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COURT OF APPEALS DIVISION II OF THE STATE OF WASHINGTON

Lawrence C. Little
Petitioner,

vs.

State of Washington, Employment
Security Department
Respondent.

Court of Appeals No. 50189-9-II
Appellant's Opening Brief

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I. INTRODUCTION

I, Lawrence C. Little III was wrongfully terminated from my job on February 16, 2016. On
April 27, 2016 ESD reversed their decision to deny benefits due to a lack of evidence that I

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Lawrence C. Little
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1 participated in any misconduct. In May of 2016 I applied for CAT for the course I was enrolled
2 in at Grays Harbor College (during which time I was also employed and accepting any work that
3 was offered and reporting income) and ESD assumed that since I was enrolled in more than 12
4 hours that I wasn't eligible for benefits. Also, I was denied approval for the CAT program. I
5 continued to claim benefits through October 8th, 2016 but I was denied any reimbursement
6 because ESD assumed that I wasn't available for work and because of the pending litigation
7 against my original claim. I was only enrolled for 5 credit hours during the summer and when I
8 was offered a full-time position outside a reasonable commuting distance I dropped the course in
9 order to accept the full-time position.

10 I'm filing this appeal on the grounds that the Commissioners Delegate failed to cite the law that
11 confirms my eligibility for benefits during the weeks that I filed for unemployment. The
12 Commissioner's delegate conveniently disregarded provisions for individuals to attend 12 or
13 more credit hours under RCW 50.20.095(3), provisions to be excused from the mandatory job
14 search workshop under WAC 192-140-090(4)(a)(b)(c) and the fact that I'm not required by any
15 law or regulation to be in an approved CAT program in order to be eligible for unemployment
16 benefits. I was employed the entire time I was going to school and I was accepting all of the
17 work that was offered and including full caseloads found in Clerk's Document #22 page 11-12.
18 In the Clerk's document #22 page 7, under the Memorandum Decision, paragraph 2 the
19 Honorable Judge Michael G. Spencer cites "the Court is required to affirm the fact finding is
20 supported by substantial evidence." I have provided indisputable evidence that I was employed,
21 claiming income, able to work, available for work, accepting all work that was offered, and I
22 supplied a written record to ESD of my job search with 3 or more contacts every week during
23 the weeks claimed. According to RCW 50.20.095(3)(a)(b)(c)(d) this is all I needed in order to be
24 eligible for benefits. Obviously, if I'm working then I'm available for work, regardless of how
25 many credit hours I'm enrolled in for college. Under the Memorandum Decision on page 7,
26 paragraph 2 Judge Spencer cites "Evidence is substantial if it is sufficient to persuade a

1 reasonable, fair-minded person of the truth of the finding. Again, although reasonable minds
2 might differ on a particular issue, the Court is required to affirm if the fact finding is supported
3 by substantial evidence.” The Commissioner’s delegate has failed to provide any evidence to
4 show that I was ineligible for benefits during the weeks claimed. I have provided indisputable
5 evidence in the form of written witness testimony and reported employment and income that I
6 was always able and available for work and that I was actively seeking employment. Based on
7 these facts and the evidence provided, I’m seeking to have the decision of the Commissioner’s
8 Delegate and ruling of Judge Spencer of Grays County Superior Court to be reversed by the
9 Court of Appeals Division II of the State of Washington.

10
11 **II. ASSIGNMENT OF ERRORS AND ISSUES PERTAINING**

12 Included in the Clerks Papers are documents #20 and #22. Included in document No. 20 is the
13 Findings of Fact and Conclusions of Law, and the signed order of the Honorable Judge, Michael
14 G. Spencer. His order is in error for the following reasons:

