is reasonable on an employer-by-employer basis, creating a patchwork of guidelines depending on the particular field in which a claimant was employed.

It is not clear from the record, as Campbell asserts, that Campbell chose to quit at the end of the 2010 school year to allow his employer as much notice and time as possible to find a replacement. Opening Br. at 14. Although he stated at the administrative hearing that he wanted to be “ethical and professional,” he did not specify that it was to accommodate his employer’s staffing needs. AR 15. Moreover, in his appeal letter, he stated that when the school district denied his leave requests, he felt he “was given no choice but to resign in order to be a responsible parent.” AR 33. He was “willing and able” to continue working for the district for the first semester had they granted his leave request, but when they denied it, he quit at the end of the school year in June to travel with his family the following February rather than continue working. AR 33. He should have been “willing and able” to continue working for district for at least the first semester in spite of the fact that they denied his leave requests. Even if Campbell’s decision was made solely with his employer’s staffing needs in mind, he was under no obligation to accommodate his employer’s needs (particularly after they refused to accommodate his). More importantly,

his doing so does not allow him to draw benefits from the unemployment compensation fund under the Act.

In determining whether an individual's actions were reasonable, the Court should consider the "actions of a person exercising common sense in a similar situation." WAC 192-100-010. Under this standard, it was not reasonable to quit a full-time job seven months prior to a move and draw benefits from the unemployment compensation fund while only looking for temporary, part-time substitute teaching work when continuing full-time work is available. *See supra* note 4. The Act was not meant to subsidize this type of situation where the seven months of unemployment was voluntary. Accordingly, Campbell did not work "as long as was reasonable prior to the move," and the Commissioner's decision should be affirmed.

**c. Allowing a claimant to quit seven months prior to the move would create an incongruous result.**

Additionally, allowing a claimant to quit seven months prior to a move yet still qualify for unemployment benefits under the "quit to follow" statute would create an incongruous result when considering what a claimant who accepts a new job must do to establish eligibility. A claimant may establish good cause to quit if he or she left work to accept a bona fide offer of bona fide work. RCW 50.20.050(2)(b)(i). However, in

order to do so, the claimant must have “continued in the previous employment for as long as was reasonably consistent with whatever arrangements were necessary to start working at the new job.”

In *In re Jodie Ackler*, Emp’t Sec. Comm’r Dec.2d 581 (1979),<sup>5</sup> the claimant last worked as a teacher’s aide in the 1978–1979 school year, and she intended to return to work in the same capacity the next school year. In late August, she was offered other work that was to begin sometime between September 17 and October 1, 1979, which she accepted. *Id.* On August 28, she resigned her position even though the school year was to commence on September 4. *Id.* The Commissioner concluded she did not continue in her old employment as long as was reasonably consistent with the arrangements necessary to begin a new job because she did not work until her start date at her new job. *Id.*

Although the precise language in the “offer of bona fide work” provision does not apply here, the same principles apply. While a move assumes that some moving preparations will be required that might require one to quit earlier than if one were simply beginning a new job in the same labor market area, a person is still required to work as long as reasonable under both scenarios. Here, what is reasonable for a spouse who “quits to

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<sup>5</sup> A copy has been attached as Appendix D.

follow” is to remain employed as long as reasonably consistent with the arrangements necessary to move.

Moreover, it would create a statutory inconsistency if the spouse whose job necessitated a move was required to work until the new job began to be eligible for benefits under RCW 50.20.050(2)(b)(i) and WAC 192-150-050, but the spouse who “quit to follow” could quit seven months in advance of the move and be eligible for unemployment benefits under RCW 50.20.050(2)(b)(iii). This incongruity would be the consequence if the Court adopted the reasoning Campbell urges. The Court must look at the statute as a whole, and its interpretation must not create an absurd result. *Erakovic v. Dep’t of Labor and Indus.*, 132 Wn. App. 762, 768, 134 P.3d 234 (2006). There is nothing in the statute that contemplates such disproportionately favorable treatment for a person who quits to follow his or her spouse.

**2. Campbell did not establish that he quit work to relocate for the *employment* of his spouse.**

Campbell also did not satisfy the prong of the “quit to follow” statute that requires the claimant to have quit his job to relocate “for the *employment* of a spouse or domestic partner that is outside the existing labor market area.” RCW 50.20.050(2)(b)(iii)(A) (emphasis added). Contrary to Campbell’s suggestion, the Commissioner did not arbitrarily

impose an additional requirement. The Act itself provides a definition of “employment”:

[P]ersonal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship, including service in interstate commerce, performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied.

