

No. 50669-6-II

ORIGINAL

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

JANA WOLFF, Appellant

v.

STATE OF WASHINGTON, DEPARTMENT OF EMPLOYMENT SECURITY, Respondent

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APPELLANT'S OPENING BRIEF

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Table of Contents

I.	INTRODUCTION.....	1
II.	ASSIGNMENTS OF ERROR.....	1
1.	The Commissioner erred in finding that there was substantial evidence that Ms. Wolff was not able, available, and actively seeking work.....	1
2.	The Commissioner erred in concluding that Ms. Wolff was not in compliance with the availability requirements of RCW 50.20.010(1)(c).....	2
3.	The Commissioner erred in concluding that Ms. Wolff failed to meet the exceptions to the requirement that she be available for full-time work pursuant to WAC 192-170-010.....	2
III.	ISSUES PERTAINING TO THE ASSIGNMENT OF ERROR....	2
1.	Whether this Court should reverse the Commissioner’s Decisions when no substantial evidence supports the finding that Ms. Wolff was not able, not available, and not actively seeking work when (1) Ms. Wolff is physically able to perform work in her customary labor market; (2) Ms. Wolff makes three to five job contacts per week in a wide variety of work; and (3) Ms. Wolff is available to work between 25 to 30 hours per week. (Assignment of Error 1).....	2
2.	Whether this Court should reverse the Commissioner’s Decision when the Commissioner erred in concluding that Ms. Wolff was not in compliance with the availability requirements pursuant to RCW 50.20.010(1)(c) and its related regulations when Ms. Wolff is the adopted mother of two twin boys with fetal alcohol syndrome who require medical care. (Assignment of Error 2).....	2
3.	Whether this Court should reverse the Commissioner’s Decision when the Commissioner erred in concluding that Ms. Wolff failed to meet the two exceptions to the requirements that she be available for full-time work pursuant to WAC 192-170-010 when (1) Ms. Wolff is willing to work 25 to 30 hours per week; and (2) Ms. Wolff is the adopted mother of two twin boys with fetal alcohol syndrome who require medical care. (Assignment of Error 3).....	3
IV.	STATEMENT OF THE CASE.....	3

V. ARGUMENT.....6

A. This court should reverse the Commissioner's Decisions when no substantial evidence supports the findings that Ms. Wolff was not able, available, and actively seeking work when (1) Ms. Wolff is physically able to perform work in her customary labor market; (2) Ms. Wolff makes three to five job contacts per week in a wide variety of work; and (3) Ms. Wolff is available to work between 25 to 30 hours per week.....8

B. This Court should reverse the Commissioner's Decision when the Commissioner erred in concluding that Ms. Wolff was not in compliance with the availability requirements pursuant to RCW 50.20.010(1)(c) and its related regulations when Ms. Wolff is the adopted mother of two twin boys with fetal alcohol syndrome who require medical care.....10

C. This Court should reverse the Commissioner's Decision when the Commissioner erred in concluding that Ms. Wolff failed to meet the two exceptions to the requirements that she be available for full-time work pursuant to WAC 192-170-010 when (1) Ms. Wolff is willing to work 25 to 30 hours per week; and (2) Ms. Wolff is the adopted mother of two twin boys with fetal alcohol syndrome who require medical care.....16

VI. CONCLUSION.....19

TABLE OF AUTHORITIES

Cases

Brandley v. Emp't Sec. Dep't., 23 Wn. App. 339, 342, 595 P.2d 565 (1979).....7

Delagrave v. Emp't Sec. Dep't of State of Wash., 127 Wn. App. 596, 608-609, 111 P.3d 879 (2005) - 8 denied, 518 U.S. 1006 (1996).....6

Heinmiller v. State Dep't of Health, 127 Wn.2d 595, 609-610, 903 P.2d 433 (1995), cert.....6

Hermesen v. Empl. Sec. Dep't, 39 Wn.2d 903, 239 P.2d 863 (1952).....16

In re Lininger, Empl. Sec. Comm'r Dec.2d 213 (1976).....15,16

In re Yeoman, Empl. Sec. Comm'r Dec. 1200 (1974).....14,15

Jacobs v. Office of Unemployment Compensation and Placement, 27 Wn.2d 641, 660, 179 P.2d 707 (1947).11

