

NO. 43947-6-II

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

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LINDA K. KALASH

Respondent,

vs.

STATE OF WASHINGTON  
DEPARTMENT OF EMPLOYMENT  
SECURITY,

Appellant.

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**APPELLANT'S RESPONSE BRIEF**

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**TABLE OF CONTENTS**

I. INTRODUCTION.....1

II. STATEMENT OF THE ISSUES.....2

III. STATEMENT OF THE CASE.....2

IV. STANDARD OF REVIEW.....5

    A. Review Of Factual Matters .....6

    B. Review Of Questions Of Law.....8

    C. Mixed Questions Of Law And Fact.....8

    D. Arbitrary Or Capricious Orders .....9

V. ARGUMENT .....10

    A. Substantial Evidence Supports The Commisioner’s  
    Factual Finding That Kalash Did Not Have A Bona Fide  
    Job Offer When She Left Work.....12

    B. Kalash Did Not Establish That She “Left Work To  
    Accept A Bona Fide Offer Of Bona Fide Work” Because  
    At The Time Kalash Left Work, She Did Not Have Any  
    Offer Of Other Employment.....13

    C. Kalash Did Not Demonstrate That She Met The  
    Requirements Of WAC 192-150-050 .....18

    D. The Policy Of The Employment Security Act Supports  
    the Conclusion That Claimants Must Have Good Cause  
    On The Date They Leave Work.....20

    E. The Court Should Not Award Attorney Fees Unless It  
    Reverses Or Modifies The Commissioner’s Decision.....24

VI. CONCLUSION .....25

## TABLE OF AUTHORITIES

### Cases

<i>Cowles Publ'g Co. v. Emp't Sec. Dep't</i> , 15 Wn. App. 590, 550 P.2d 712 (1976).....	11
<i>Davis v. Dep't of Labor &amp; Indus.</i> , 94 Wn.2d 119, 615 P.2d 1279 (1980) .....	7
<i>Dep't of Ecology v. Campbell &amp; Gwinn, LLC</i> , 146 Wn.2d 1, 43 P.3d 4 (2002).....	14, 21
<i>Eggert v. Emp't Sec. Dept.</i> , 16 Wn. App. 811, 558 P.2d 1368 (1976).....	6, 9, 10
<i>Emps. of Intalco Aluminum Corp. v. Emp't Sec. Dep't</i> , 128 Wn. App. 121, 114 P.3d 675 (2005).....	16
<i>Fred Hutchinson Cancer Research Ctr. v. Holman</i> , 107 Wn.2d 693, 732 P.2d 974 (1987).....	7
<i>Hillis v. Dep't of Ecology</i> , 131 Wn.2d 373, 932 P.2d 139 (1997).....	9, 18
<i>In re Estate of Jones</i> , 152 Wn.2d 1, 93 P.3d 147 (2004).....	6
<i>Markam Group, Inc. v. Dep't of Emp't Sec.</i> , 148 Wn. App. 555, 200 P.3d 748 (2009).....	8
<i>Martini v. Emp't Sec. Dep't</i> , 98 Wn. App. 791, 990 P.2d 981 (2000).....	9
<i>Pierce Cnty. Sheriff v. Civil Serv. Comm'n of Pierce Cnty.</i> , 98 Wn.2d 690, 658 P.2d 648 (1983).....	9
<i>Safeco Ins. Cos. v. Meyering</i> , 102 Wn.2d 385, 687 P.2d 195 (1984).....	10, 11, 21

<i>Smith v. Emp't Sec. Dep't</i> , 155 Wn. App. 24, 226 P.3d 263 (2010).....	5, 7
<i>Spain v. Emp't Sec. Dep't</i> , 164 Wn.2d 252, 185 P.3d 1188 (2008).....	11
<i>State v. Heath</i> , 168 Wn. App. 894, 279 P.3d 458 (2012).....	21
<i>Sweitzer v. Dep't of Emp't Sec.</i> , 43 Wn. App. 511, 718 P.2d 3 (1986).....	8
<i>Tapper v. Emp't Sec. Dep't</i> , 122 Wn.2d 397, 858 P.2d 494 (1993).....	5, 7, 8, 10
<i>Terry v. Emp't Sec. Dep't</i> , 82 Wn. App. 745, 919 P.2d 111 (1996).....	16
<i>Townsend v. Emp't Sec. Dep't</i> , 54 Wn.2d 532, 341 P.2d 877 (1959).....	6, 11, 13
<i>Wm. Dickson Co. v. Puget Sound Air Pollution Control Agency</i> , 81 Wn. App. 403, 914 P.2d 750 (1996).....	6, 7, 8