RCW 50.04.100. Therefore, to determine if Campbell’s wife’s Fulbright grant met the definition of "employment," the Commissioner needed to determine (1) if Campbell’s wife was going to perform personal services for an employer, and (2) if the employer pays wages for those services or paid under a contract calling for personal services. *Language Connection, LLC v. Emp’t Sec. Dep’t*, 149 Wn. App. 575, 581, 205 P.3d 924 (2009). To satisfy the first prong, the personal services must clearly be performed for an alleged employer or for its benefit. *Id.* at 582.

Here, although he was represented by counsel at the administrative hearing, Campbell made no attempt to establish that his wife’s Fulbright grant constituted “employment.” RCW 50.20.050(2)(b)(iii)(A), 50.04.010. Campbell testified that it was a four month grant for \$17,000.00. AR 13, 16-17. At the time of the hearing, Campbell did not know through what university she would be working or exactly what the work would entail. AR 19-20 (“[S]he will be having to travel to public

schools to do her research. She will be working with colleagues at whatever university she is placed at, and will be teaching university students presumably; perhaps teaching or making presentations to public school students. There is a whole variety of – of activities that she will be doing.”) It is unclear whether this constitutes “personal services” under RCW 50.04.010 and, therefore, “employment” under RCW 50.20.050(2)(b)(iii)(A). The record does not establish whether Campbell’s wife is a graduate student, or a professor, or some other type of Fulbright scholar.

As discussed, the burden of establishing good cause to quit is on the benefits claimant. *Townsend*, 54 Wn.2d at 532. Because Campbell failed to carry his burden to establish that he quit his job to relocate for his wife’s “employment,” he did not satisfy either prong of the “quit to follow” statute. Therefore, the Commissioner’s decision should be affirmed.

**B. The Court should not award attorney fees unless it reverses or modifies the Commissioner’s decision.**

Reasonable attorney fees in connection with judicial review may be recovered and paid from the unemployment administration fund only “if the decision of the commissioner shall be reversed or modified.” RCW 50.32.160. Accordingly, Campbell is entitled to an award of

attorney fees only if this Court reverses or modifies the Commissioner's Decision. Whether the hours expended by counsel in this case and his hourly rate are reasonable can be determined only upon the submission of a cost bill should this Court reverse the Commissioner's decision.

## **VI. CONCLUSION**

Campbell's quit did not satisfy either of the prongs under the "quit to follow" statute: he neither worked as long as was reasonable prior to the move nor established that he was relocating for his wife's "employment." After his employer denied his leave requests, he could have worked until shortly before his scheduled move before terminating his employment. Instead, he quit his job seven months in advance, failing to take prudent steps to preserve his employment for as long as reasonable. The fact that the school district denied his leave requests did not preclude him from continuing to work until the move, or at least through the first semester of the 2010–2011 school year. The Commissioner properly concluded that Campbell did not establish his eligibility for unemployment benefits. Accordingly, the Department respectfully requests that the Court affirm the Commissioner's decision.

RESPECTFULLY SUBMITTED this 10th day of February,

2012.

ROBERT M. MCKENNA  
Attorney General

A handwritten signature in cursive script, appearing to read "Leah Harris".

LEAH HARRIS,  
WSBA # 40815  
Assistant Attorney General  
Attorneys for Respondent

# Appendix A

**Washington State  
Employment Security Department  
Precedential Decisions of Commissioner**

**WEST**[Home](#)

**IN RE E. S. LANSBERRY**  
Empl. Sec. Comm'r Dec.2d 641  
October 16, 1980

Term 

Empl. Sec. Comm'r Dec.2d 641, 1980 WL 344319 (WA)

Commissioner of the Employment Security Department  
State of Washington

**IN RE E. S. ← LANSBERRY →**

October 16, 1980  
Case No.  
641  
Review No.  
36811  
Docket No.  
0-05681

**DECISION OF COMMISSIONER**

RIVERSIDE SCHOOL DISTRICT, the former and interested employer of the claimant above named, by and through The Gibbens Company, Patricia Owens-Fenn, Account Services Supervisor, duly petitioned the Commissioner for a review of a Decision of an Appeal Tribunal entered in this matter on the 22nd day of July, 1980, and the undersigned, having carefully reviewed the entire record, thereby being fully advised in the premises, does hereby adopt the Findings of Fact Nos. 1 and 2 of the Appeal Tribunal's Decision, quoted below, and adds the following Additional Findings of Fact.