15 **No. 1**, Page 1, Paragraph II, Under Findings of Fact, “The Commissioner’s delegate concluded
16 that Mr. Little was ineligible for benefits due to his full-time enrollment in an academic program
17 which the Commissioner’s delegate concluded is not eligible for Commissioner Approved
18 Training.” There is no rule, regulation or law in Washington State that requires that I’m approved
19 under CAT in order to be eligible for unemployment benefits, regardless of my enrollment status
20 as a student. I challenge the Attorney General’s office to present the law, rule and or regulation
21 that states otherwise. According to RCW 50.20.095(3) This disqualification shall not apply to any
22 individual who:

23 3) Demonstrates to the Commissioner by a preponderance of the evidence his or her actual
24 availability for work, and arriving at this determination the commissioner shall consider the
25 following factors:

1 a) Prior work history; my prior work history is what determined my eligibility for benefits in the
2 first place. In document No. 22 of the Clerks Papers, page 11 and 12 is witness testimony of the
3 fact that I was able to attend classes while being available for full time employment. Where is the
4 Commissioner's delegates "substantial evidence" to prove otherwise?

5 b) Scholastic history; The Commissioner had a complete record of my scholastic history

6 c) Past and current labor market attachment; I accepted the first and only job I was offered during
7 the weeks claimed and the Commissioner had a record of my reported income. Aside from that,
8 all labor statistics in any given field are 100% subjective; and

9 d) Past and present efforts to seek work; I provided ESD with a written record of my efforts to
10 seek work during the weeks claimed.

11 No. 2, Page 1 & 2 under Findings of Fact, following sentence, "The Commissioner's delegate
12 also concluded that Mr. Little is ineligible for benefits for the week ending May 21, 2016 because
13 of his failure to report to a job workshop." The Commissioner's delegate assumed that I wasn't
14 available for work during the week claimed because I missed a 2-hour workshop, even though
15 ESD has a record of the fact that I did work during the week claimed and that I reported income.
16 Also, according to WAC 192.140.090(4) **Justifiable Cause**. Justifiable cause for failure to
17 participate in reemployment services as directed will include factors specific to you which would
18 cause a reasonably prudent person in similar circumstances to fail to participate. Justifiable causes
19 include, but is not limited to:

- 20 a.) Your illness or disability or that of a member of your immediate family;
21 b.) Conflicting employment or your presence at a job interview scheduled with an
22 employer; or
23 c.) Severe weather conditions precluding safe travel. Reasons for absence may be
verified. In all such cases, your ability to or availability for work is in question.

24 I am a "reasonably prudent person," I have been employed in the workforce for over 40 years
25 and I have/had a prepared resume and I was working during the week claimed. I didn't need
26 to attend a job search workshop because I already know how to network on-line, had at least

1 3 contacts per week and, being a reasonably prudent person, I didn't want to miss chemistry
2 lab and possibly fail the class. Education is more important than a 2-hour remedial workshop
3 that may be necessary for someone new to the workforce, and the fact that it's arbitrarily
4 mandated by the state for everyone, regardless of experience is further evidence of the
5 government's pointless intrusion into the lives of the citizenry. In any case, since I did work
6 during the week claimed, I'm requesting that at the most I be required to repay is 1/7th of the
7 benefits paid for the week ending May 21st 2016 or nothing at all since I worked, was able to
8 work and available for work during the week claimed.

9 **No. 3** Page 2 of the Clerk's Documents, under Conclusions of Law, II. "The
10 Commissioner's findings of fact are supported by substantial evidence." What evidence?
11 Other than the opinion that I'm required to work a rigid schedule that doesn't allow for the
12 flexibility for a full-time schedule in college, the Commissioner hasn't offered any evidence
13 that I wasn't available for full-time employment during the weeks claimed. I have offered
14 indisputable evidence to the contrary, which includes written witness testimony in Clerk's
15 Document #22 page 11-12, and the Commissioner has a record of the fact that I reported
16 income that disqualified me for benefits most of the time. I was available for work, able to
17 work and I was working during the weeks claimed.