**Statutes**

RCW 1.12.025 .....	11
RCW 34.05 .....	5
RCW 34.05.510 .....	5
RCW 34.05.558 .....	5, 6
RCW 34.05.570(1)(a) .....	6
RCW 34.05.570(3)(d) .....	8
RCW 34.05.570(3)(e) .....	6
RCW 50.01.010 .....	10, 17, 20

RCW 50.20.050 .....	11, 18
RCW 50.20.050(2).....	1
RCW 50.20.050(2)(a) .....	1, 11, 13, 14, 15, 21
RCW 50.20.050(2)(b) .....	1, 2, 11, 14, 21
RCW 50.20.050(2)(b)(i) .....	2, 14, 16
RCW 50.20.050(2)(b)(ii)(A).....	21
RCW 50.20.050(2)(b)(iii) .....	22
RCW 50.20.050(2)(b)(ix) .....	22
RCW 50.20.050(2)(b)(viii) .....	22
RCW 50.32.070 .....	4
RCW 50.32.080 .....	7
RCW 50.32.095 .....	9
RCW 50.32.120 .....	5
RCW 50.32.150 .....	6
RCW 50.32.160 .....	25
Laws of 2009, ch. 493, § 3 .....	11

**Regulations**

WAC 192-04-020(5).....	4
WAC 192-100-010.....	22
WAC 192-150-050.....	2, 14, 18, 19, 20
WAC 192-150-050(4).....	19, 22

**Rules**

RAP 10.3(g) ..... 7

**Other Authorities**

*In re E.S. Lansberry,*  
Emp't Sec. Comm'r Dec.2d 641 (1980)..... 23, 24

*In re Jodie Ackler,*  
Emp't Sec. Comm'r Dec.2d 581 (1979)..... 23

*In re. Bauer,* Emp't Sec. Comm'r Dec.2d 220 (1976) ..... 9

## I. INTRODUCTION

Under the Employment Security Act, individuals who voluntarily quit work without good cause are ineligible for benefits. RCW 50.20.050(2). Under the Act's voluntary quit statute, a claimant quits work on the date she leaves work, not the date she notifies her employer of her intent to quit on a date certain. RCW 50.20.050(2)(a). Accordingly, in determining whether a claimant has demonstrated good cause to quit, the relevant inquiry is whether the claimant had good cause on the date she left work. RCW 50.20.050(2)(a), (b).

In this case, it is undisputed that Kalash did not have a "bona fide offer of bona fide work" from another employer at the time she left work and became unemployed. For this reason, the Commissioner of the Employment Security Department (Department) correctly concluded that Kalash did not demonstrate good cause for quitting.

Because substantial evidence supports the Commissioner's findings of fact, and the Commissioner made no errors of law, the Department respectfully requests that the Court reverse the Thurston County Superior Court decision in this case and affirm the Commissioner's decision.

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

A. A person who voluntarily quits her job is ineligible for unemployment benefits unless she quit for good cause as defined by RCW 50.20.050(2)(b). Under RCW 50.20.050(2)(b)(i), a person has good cause to quit if she “left work to accept a bona fide offer of bona fide work.” Did the Commissioner correctly conclude that Kalash did not leave work to accept a bona fide offer of bona fide work because, on the day she left work, she did not have any bona fide offer of employment elsewhere?

B. Under WAC 192-150-050, a claimant has good cause to quit to accept a bona fide offer of employment when, among other things, she continued in her previous employment “for as long as was reasonably consistent with whatever arrangements were necessary to start working at the new job.” Did the Commissioner correctly conclude that Kalash did not have good cause to quit when she did not satisfy this requirement because, when she left work, she knew that her job offer had been rescinded?

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

Kalash worked at La Petite Academy in Covington, Washington, from August 19, 2010, until May 27, 2011. Certified Administrative

Record at 16-17, 19, 68, 84.<sup>1</sup> When she began her employment, Kalash lived in Covington, but on March 5, 2011, she moved to Bremerton, Washington, for non-work-related reasons. Admin. Rec. at 17, 21, 56, 69, 84. Because of the cost associated with her longer commute, Kalash began looking for work closer to Bremerton. Admin. Rec. at 56-57, 84. Kalash sought a transfer to a Bremerton-area childcare center within the same company. Admin. Rec. at 21, 28, 51, 56-57, 84. When the transfer did not materialize, she began looking for work with other employers. Admin. Rec. at 21-22, 28, 56-57, 84.