**FINDINGS OF FACT:**

- "1. Claimant worked as a secretary for the interested employer from August 23, 1977 until she voluntarily quit on May 28, 1980. At the time of job separation she received a monthly salary of \$635 and worked eight hours per day, five days per week. She was qualified to do the work.
- "2. Claimant quit her job after being informed by her supervisor that she could no longer work as the high school secretary. Claimant was told that she would be reassigned to another position. On the day that claimant tendered her resignation, she was offered a job as library aide. Claimant investigated this position but decided against accepting the transfer."

**ADDITIONAL FINDINGS OF FACT**

On November 5, 1979, claimant was evaluated by the principal. She was given generally good ratings, except that her "tact" was rated poor, with specific comments as to her need for improvement in her relationships with students, teachers and the public.

Claimant wrote a memo dated February 29, 1980, to her superior, (the school principal) criticizing certain school expenditures. Claimant was responsible for the record keeping for the particular account involved. She sent copies of that memo to the school superintendent, (the principal's superior) and two other individuals. As a result, on March 3, the principal wrote a memo of reprimand to claimant. Among other things, the reprimand stated that claimant would be changed from her secretarial position "as soon as possible" and that the principal would do his best to find employment for claimant in

some other capacity in the school system.

A transfer between claimant's secretarial position and that of a library aide was attempted. Claimant tried out the library aide position on March 5, and on March 6 the library aide tried claimant's position for about two hours before determining that she wished to return to library aide work. The principal was out of his office for this two hours and on his return, found things in a turmoil and that claimant had submitted her resignation letter, dated March 6 but effective March 28, 1980 (not May 28 as shown in the Appeal Tribunal's Decision).

Claimant understood at the time of resignation that she could have continued to work until the principal found another position for her. There were no secretarial openings at that time to the knowledge of the principal but he would have been "obligated" to find another job for claimant, at the same pay through at least the balance of the school year. It is not explained on the record just how he was so "obligated" but it appears to have something to do with a collective bargaining agreement between the school district and claimant's union, Association of Federal, State, County and Municipal Employees, Local 1135, particularly since claimant's secretarial replacement was found by the union procedure of posting and bidding for the job. Claimant did not protest her situation to the union because she felt they did not represent secretaries but were more concerned with bus drivers. Claimant did work as the secretary until March 28, and could have so continued until another position was found for her or until the end of the school year.

The library aide work was different than secretarial but claimant had performed such work in the past. She felt, however, that library work would not be in keeping with her secretarial abilities and career objectives. She had also worked for the school district as a teacher's aide from September, 1975, to June, 1977.

From the foregoing, the undersigned frames the following.

#### **ISSUE**

Did the claimant voluntarily quit work without good cause pursuant to RCW 50.20.050?

From the Issue as framed, the undersigned draws the following.

#### **CONCLUSIONS**

##### **I**

We adopt the Appeal Tribunal's Conclusions Nos. 1, 2 and 3 as if fully set forth herein.

The Appeal Tribunal ultimately concluded that claimant had good cause to leave her employment with the school district because her duties were to be materially changed from that of a secretary to another job such as library aide, and that such a change was a substantial and involuntary deterioration of the work factor. While it is true that the principal no longer desired claimant's services in his office as a secretary, she had not in fact been transferred to a position as library aide, nor to any other position. Claimant resigned before any such transfer could be effectuated. As we understand the testimony, the principal was obligated to find another position for claimant. The record does not reflect whether the principal could or would have forced the library aide to switch to claimant's position as secretary, but the principal did not have that opportunity before claimant resigned. We simply can't say that there was a deterioration of the work or some unconscionable hardship until such time as we know what the new job was and what it entailed. We do know that claimant's pay would not have changed at least through the end of the school year. We do not know the specifics of any new job to which she may have been transferred in terms of duties, hours, or other work related factors. This case is dissimilar to that of In re Price, Comm. Dec. (2nd) 547 (1978), wherein the claimant's skilled position as power house engineer was eliminated, and he was assigned to and did briefly work at an unskilled labor pool assignment at a 22% reduction in hourly wages. That was substantially different work, which the claimant had demonstrated an inability to perform, at a substantially different wage and afforded the claimant good cause in quitting. In this case we just do not know what work claimant might have been transferred to.

##### **II**

Even if claimant had been required to accept the library aide position, we are required by the voluntary quit statute to consider the individual's ability to perform the work. We believe that claimant demonstrated ability to perform such work by the fact that she had previously done it, although she did not wish to return to that type of work because she felt that it was not in keeping with her abilities and career plans. Although the record shows that library aide work is "different" than secretarial, we are not told whether it is so dissimilar that a reasonably prudent person would have a compelling reason for leaving the job.