18 **No. 4** Page 2 of the Clerk's Documents, under Conclusions of Law, III. "The
19 Commissioner's conclusions of law do not constitute an error of law and are otherwise in
20 accordance with the Washington Administrative Procedure Act." It's obvious that throughout
21 the proceedings of this case that the Commissioner's delegate has been cherry picking from
22 the law in an effort to retrieve revenue and otherwise ignoring the fact that eligibility for
23 benefits isn't determined by whether I was approved for CAT or how many credit hours I
24 was enrolled in, but rather whether I was able to work, available for work and actively
25 seeking employment, RCW 50.20.095(3), RCW 50.20.010(1)(c).

1 **No. 5** Page 2 in the Clerk's Documents, under Conclusions of Law IV. "The Commissioner's
2 order does not constitute an arbitrary and capricious action." What is more capricious and
3 arbitrary than for the Commissioner's Delegate to ignore provisions in the law which confirms
4 my eligibility for benefits even though I wasn't approved for CAT and I was taking more than
5 12 credit hours? RCW 50.20.95(3), RCW 50.20.010(1)(c), WAC 192.200.005(3)(c).

6 **No. 6** Page 2 in the Clerk's Documents, under Conclusions of Law V. "Mr. Little is ineligible
7 for Commissioner Approved Training per WAC 192-200-010(2)." As I've pointed out about 5
8 million times, my eligibility for CAT is completely irrelevant and the inclusion of this
9 statement is obviously "arbitrary and capricious" to imply that I wasn't eligible for benefits.

10 I'm not required to be in a CAT program in order to be eligible for benefits, RCW
11 50.20.95(3)(a)(b)(c)(d), RCW 50.20.010(1)(c), WAC 192.200.005(3)(c).

12 **No.7** Page 2 in the Clerk's Documents, under Conclusions of Law VI. "Mr. Little is
13 disqualified for benefits during the period he is registered for twelve or more credit hours
14 pursuant to WAC 192.200.005(2)." This is another example of the Commissioner's delegate
15 cherry picking from the law in an effort to retrieve revenue because WAC 192.200.005(3)(c)
16 makes provision to take 12 or more credit hours, provided it doesn't interfere with my
17 availability for work. I provided evidence that I was able to manage up to full caseloads
18 before and after school in Document 22, pages 11-12. And that I was willing to drop the
19 course if it interfered with full time employment.

20 **No. 8** Page 2 in the Clerks Documents, under Conclusions of Law VII. "Mr. Little is ineligible
21 for benefits for the entire week ending May 21st 2016 per WAC 192.180.040(3)." More cherry
22 picking from the Commissioner's Delegate because WAC 192.180.040(4)(a)(b)(c) states
23 justifiable cause for me to have been excused from this remedial level, 2-hour job search
24 workshop.

1 III. STAMENT OF THE CASE AND CITATION TO THE RECORD

2 It's difficult for a clinician who's been fired to find work, wrongful termination aside. I took
3 the first job offered to me which was a PRN (as needed) position working for Genesis Health
4 and Rehabilitation in Montesano, Washington. I managed up to full caseloads while I was
5 enrolled in school at Grays Harbor College and I never refused work. During that time, I was
6 also seeking employment and I provided ESD with a written record of my job search. From
7 February 16th, 2016 thru the week ending October 8th, 2016 I was in compliance with RCW
8 50.20.95(3)(a)(b)(c)(d), WAC 192-200-005(3)(c) and RCW 50.20.010(1)(c). I withdrew from
9 the course at Grays Harbor Community College when I was offered a full-time position which
10 was outside a reasonable commute. Please refer to pages 1-12 of the Clerks Documents for the
11 record.

12 IV. ARGUMENT AND AUTHORITY

13 I was eligible for benefits during all of the weeks claimed because I was seeking work, able to
14 work and I was always available for work during all of the weeks claimed. And I have
15 provided indisputable evidence to that fact. ESD and the Commissioner's Delegate have not
16 provided evidence to the contrary and frankly, they don't have a case. The facts, evidence and
17 the law are all in favor of the appellate, Lawrence C. Little III. And for justice sake,
18 reasonable minds with consideration for the law, facts and evidence must conclude that the
19 Order of Grays Harbor Superior Court is in error and must be reversed. The authority for this
20 case is the law and the fact that I have always been in compliance with the law.