On May 13, 2011, Kalash received an employment offer from KinderCare in Bremerton and was to begin work on May 31, 2011. Admin. Rec. at 18-19, 84. Consequently, Kalash gave La Petite Academy written notice on May 16, 2011, that her last day of work would be May 27, 2011. Admin. Rec. at 19, 61, 84. However, KinderCare revoked Kalash's job offer on May 26, 2011. Admin. Rec. at 20, 84. Despite no longer having a position waiting for her, Kalash proceeded with her decision to quit employment with La Petite Academy on May 27. Admin. Rec. at 84. She did not speak with anyone at La Petite Academy to determine whether she could continue working there. Admin. Rec. at 20,

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<sup>1</sup> Thurston County Superior Court transmitted the certified administrative record to this Court under a separate cover from the remaining clerk's papers.

69, 84-85. Had she asked, La Petite Academy would have kept her on as an employee. Admin. Rec. at 31, 35-36, 85.

When Kalash applied for unemployment benefits, she told the Department she had quit for the following reasons: “cut hours, did not get transfer as promised, can’t afford to drive 100 miles each work day, plus toll fees.” Admin. Rec. at 50, 68-69. In response to the Department’s question, “Did you quit because you were hired for a new job?”, Kalash answered a definitive “No.” Admin. Rec. at 51, 69.

The Department denied Kalash’s benefit application because she had quit her job without good cause. Admin. Rec. at 45-49. After a hearing at the Office of Administrative Hearings, the administrative law judge (ALJ) who presided over the hearing affirmed the Department’s initial determination. Admin. Rec. at 68-73. Kalash filed a petition for review with the Department’s Commissioner. Admin. Rec. at 77-81. The Commissioner<sup>2</sup> adopted the ALJ’s findings of fact and conclusions of law and made additional findings and conclusions. Admin. Rec. at 84-86. Specifically, the Commissioner found that Kalash quit for reasons other than an offer of bona fide work because she continued with her decision to quit even after KinderCare revoked its offer. Admin. Rec. at 85-86. The

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<sup>2</sup> Decisions on petitions for review by the Department’s Commissioner are made by review judges in the Commissioner’s review office but are treated as decisions of the Commissioner due to statutory delegation. *See* RCW 50.32.070; WAC 192-04-020(5).

Commissioner concluded that Kalash did not demonstrate good cause for quitting work because she quit for personal reasons, including the additional cost of the commute caused by her moving from Covington to Bremerton. *Id.* The Commissioner ultimately affirmed the ALJ's initial order. Admin. Rec. at 86.

Kalash filed a Petition for Judicial Review in Thurston County Superior Court, which reversed the Commissioner's Decision. Clerk's Papers (CP) at 39-42. The Department now appeals to this Court.

#### IV. STANDARD OF REVIEW

Kalash seeks judicial review of the Commissioner's decision. Judicial review of Commissioner's decisions is governed by the Washington Administrative Procedure Act (APA), chapter 34.05 RCW. RCW 34.05.510; RCW 50.32.120. The court of appeals sits in the same position as the superior court and applies 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. *Id.*; *Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 406, 858 P.2d 494 (1993).

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 party asserting its invalidity. RCW 34.05.570(1)(a); RCW 50.32.150; *see also Eggert v. Emp't Sec. Dept.*, 16 Wn. App. 811, 813, 558 P.2d 1368 (1976) (recognizing that the court's jurisdiction is "further limited by RCW 50.32.150").

Here, because Kalash sought review of the Commissioner's decision in the superior court, and pursuant to this Court's General Order 2010-1, Kalash has the burden of demonstrating the invalidity of the Commissioner's decision. RCW 34.05.570(1)(a); RCW 50.32.150. Additionally, Kalash bears the burden to establish her right to unemployment benefits. *Townsend v. Emp't Sec. Dep't.*, 54 Wn.2d 532, 534, 341 P.2d 877 (1959).