### III

Nor are we persuaded that claimant had good cause for leaving because of the March 3 reprimand. We have not quoted claimant's February 29 memo nor the principal's March 3 reprimand--suffice it to say that the reprimand was warranted, particularly when one considers that claimant sent copies of her criticisms to the principal's superior and others. She was on notice as of the November 5, 1979, evaluation of her need to use tact in dealing with students, teachers and the public. Claimant's act of writing the memo critical of her superior and distributing copies to individuals other than her superior brought about the reprimand, and in our view the reprimand was justified. This case is therefore factually dissimilar from a number of cases holding good cause for voluntarily leaving due to unjustified, unwarranted criticism of an employee by the employer. E.g., *In re Legault*, Comm. Dec. 901 (1972); *In re Pronovost*, Comm. Dec. 909 (1972); *In re Ehrhardt*, Comm. Dec. (2nd) 112 (1975). In addition, although there may not have been openings with the school district as a secretary, claimant failed to request transfer to other work which may have been available to her and within her ability to perform. As noted above, the principal was "obligated" to find another position for her, but claimant resigned before the employer had the opportunity to pursue that alternative.

Finally, we note claimant's allegation in her notice of appeal of mental anguish resulting from her job. Although given ample opportunity to present testimony in this matter, no mention was made of health problems at the hearing. Further, the voluntary quit statement completed by claimant states "N/A" (not applicable) in response to the question of whether she left work because of personal illness on the advice of a doctor.

The claimant did not meet her burden of establishing good cause for having voluntarily quit her work under RCW 50.20.050, and benefits must therefore be denied. Accordingly,

IT IS HEREBY ORDERED that the Decision of the Appeal Tribunal entered in this matter on the 22nd day of July, 1980, shall be SET ASIDE. Benefits shall be denied the claimant pursuant to RCW 50.20.050 beginning March 23, 1980, and continuing thereafter until she has obtained work and earned wages of not less than her suspended weekly benefit amount in each of five calendar weeks.

DATED at Olympia, Washington, OCT 16 1980

Patricia L. Stidham  
Commissioner's Delegate

#### CASE HISTORY:

--Order of Dismissal entered by Superior Court for Spokane County, Cause No. 80-2-04156-2 (5-18-81).

Empl. Sec. Comm'r Dec.2d 641, 1980 WL 344319 (WA)

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# Appendix B

**Washington State  
Employment Security Department  
Precedential Decisions of Commissioner**

**WEST®**[Home](#)**IN RE THELMA J. BURKHOLDER**

Empl. Sec. Comm'r Dec.2d 315

May 27, 1977

Term 

Empl. Sec. Comm'r Dec.2d 315, 1977 WL 191858 (WA)

Commissioner of the Employment Security Department  
State of Washington

**IN RE THELMA J. ← BURKHOLDER →**

May 27, 1977

Case No.

315

Review No.

27175

Docket No.

6-16620

**DECISION OF COMMISSIONER**

ST. MARY COMMUNITY HOSPITAL, the former and interested employer of the claimant above named, by and through THE GIBBENS COMPANY, INC., R.K. Lee, District Manager, having duly petitioned the Commissioner for a review of a Decision of an Appeal Tribunal entered in this matter on the 19th day of November, 1976, and the undersigned, having carefully reviewed the entire record, thereby being fully advised in the premises, does hereby enter the following:

**FINDINGS OF FACT****I**

The claimant is a registered nurse and the primary source of income for herself and her husband. Her husband was notified in December, 1975, of his acceptance into the University of Washington Medical School at Seattle for the entering class of 1976. She worked for the employer from September, 1974, until her resignation on July 31, 1976, her last day of work. She gave a one-month notice. Her husband graduated at Walla Walla in May and worked in the pea fields until the end of July.

**II**

They drove to Seattle the following week to find a home. They located one and signed a purchase agreement on August 6 with a possession date about September 1, in order to start his schooling on September 20. After signing the agreement on August 6, they returned to Walla Walla for about three days. Then they went on a three-week vacation on the claimant's accrued leave. They returned to Seattle about September 12 to find the house not yet available. Hence, they had to live in a motel until late October, when they moved into their home.

**III**

The claimant had non-rotating hours. Her days off rotated. She had no promise of a job in Seattle when she quit. She did not seek a home on her days off, nor did she ask for a

couple of extra days off for which there was a possibility of obtaining. She did not use her three-weeks accrued vacation to seek, and then to return to her job for several weeks or more. Nor did she apparently have her husband, who was unemployed after July, seek out housing areas and houses near to the University and some hospitals or with available transportation systems.

From the foregoing Findings of Fact, the undersigned frames the following:

#### **ISSUE**

Is the claimant subject to disqualification for having voluntarily left her employment without good cause under RCW 50.20.050?