21 V. FINDING OF FACTS

22 I. Appellant Lawrence C. Little is a resident of Grays Harbor County and filed an Appeal with
23 Washington State Court of Appeals Division II.

24 II. Mr. Little was enrolled full-time at Grays Harbor College in a program that was not
25 eligible for Commissioner Approved Training. The Commissioners delegate erred in their
26 conclusion that Mr. Little was not eligible for benefits because the appellate is not required to

1 be enrolled in Commissioner Approved Training in order to qualify for benefits. RCW
2 50.20.95(3)(a)(b)(c)(d) makes provision for claimants to be enrolled in 12 or more credit
3 hours.

4 III. Mr. Little has provided indisputable evidence that he was in compliance with RCW
5 50.20.95 in the form of written testimony, work history and reported income during the weeks
6 claimed.

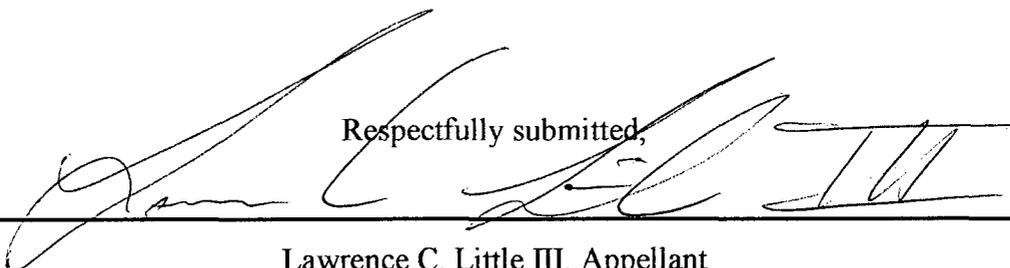
7 IV. The Commissioner's delegate also erred when they concluded that Mr. Little was not
8 eligible for benefits for the week ending May 21st, 2016 due to his absence from a mandatory
9 remedial job search workshop. WAC 192-140-090(4)(a)(b)(c) provides unlimited justifiable
10 cause for a "reasonably prudent person" to be excused from the work shop. Mr. Little has
11 provided indisputable evidence that he is a reasonably prudent person and he is hereby
12 excused and deemed to be eligible for benefits for the week ending May 21st, 2016.

13 VI. CONCLUSIONS OF LAW

- 14 I. The Court has jurisdiction over the parties and subject matter.
- 15 II. The Commissioner's findings of fact are not supported by substantial evidence.
- 16 III. The Commissioner's conclusions of law exclude provisions for Mr. Little's
17 eligibility for benefits and constitute an error that is otherwise not in accordance
18 with the Washington Administrative Procedure Act.
- 19 IV. The Commissioner's order constitutes an arbitrary and capricious action.
- 20 V. Mr. Little's ineligibility for Commissioner Approved Training has no relevance to
21 his eligibility for benefits.
- 22 VI. Mr. Little has provided indisputable evidence that he was in compliance with
23 WAC 192-200-005(3)(c) and he was qualified for benefits for all of the weeks
24 claimed.
- 25 VII. Mr. Little is excused from remedial job search training in accordance with the
26 provision in WAC 192-140-090(4)(a)(b)(c) and he is eligible for benefits for the
27 week ending May 21st, 2016.
- 28 VIII. Mr. Little is eligible for benefits for all of the weeks claimed between the dates of
February 16, 2016 and the week ending October 8th 2016.
- IX. The decision of the Commissioner of the Employment Security Department of the
State of Washington made in the above titled matter is reversed based on facts,
indisputable evidence and provisions of the law.

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Respectfully submitted,



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