**A. Review Of Factual Matters**

Judicial review of disputed issues of fact is limited to the agency record. RCW 34.05.558. The court must uphold an agency's factual findings if they are supported by substantial evidence in the record. RCW 34.05.570(3)(e); *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 "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 even if the record contains

conflicting evidence 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 reasonable inferences therefrom in the light most favorable to the party that prevailed at the administrative proceeding below—here, the Department. *Wm. Dickson Co.*, 81 Wn. App. at 411. Unchallenged factual findings are verities on appeal. RAP 10.3(g); *Tapper*, 122 Wn.2d at 407.

In reviewing an ALJ's initial order, 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; RCW 50.32.080. But on judicial review, 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).

**B. Review Of Questions Of Law**

Questions of law are subject to de novo review. RCW 34.05.570(3)(d); *Tapper*, 122 Wn.2d at 403. However, the court must accord substantial weight to the agency's view of the law it administers. *Wm. Dickson Co.*, 81 Wn. App. at 407; *Markam Group, Inc. v. 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 her job is a mixed question of law and fact. *Sweitzer v. Dep't of Emp't Sec.*, 43 Wn. App. 511, 515, 718 P.2d 3 (1986). When reviewing a mixed question of law and fact, the court must (1) determine which factual findings are supported by substantial evidence; (2) make a de novo determination of the correct law; and (3) apply the law to the applicable facts. *Tapper*, 122 Wn.2d at 403. 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.

The manner in which an individual's employment is terminated is a matter of fact. *In re. Bauer*, Emp't Sec. Comm'r Dec.2d 220 (1976).<sup>3</sup> Therefore, the Commissioner's findings regarding the reason for the job separation should be reviewed for whether substantial evidence supports them, and the court should then apply the law de novo to the facts as found by the Commissioner.

**D. Arbitrary Or Capricious Orders**

Agencies act in an arbitrary or capricious manner when their action is "willful and unreasoning and taken without regard to the attending facts or circumstances." *Hillis v. Dep't of Ecology*, 131 Wn.2d 373, 383, 932 P.2d 139 (1997). The "one who seeks to demonstrate that action is arbitrary and capricious must carry a heavy burden." *Pierce Cnty. Sheriff v. Civil Serv. Comm'n of Pierce Cnty.*, 98 Wn.2d 690, 695, 658 P.2d 648 (1983). A decision is not arbitrary or capricious if there is room for more than one opinion and the decision is based on due consideration, even if the Court disagrees with it. *Hillis*, 131 Wn.2d at 383.

Accordingly, the Court may not reverse the Commissioner's decision simply by disagreeing with his conclusions. *Eggert*, 16 Wn. App. at 813. Thus, upon review of the entire record, the Court, in order to

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<sup>3</sup> Under RCW 50.32.095, the Commissioner may designate certain Commissioners' decisions as precedent, which serve as persuasive authority for this Court. *Martini v. Emp't Sec. Dep't*, 98 Wn. App. 791, 795, 990 P.2d 981, 984 (2000).

reverse the Commissioner in this case, must be left with the definite and firm conviction that a mistake has been made. *Id.*

## V. ARGUMENT

The Court should affirm the Commissioner's decision in this case because the Commissioner properly found that on the day Kalash left employment, she did not have a bona fide job offer. Kalash's argument is based on the erroneous premise that a person quits when she notifies her employer of her intent to resign. This Court should reject Kalash's argument and find that a person quits employment on the day she actually leaves work, not the day she notifies her employer of her intent to quit on a date certain.

The Employment Security 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. "The disqualification provisions of the act are based upon the fault principle and are predicated on the individual worker's action, in a sense his or her blameworthiness." *Safeco Ins. Cos. v. Meyering*, 102 Wn.2d 385, 392, 687 P.2d 195 (1984). Accordingly, "in order for a claimant to be eligible for benefits, the act requires that the reason for the unemployment be external and apart from the claimant." *Safeco*, 102

Wn.2d at 392 (citing *Cowles Publ'g Co. v. Emp't Sec. Dep't*, 15 Wn. App. 590, 593, 550 P.2d 712 (1976)).

A person is ineligible to receive unemployment benefits when she voluntarily quits her job unless she can establish that she had good cause to quit for one of the eleven factual scenarios enumerated in RCW 50.20.050(2)(b). RCW 50.20.050(2)(a).<sup>4</sup> The Employment Security Act “requires that the Department analyze the facts of each case to determine what actually caused the employee’s separation.” *Safeco*, 102 Wn.2d at 392-93. A claimant bears the burden of showing that she had good cause for quitting. *See Townsend*, 54 Wn.2d at 534 (claimant has burden to establish her rights to unemployment benefits).