From the Issue as framed, the undersigned draws the following:

#### **CONCLUSIONS**

We concur with the Tribunal's citation of RCW 50.20.050, RCW 50.20.100 and RCW 50.20.110. We concur with Conclusion No. 2, where it stated in part that it must be established that the individual made every reasonable effort to preserve the employer-employee relationship. Additionally, the individual must endeavor to preserve the job relationship as long as possible under the facts. Careful attention is given to these cases. It usually boils down to a narrow set of facts and time frame. The burden is on the claimant to establish good cause.

In one leading case, a claimant worked for her Seattle employer from 1959 until she quit on September 2, 1960. Her husband had obtained a teaching job in July in Oakville to commence September 3, 1960. She left her job on September 2 to move there to establish a home for husband and child. It was held that she quit with "good cause" to follow her husband. In re Bale, 4 Comm. Dec. 452; 63 Wn.2d 83, 385 P.2d 545. However, it is important to note the time frame there.

There is also another line of cases which throw some light on the subject. These are the "quitting to get married" cases which usually find "not good cause". There is one reported case which, at first reading, would appear to be an exception to this holding. However, a closer reading shows that it was decided on its own very close set of facts, and is not truly an exception. There a claimant worked for her Spokane employer for one and one-half years. Her fiance and she planned to be married on a weekend. He was notified that he would be transferred to Clarkston to start September 29, 1969. The claimant gave two weeks' notice, last worked Friday, September 26, and was married Saturday, September 27, and moved with her husband to Clarkston that same day. Her husband started work there that Monday. It was noted that the act of marrying itself seldom gives rise to the need to terminate the job, since it can be contracted on a weekend or during a vacation or leave of absence. However, on the other hand, it is different where the individual feels it essential to quit on a date sufficiently prior to her intended date of marriage so as to complete all arrangements in relation thereto. In this latter situation, the individual "quits work to marry". The case then held that under the timing and sequence, the claimant had not quit to make preparations and to get married; but rather had quit in order to accompany her husband (on that same day) to a new location. In re Pedersen, 8 Comm. Dec. 811.

From all the above, it appears that a fairly narrow time frame between the quit and the move is needed in order to show "good cause" in cases of quitting to follow a husband. In the instant case, in view of Finding of Fact III above, we do not consider that the claimant did in any real way endeavor to preserve the job as long as possible under the facts. It is established that she quit prematurely without good cause within the meaning of the Act. Good cause was not established.

In passing, we note the Tribunal's Conclusion No. 5, which states:

"There is a vital public interest in encouraging the enrollment of individuals in medical school, and increasing the supply of practitioners of the healing arts. Accordingly, it is held that this claimant should be allowed a lengthier adjustment period than might be allowed for other categories of claimants."

While we agree that there is a vital need for encouraging education of doctors, we are still constrained to decide quit situations within the meaning and purview of the Act. We do not believe this can be so found. Accordingly,

IT IS HEREBY ORDERED that the Decision of the Appeal Tribunal entered in the matter on the 19th day of November, 1976, shall be SET ASIDE. Benefits shall be denied the claimant beginning July 25, 1976, and until she has obtained work and earned wages of not less than her suspended weekly benefit amount in each of five calendar weeks: PROVIDED, the disqualification shall not extend beyond October 9, 1976, pursuant to the provisions of [RCW 50.20.050](#). The question of any overpayment shall be remanded to the local office for determination within [RCW 50.20.190](#).

DATED at Olympia, Washington, MAY 27 1977

Thomas J. Moran  
Commissioner's Delegate

CASE HISTORY:

--Commissioner affirmed by Superior Court for King County, Cause No. 830594, (10-19-79).

Empl. Sec. Comm'r Dec.2d 315, 1977 WL 191858 (WA)

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# Appendix C

**Washington State  
Employment Security Department  
Precedential Decisions of Commissioner**

**WEST®**[Home](#)**IN RE BRIDGETTE A. WOLANSKI**

Empl. Sec. Comm'r Dec.2d 860

May 16, 1997



Empl. Sec. Comm'r Dec.2d 860, 1997 WL 33644587 (WA)

Commissioner of the Employment Security Department  
State of Washington

**IN RE BRIDGETTE A. ←WOLANSKI→**

May 16, 1997

Case No.

860

Review No.

1997-1076

Docket No.

01-1997-01469

**DECISION OF COMMISSIONER**

On April 21, 1997, BRIDGETTE A. ←WOLANSKI→ petitioned the Commissioner for review of a decision issued by the Office of Administrative Hearings on April 4, 1997. Having reviewed the entire record and having given due regard to the findings of the administrative law judge pursuant to RCW 34.05.464(4), the undersigned adopts the Office of Administrative Hearings' findings of fact and conclusions of law, and enters the following:

**FINDINGS OF FACT****I**

Claimant opened the claim here contested on January 15, 1997, informing the Department that she was attending school in the morning five days per week.

**II**

Without issuing a written determination notice, the Department granted claimant waiting period credit for the week ending January 18, 1997, and allowed benefits for the weeks ending January 25, 1997, through February 22, 1997.

**III**

On February 14, 1997, the Department mailed claimant forms to complete regarding her availability for work. She completed and returned these forms, but they either did not reach the Department or reached the Department and were misplaced.

**IV**

On February 28, 1997, the Department issued a determination notice denying claimant waiting period credit for the week ending January 18, 1997, and denying benefits for the weeks ending January 25, 1997, through February 22, 1997, on the basis that claimant,

being a student, was not available for work. The determination also held that all benefits paid constituted an overpayment for which claimant was liable because she was at fault, inasmuch as she had not returned the forms mailed to her on February 14, 1997.

#### V

Claimant appealed the February 28, 1997, determination and her case was heard in due course. On April 4, 1997, the Office of Administrative Hearings issued a decision affirming the determination that claimant was unavailable for work. The decision did not deem claimant to have been at fault in the matter of her overpayment, but nonetheless held her liable for refund on the grounds that state regulation prohibited waiving the portion of her overpayment which consisted of benefits conditionally paid and that it would not be violative of principles of equity and good conscience to require refund of the portion consisting of benefits regularly paid.

#### VI

During the weeks in issue, claimant sought data entry and receptionist work. The hours during which this type of work is customarily performed include hours during which she is in class. She is unwilling to leave school to accept employment.

#### ISSUES

##### I

Whether claimant is ineligible pursuant to RCW 50.20.010(3)?

##### II

Whether claimant is liable for refund of benefits?

#### CONCLUSIONS

##### I

Upon applying for unemployment benefits, a claimant is required to meet the requirements of RCW 50.20.010(3) as a condition precedent to eligibility. In re LeCompte, Empl. Sec. Comm'r Dec. 525 (1963).

##### II

In interpreting RCW 50.20.010(3), we have held that a claimant may place certain restrictions upon his or her availability for work and yet be eligible for benefits, but that a substantial restriction will render him or her ineligible. See, e.g., In re Skaggs, Empl. Sec. Comm'r Dec. 2d 212 (1976); In re Bertram, Empl. Sec. Comm'r Dec. 1054 (1973). It follows that a claimant who is a student must demonstrate that his or her class attendance and studies do not constitute a substantial restriction. In re Klein, Empl. Sec. Comm'r Dec. 1148 (1974).

##### III

Generally, a restriction is substantial if it renders a claimant unavailable for any hours customarily worked in his or her occupation. (Emphasis supplied.) See, e.g., In re Erickson, Empl. Sec. Comm'r Dec. 1253 (1975); In re Catterlin, Empl. Sec. Comm'r Dec. 362 (1957). This is true even if, as here, a claimant has been previously successful in finding work which allowed him or her to continue in school. See, e.g., In re Gatherers, Empl. Sec. Comm'r Dec. 1026 (1973). The evidence in this case shows that claimant's schooling renders her unavailable for work during a part of the day when the type of work she is seeking is customarily performed and, consequently, she is unavailable for work. As explained below, however, ineligibility pursuant to RCW 50.20.010(3) cannot be imposed in this case for the weeks ending January 18, 1997, through February 22, 1997.

**IV**

A conditional payment is a payment made to a continued claim recipient whose eligibility is questioned. WAC 192-12-012. A continued claim recipient is a claimant who has been determined to be monetarily entitled to and nonmonetarily eligible for benefits, and who has been granted waiting period credit or benefits. WAC 192-12-011.

**V**

In this case, it was not until February 14, 1997, that the Department questioned claimant's eligibility. Consequently, payments for weeks preceding February 14, 1997, were not conditional, but instead constituted a determination of allowance. See, e.g., In re Bailey, Empl. Sec. Comm'r Dec.2d 599 (1980); In re Clinton, Empl. Sec. Comm'r Dec.2d 532 (1979). It follows that the February 28, 1997, determination notice which deemed claimant ineligible was in fact a redetermination as to those weeks. See, e.g., In re Rundell, Empl. Sec. Comm'r Dec.2d 327 (1977); In re Pederson, Empl. Sec. Comm'r Dec.2d 139 (1976). As such, the determination could only be valid on a showing of fraud, misrepresentation, or nondisclosure. RCW 50.20.160(3); Bailey, Rundell, supra.