In the present case, Kalash does not contest that she voluntarily quit her job. The issue before the Court is whether she had good cause for quitting within the meaning of the Employment Security Act such that she is entitled to unemployment benefits.

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<sup>4</sup> Laws of 2009, ch. 493, § 3. The Legislature twice amended RCW 50.20.050 during the 2009 legislative session, each without reference to the other. As a result, the code reviser published two versions of the statute, both of which are in effect. *See* Reviser’s Note *in* RCW 50.20.050; *see also* RCW 1.12.025 (construction of multiple amendments to statutes). Chapter 493, section 3 of the Laws of 2009 sets forth the requirement that good cause reasons to leave work are limited to those reasons listed in RCW 50.20.050(2)(b), superseding the ruling in *Spain v. Emp't Sec. Dep't*, 164 Wn.2d 252, 185 P.3d 1188 (2008).

**A. Substantial Evidence Supports The Commissioner's Factual Finding That Kalash Did Not Have A Bona Fide Job Offer When She Left Work**

It is undisputed that while still employed, Kalash moved for personal reasons from Covington to Bremerton and became dissatisfied with the cost of her extended commute. Admin. Rec. at 21, 56, 84. She sought a transfer within the same company closer to her new home, but the transfer did not materialize. Admin. Rec. at 21-22, 51, 57, 84. She sought and was offered a job with another employer, which she accepted. Admin. Rec. at 18-19, 84. She then gave her notice. Admin. Rec. at 19, 61, 84. One day before the end of her notice period, her job offer was rescinded. Admin. Rec. at 20, 84. However, instead of continuing work with her employer because she no longer had a job offer, she proceeded with her resignation and separated from employment. Admin. Rec. at 20, 84. The employer would have retained Kalash had she asked to continue working. Admin. Rec. at 31, 35-36, 85.

Therefore, on the day Kalash left employment, she no longer had an offer of employment elsewhere, and her reasons for continuing with her resignation were personal. Admin. Rec. at 84-85. This finding is bolstered by the fact that when Kalash applied for benefits, she told ESD that she quit because she could not afford the commute and she did not get a transfer. Admin. Rec. at 46, 50-57, 84-85. Thus, substantial evidence

supports the Commissioner's finding that Kalash did not leave work to accept a bona fide job offer. Admin. Rec. at 85-86.

**B. Kalash Did Not Establish That She "Left Work To Accept A Bona Fide Offer Of Bona Fide Work" Because At The Time Kalash Left Work, She Did Not Have Any Offer Of Other Employment**

To qualify for benefits, a claimant has the burden to show that she had good cause for quitting. *See Townsend*, 54 Wn.2d at 534. The voluntary quit statute, RCW 50.20.050(2)(a), establishes the disqualification for individuals who leave work voluntarily:

An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount. Good cause reasons to leave work are limited to reasons listed in (b) of this subsection.

RCW 50.20.050(2)(a). The statute then enumerates eleven scenarios under which a person will *not* be disqualified from receiving benefits, even if he or she left work voluntarily. RCW 50.20.050(2)(b). The factor Kalash asserts should apply in her case, the bona fide offer of employment provision, states:

An individual is not disqualified from benefits under (a) of this subsection when:

- (i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection.

RCW 50.20.050(2)(b).

The Department has a regulation further defining the requirements for a person to satisfactorily demonstrate good cause within the meaning of this provision. WAC 192-150-050.

The meaning of a statute is a question of law reviewed de novo. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). The court's fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent. *Id.* at 9-10. The plain meaning of a statute is derived from what the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question. *Id.* at 11-12.

Under the Employment Security Act, a claimant quits on the date she leaves work. RCW 50.20.050(2)(a). The voluntary quit statute directs the Department to examine the circumstances under which a claimant "left work." RCW 50.20.050(2)(a). The bona fide offer of employment provision applies when an individual "has *left work* to accept a bona fide offer of bona fide work[.]" RCW 50.20.050(2)(b)(i) (emphasis added). Accordingly, in determining whether a claimant has good cause to quit work, the relevant inquiry is whether a claimant had good cause on the date she left work. RCW 50.20.050(2)(a), (b). Because Kalash did not

have a bona fide offer of employment on the date she left work, she did not have good cause to quit within the meaning of the Employment Security Act and is disqualified from receiving unemployment benefits.

Here, the Commissioner found and the record supports that Kalash quit for personal reasons because at the time she left work, she did not have a job offer. Unsatisfied with her commute and lack of a job transfer, she proceeded with her resignation despite no longer having other employment available. Admin. Rec. at 85. Personal reasons do not amount to “good cause” under the Employment Security Act. *See* RCW 50.20.050(2)(a) (“Good cause reasons to leave work are limited to reasons listed in (b) of this subsection”); RCW 50.20.050(2)(b) (listing 11 good cause reasons).

In Kalash’s case, the Commissioner found that on May 16, 2011, Kalash gave La Petite Academy notice of her intent to quit on May 27. Admin. Rec. at 84. KinderCare revoked its offer to Kalash on May 26. Admin. Rec. at 20, 84. Thus when Kalash left La Petite Academy on May 27, she did not “le[ave] work to accept a bona fide offer of bona fide work,” as she no longer had a bona fide offer of work from KinderCare or any other employer. Instead, the record reveals Kalash left work because of the length of her commute, which she chose, and her inability to transfer to a child care facility closer to her home. Admin. Rec. at 17, 21-

22, 28, 51, 84-86. Because the circumstances do not meet the plain meaning of RCW 50.20.050(2)(b)(i), the Commissioner's conclusion that Kalash quit without good cause was correct.

Kalash contends that she met the bona fide offer provision because she resigned after receiving a bona fide job offer. Respondent's Opening Br. at 12. But while she may have submitted notice of her intent to quit La Petite Academy after receiving an offer of employment elsewhere, at the time she left work, she no longer had a bona fide offer of employment. Kalash presupposes that she "quit" at the time she gave notice of her intent to quit. Under the plain language of the statute, however, the relevant inquiry is whether a claimant *left work* to accept a bona fide offer of work, not whether a claimant *gave notice of intent to leave* to accept such an offer.

Additionally, the Commissioner's conclusion is consistent with principles recognized by this Court in other cases addressing good cause to quit. For example, this Court has stated that good cause must be "based upon existing facts," not conjecture. *Emps. of Intalco Aluminum Corp. v. Emp't Sec. Dep't*, 128 Wn. App. 121, 130, 114 P.3d 675 (2005); *Terry v. Emp't Sec. Dep't*, 82 Wn. App. 745, 751, 919 P.2d 111 (1996). Here, the existing facts were that Kalash left work on May 27, 2011, without a job offer. To conclude that someone who did not have a bona fide job offer at

the time she left work should be entitled to benefits is contrary to the plain meaning of the voluntary quit statute.

Though a claimant may have other good reasons for giving notice of her intent to quit in advance of leaving work, the Employment Security Act does not require claimants to give notice. Here, Kalash's decision to give two weeks' notice is the factual basis of her argument that she quit for a bona fide job offer. But she did not have a bona fide job offer on the day she actually left work. Applying Kalash's argument to similar situations would produce results inconsistent with the Act's voluntary quit provisions. For instance, what if a claimant gives one or two months' notice of his intent to quit due to a job offer elsewhere, but then the offer is rescinded at some early point during the notice period? Surely such a claimant should not qualify for benefits if he makes no effort to rescind his resignation notice, knowing for weeks that he will not have a job when he leaves work. Such a result is inconsistent with the plain meaning of the voluntary quit statute and the Legislature's clear intent that the State's unemployment funds are "to be used for the benefit of persons unemployed through no fault of their own." RCW 50.01.010.

Kalash argues that the Commissioner imposed requirements upon her that are not in the voluntary quit statute or the Department's regulations. But the Commissioner's decision is consistent with the plain

meaning of the voluntary quit statute and does not impose any non-statutory requirements. Furthermore, the Commissioner's decision was not arbitrary and capricious. Kalash had ample opportunity to be heard, and the decision itself demonstrates that the Commissioner considered the facts and circumstances presented by all parties. *See Hillis*, 131 Wn.2d at 383 (arbitrary or capricious action is "willful and unreasoning and taken without regard to the attending facts or circumstances"). The Commissioner concluded that Kalash quit for reasons other than an offer of bona fide work because she continued with her decision to leave work despite not having a new job. Admin. Rec. at 85-86. The Commissioner did not impose additional requirements on Kalash.