**VI**

As claimant provided complete and accurate information regarding her student status at the time she opened her claim, we cannot conclude that fraud, misrepresentation, or nondisclosure has been established. It follows that the February 28, 1997, determination notice is invalid with respect to the weeks ending January 18, 1997, through February 8, 1997.

**VII**

As for the weeks ending February 15, 1997, and February 22, 1997, the evidence shows that as of February 14, 1997, the Department questioned claimant's eligibility. However, this was unnecessary, since, as noted in the preceding conclusion, claimant had already provided all of the information the Department needed in order to determine whether her student status rendered her unavailable for work. Under these particular circumstances, we do not believe the benefit payments for the weeks ending February 15, 1997, and February 22, 1997, can properly be deemed conditional payments, and we conclude that they also constituted determinations of allowance.

Now, therefore,

IT IS HEREBY ORDERED that the decision of the Office of Administrative Hearings issued on April 4, 1997, is SET ASIDE. The redetermination of February 28, 1997, is invalid pursuant to RCW 50.20.160(3) and there is no overpayment pursuant to RCW 50.20.190.

DATED at Olympia, Washington, May 16, 1997. [FN#1]

Anthony J. Philippsen, Jr.  
Commissioner's Delegate

**RECONSIDERATION/JUDICIAL APPEAL**

Pursuant to RCW 34.05.470 and WAC 192-04-190 you have ten (10) days from the mailing and/or delivery date of this order/decision, whichever is earlier, to file a petition for reconsideration. No matter will be reconsidered unless it clearly appears from the face of the petition for reconsideration and the arguments in support thereof that (a) there is obvious material, clerical error in the decision/order or (b) the petitioner, through no fault of his or her own, has been denied a reasonable opportunity to present argument or respond to argument pursuant WAC 192-04-170. Any request for reconsideration shall be deemed to be denied if this office takes no action within twenty days from the date the petition for reconsideration is filed. A petition for reconsideration together with any argument in support thereof should be filed by mailing or delivering it directly to the Commissioner's Review Office, Employment Security Department, 212 Maple Park Drive, Post Office Box 9046, Olympia, Washington 98507-9046, and to all other parties of record and their representatives.

The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review. (See attached letter for judicial appeal rights.)

FNa1. Copies of this decision were mailed to all interested parties on this date.

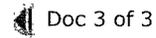
Empl. Sec. Comm'r Dec.2d 860, 1997 WL 33644587 (WA)

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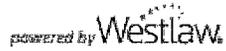
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# Appendix D

**Washington State  
Employment Security Department  
Precedential Decisions of Commissioner**

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**IN RE JODIE C. ACKLER**  
Empl. Sec. Comm'r Dec.2d 581  
November 30, 1979

Term 

Empl. Sec. Comm'r Dec.2d 581, 1979 WL 202723 (WA)

Commissioner of the Employment Security Department  
State of Washington  
**IN RE JODIE C. ←ACKLER →**

November 30, 1979  
Case No.  
581  
Review No.  
34237  
Docket No.  
9-10895

**DECISION OF COMMISSIONER**

WEST VALLEY SCHOOL DISTRICT, the former and interested employer of the above-named claimant, by and through The Gibbens Company, Inc., duly petitioned the Commissioner for a review of a Decision of an Appeal Tribunal entered in this matter on the 4th day of October, 1979, and the undersigned, having carefully reviewed the entire record, thereby being fully advised in the premises, does hereby enter the following:

**FINDINGS OF FACT****I**

Prior to filing her application for benefits claimant last was employed by petitioner as a teacher's aide in the 1978-79 school year. She planned to return to work in the same capacity for the ensuing school year until she was offered other work in late August, which she decided to accept on August 27. On August 28, 1979, she notified the principal of the school in which she worked of her intent to work elsewhere and resigned from her teacher's aide position. The new job was a full-time secretarial position and was to begin sometime between September 17 and October 1, 1979. The 1979-80 school year commenced on September 4, 1979.

**II**

At the request of the petitioner's representative and with claimant's consent the Tribunal assumed jurisdiction over a subsequent period of employment that claimant had with petitioner. Claimant had been rehired by petitioner in September, 1979, and she worked that day only. Neither party was aware of the contents of a Determination Notice regarding that separation. However, such was issued by the Job Service Center on September 26, 1979, according to a document in evidence, claimant's Claim Record Card.

From the foregoing Findings of Fact, the undersigned frames the following

**ISSUES**

**I**

Should claimant be disqualified for benefits pursuant to the provisions of RCW 50.20.050 (1)?

**II**

Whether the Appeal Tribunal properly assumed jurisdiction over the separation of September 10, 1979?