**C. Kalash Did Not Demonstrate That She Met The Requirements Of WAC 192-150-050**

The Department's regulation regarding good cause to quit for a bona fide offer of employment provides:

If you leave work to accept a bona fide offer of employment, you will have good cause within the meaning of RCW 50.20.050 if you satisfactorily demonstrate that:

- (1) Prior to leaving work, you received a definite offer of employment; and
- (2) You had a reasonable basis for believing that the person making the offer had the authority to do so; and
- (3) A specific starting date and the terms and conditions of the employment were mutually agreed upon; and

(4) You continued in your previous employment for as long as was reasonably consistent with whatever arrangements were necessary to start working at the new job; and

(5) The new job is in employment covered by Title 50 RCW or the comparable laws of another state or the federal government.

WAC 192-150-050.

Kalash did not meet all of these requirements. At the administrative hearing, Kalash testified about the revocation of her job offer at KinderCare:

Because the day – the night before my last day of work, I received a phone call and Jill [Metcalf, director of KinderCare] told me that the cook decided to stay after her two weeks’ notice and so, therefore, I would have to wait for a position for a teacher or if she didn’t work out, because she had already given notice. Then she would try to work me in.

Admin. Rec. at 20. Consequently, Kalash did not demonstrate that she “le[ft] work” to accept a bona fide offer of employment, as discussed in the previous section and required by the voluntary quit statute and WAC 192-150-050.

Kalash also did not establish that she “continued in [her] previous employment for as long as was reasonably consistent with whatever arrangements were necessary to start working at the new job[.]” WAC 192-150-050(4). She cannot satisfy this provision because, on her last day

of work, she knew she no longer had a new job and she made no attempt to continue her employment with La Petite Academy. She did not continue in her “previous employment for as long as was reasonably consistent with any arrangements necessary to start working at the new job” because there was no new job. This provision is simply inapplicable to Kalash’s circumstances; therefore, she cannot satisfy WAC 192-150-050 and did not demonstrate good cause for quitting.

**D. The Policy Of The Employment Security Act Supports the Conclusion That Claimants Must Have Good Cause On The Date They Leave Work**

Inherent in the Employment Security Act, and in the voluntary quit statute in particular, is a policy requiring claimants to take reasonable steps to preserve their employment, which supports the Commissioner’s conclusion that a claimant must demonstrate good cause on the date she leaves work. As a starting point, the purpose of the Act is to alleviate “involuntary” unemployment. RCW 50.01.010. While Kalash asks this Court to liberally construe the statutes in her favor, she overlooks the fact that the Legislature has directed the Department and the courts to liberally construe the Act “for the purpose of reducing involuntary unemployment,” not to liberally construe the Act in all claimants’ favor. RCW 50.01.010. Where, as here, a claimant has become voluntarily unemployed, there is no basis for liberal construction. *See* RCW 50.01.010. Moreover, “[t]he

disqualification provisions of the act are based upon the fault principle and are predicated on the individual worker's action, in a sense his or her blameworthiness." *Safeco*, 102 Wn.2d at 392. Thus, it is consistent with the Act to consider the claimant's blameworthiness in becoming unemployed, including whether the claimant made efforts to remain employed before leaving work.

Additional examples of a policy requiring claimants to take steps to preserve their employment appear throughout employment security law. It is "entirely appropriate" for the court to consider the statutory context of the voluntary quit statute to assist in determining its plain meaning. *See State v. Heath*, 168 Wn. App. 894, 900, 279 P.3d 458 (2012) (citing *Dep't of Ecology*, 146 Wn.2d at 11-12).

First, the general rule is that claimants are disqualified from receiving benefits if they have quit work. RCW 50.20.050(2)(a). The circumstances under which a claimant who voluntarily quits is eligible for benefits are limited and are the exceptions to the general rule. RCW 50.20.050(2)(a), (b). Second, and more specifically, to show good cause to quit due to illness or disability of the claimant or immediate family, a claimant must show that she "pursued all reasonable alternatives to preserve his or her employment status" before quitting. RCW 50.20.050(2)(b)(ii)(A). Similarly, under a provision that allows benefits

when a claimant quits to relocate for the employment of a spouse or domestic partner, the claimant must remain employed “as long as was reasonable prior to the move” to be eligible for benefits. RCW 50.20.050(2)(b)(iii). Likewise, to establish good cause for quitting due to safety deterioration or illegal activities in the worksite, an individual must show that, before quitting, she reported the deterioration or activities to the employer and the employer failed to correct the situation within a reasonable period of time. RCW 50.20.050(2)(b)(viii) and (ix). Altogether, these provisions reflect the Employment Security Act’s policy that claimants will not receive benefits after voluntarily quitting work unless they show that they took reasonable steps to remain employed before leaving work.