From the Issue as framed, the undersigned draws the following.

**CONCLUSIONS****I**

RCW 50.20.050(2)(a) provides that an individual shall not be considered to have left work without good cause when he or she has left work to accept a bonafide job offer.

**II**

WAC 192-16-011, an interpretative regulation, is applicable. It provides as follows:

WAC 192-16-011 INTERPRETATIVE REGULATIONS - LEAVING WORK TO ACCEPT BONA FIDE JOB OFFER - RCW 50.20.050(2)(a). An individual who leaves work to accept a bona fide offer of employment will be found to have good cause within the meaning of RCW 50.20.050(1) only if he or she satisfactorily demonstrates that:

- (1) prior to leaving work, the individual received a definite offer of employment; and
- (2) the individual had a reasonable basis for believing that the offeror had authority to make the offer; and
- (3) a specific starting date and the terms and conditions of the employment were mutually agreed upon; and
- (4) the individual continued in his or her old employment for as long as was reasonably consistent with whatever arrangements were necessary to start working at the new job.

**III**

Claimant did not have a specific starting date for her new employment. She did not continue in her old employment as long as was reasonably consistent with the arrangements necessary to begin the new job. Accordingly, it is concluded that claimant voluntarily left work with petitioner on August 28, 1979 for reasons that do not constitute good cause, and she should be disqualified pursuant to RCW 50.20.050(1) beginning August 26, 1979.

**IV**

RCW 50.32.020 provides that a claimant, employers, and other interested parties may file appeals from determinations and redeterminations with the Appeal Tribunal. Pursuant to RCW 50.32.040 not less than seven days' notice shall be given of any issue to come before an appeal tribunal. It has been held that the notice requirement may be waived by the parties and thereby confer jurisdiction in the Tribunal. However, such waiver must be intelligently given and the parties afforded due process of law. We think that waiver given without opportunity to view the determination to be put at issue is not made fully knowingly and intelligently. Thus, it is concluded that the Tribunal did not have jurisdiction over the second separation of claimant from petitioner's employ. In passing it is noted that petitioner, despite its having moved for consideration of the second separation at the hearing nonetheless filed a separate notice of appeal respecting that issue. It has been collaterally ascertained that another hearing has been or will very shortly be scheduled for consideration of that issue.

**V**

One last matter remains to be discussed. That is the issue of claimant's eligibility for benefits in the first week she claimed, the week ending August 25, 1979. The Job Service Center is directed to determine whether claimant is subject to disqualification in that week under RCW 50.44.050, which relates to benefits available to school employees between terms and school years. Accordingly,

IT IS HEREBY ORDERED that the Decision of the Appeal Tribunal entered in this matter on the 4th day of October, 1979, shall be SET ASIDE. The claimant shall be denied benefits pursuant to the provisions of RCW 50.20.050(1) beginning August 26, 1979. The Appeal Tribunal did not have jurisdiction over the second separation of claimant from employment with petitioner. The Job Service Center shall determine whether claimant is subject to disqualification beginning August 19, 1979 pursuant to RCW 50.44.050.

DATED at Olympia, Washington, NOV 30 1979

Paul R. Licker  
Commissioner's Delegate

Empl. Sec. Comm'r Dec.2d 581, 1979 WL 202723 (WA)

END OF DOCUMENT

 Term

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NO. 42631-5-II

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

ROBERT CAMPBELL,

Respondent,

v.

STATE OF WASHINGTON  
DEPARTMENT OF EMPLOYMENT  
SECURITY,

Appellant.

DECLARATION OF  
SERVICE

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.

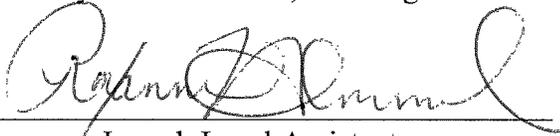
2. That on the 10 day of February 2012, I caused to be served by e-mail and ABC Legal Messenger a true and correct copy of Appellant's Response Brief to:

Marcus Lampson  
Unemployment Law Project  
1904 Third Ave., Suite 604  
Seattle, WA 98101

marc@ulproject.org

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

Dated this 10 day of February 2012 in Seattle, Washington.

  
\_\_\_\_\_  
Roxanne Immel, Legal Assistant

# WASHINGTON STATE ATTORNEY GENERAL

**February 10, 2012 - 3:56 PM**

## Transmittal Letter

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# WASHINGTON STATE ATTORNEY GENERAL

**February 10, 2012 - 3:56 PM**

## Transmittal Letter

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Case Name: Robert Campbell v. State of Washington Employment Security Department

Court of Appeals Case Number: 42631-5

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