The Department’s regulations also bear out this policy. 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. The regulation that sets forth the requirements relating to a claimant’s bona fide offer of employment requires a claimant to show that she continued in her previous employment “for as long as was reasonably consistent with whatever arrangements were necessary to start working at the new job.” WAC 192-150-050(4); *see also In re Jodie Ackler*, Emp’t Sec. Comm’r Dec.2d 581

(1979) (claimant did not have good cause to quit under bona fide offer of work provision and related regulation because she left work on August 28 and new position was not expected to begin until sometime between September 17 and October 1). This requirement reflects the Legislature's stated intent that unemployment benefits should be available for those who are involuntarily unemployed, not those who quit work without taking steps to preserve their employment. Thus, just as with other good cause provisions, claimants seeking to receive benefits under the bona fide offer of work provision must show that they have taken reasonable steps to preserve their employment before leaving work. Because Kalash took no steps to preserve her employment when her job offer was rescinded, she is ineligible for benefits.

The Commissioner's decision in *In re E.S. Lansberry*, Emp't Sec. Comm'r Dec.2d 641 (1980) supports the Department's position in this case. There, the claimant worked as a high school secretary but received a reprimand stating she would be reassigned from her secretarial position. *Id.* 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 opportunity to pursue other arrangements, the Commissioner concluded she quit prematurely and the quit was, therefore, without good cause. *Id.*

Here, similar to the situation in *Lansberry*, Kalash's employer established that it would have allowed Kalash to continue working had she informed her supervisor that she no longer had another offer of employment. Admin. Rec. at 35-36, 64, 69, 85. But Kalash did not speak to anyone at La Petite Academy to determine whether she could continue working there after KinderCare revoked its offer. Admin. Rec. at 20, 69, 84-85. Like the claimant in *Lansberry* who quit without requesting a transfer, Kalash simply decided to leave work without asking if she could continue working. She did not take any steps to preserve her own employment status to establish good cause for leaving work.

In short, for purposes of receiving benefits, Kalash's duty to pursue a prudent course of action to remain employed did not end at the time she gave notice of her intent to resign.

**E. The Court Should Not Award Attorney Fees Unless It Reverses Or Modifies The Commissioner's Decision**

The Act provides for an award of attorney fees and court costs to a claimant only if the decision of the Commissioner is reversed or modified.

RCW 50.32.160. Only a reasonable attorney fee may be charged under the statute. *Id.* Here, the Court should refuse Kalash's request for attorney fees if it affirms the decision of the Commissioner. *See id.* If the Court reverses or modifies the Commissioner's decision, the Department reserves the right to present argument regarding the reasonableness of attorney fees requested.

## VI. CONCLUSION

The circumstances present at the time Kalash left work did not meet the plain meaning of the bona fide offer of bona fide work provision because on the day she "left work," she did not have a bona fide job offer. Because Kalash made no effort to preserve her employment once her job offer was rescinded, and the employer would have retained her had she rescinded her resignation, it cannot be said that Kalash was involuntarily unemployed through no fault of her own. The Commissioner's decision was correct under the plain meaning of the voluntary quit statute and was consistent with the policies inherent in the Employment Security Act. The Department respectfully requests that the Court affirm the Commissioner's decision.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of February,  
2013.

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**PROOF OF SERVICE**

I, Dan Marvin, certify that I served a copy of this **Respondent's**  
**Brief** on all parties or their counsel of record on the date below as follows:

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I certify under penalty of perjury under the laws of the state of  
Washington that the foregoing is true and correct.

DATED this 12<sup>th</sup> day of February, 2013, at Seattle, WA.

  
\_\_\_\_\_  
Dan Marvin, Legal Assistant

# WASHINGTON STATE ATTORNEY GENERAL

**February 12, 2013 - 9:29 AM**

## Transmittal Letter

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