Kenna v. Emp't Sec. Dep't, 14 Wn. App. 898, 905, 545 P.2d 1248 (1976).....4

Cases (continued)

Matson v. Hutt, 85 Wn.2d 836, 539 P.2d 852 (1975).....7
Miotke v. Spokane Cnty, 181 Wn. App. 369, 376, 325 P.3d 434 (2014)...7
Premera v. Kreidler, 133 Wn. App. 23, 31, 131 P.3d 930 (2006).....7
Safeco Ins. Co. v. Meyering, 102 Wn.2d 385, 392, 687 P.2d 195
(1984).....7, 8
Tapper v. Emp't Sec. Dep't, 122 Wn.2d 397, 403, 858 P.2d 494 (1993)....7

Statutes

Chapter 50.20 RCW.....10
RCW 34.05.570(3).....6
RCW 50.01.010.....19
RCW 50.20.010(1)(c).....2,10,11,19,20
RCW 50.20.050.....18,19,20
RCW 50.20.066.....20
RCW 50.20.100(1).....12
RCW 50.20.11917
RCW 50.32.120.....6
RCW 50.32.160.....20
Title 50.....9, 20

Other Authorities

Carolyn McConnell, No Fault of Her Own: Redressing Family
Responsibilities Discrimination in the State Unemployment
Compensation Systems, 62 CCH Lab. Law. J. at 4 (2011).....14
Deborah Maranville, Feminist Theory and Legal Practice: A Case Study
on Unemployment Compensation Benefits and the Male Norm, 43
Hastings L.J. 1081, 1086 (1992).....14
Karen S. Czapanskiy, Unemployment Insurance Reform for Moms, 44
Santa Clara L. Rev. 1093, 1098 (2004).....14
Rebecca Smith et al., Between a Rock and a Hard Place: Confronting the
Failure of State Unemployment Insurance Systems to Serve Women
and Working Families, National Employment Law Project, 1 (July
2003) [http://www.nelp.org/content/uploads/2015/03/Between-a-Rock-
and-a-Hard-Place-070103.pdf](http://www.nelp.org/content/uploads/2015/03/Between-a-Rock-and-a-Hard-Place-070103.pdf).....13
Women in the Labor Force: a Databook, Bureau of Labor Statistics, 1,
(Dec. 2015) [https://www.bls.gov/opub/reports/womens-
databook/archive/women-in-the-labor-force-a-databook-2015.pdf](https://www.bls.gov/opub/reports/womens-databook/archive/women-in-the-labor-force-a-databook-2015.pdf).....3

Regulations

WAC 192-170-010.....2,3,11,17
WAC 192-170-010(1).....12
WAC 192-170-050(1)(b).....17
WAC 192-170-070.....17,18

I. INTRODUCTION

This is a judicial review of the Employment Security Department (ESD) Commissioner's Decisions affirming the denial of Ms. Jana Wolff's unemployment benefits. Review Judge D. Elias Freeman affirmed Administrative Law Judge (ALJ) Julie Emmal's Initial Orders on the issues of both Ms. Wolff's job separation and availability. AR 311, 316. He also adopted the Office of Administrative Hearings' findings of fact and conclusions of law. AR 309, 314. The Commissioner erred in finding that Ms. Wolff was not able, not available, and was not actively seeking work with respect to Docket Nos. 022016-01245 and 032016-00381. AR 285, 294. Also, the Commissioner erred in concluding that Ms. Wolff was not in compliance with the availability requirements. AR 285, 295. Lastly, the Commissioner erred in concluding that Ms. Wolff failed to meet the two exceptions to the requirements that she be available for full-time work. *Id.* The following is Ms. Wolff's Petition for Review of these Commissioner Decisions to the Court of Appeals, Division II.

II. ASSIGNMENT OF ERROR

1. The Commissioner erred in finding that there was substantial evidence that Ms. Wolff was not able, not available, and was not actively seeking work.

2. The Commissioner erred in concluding that Ms. Wolff was not in compliance with the availability requirements pursuant to RCW 50.20.010(1)(c) and its related regulations.
3. The Commissioner erred in concluding that Ms. Wolff failed to meet the two exceptions to the requirement that she be available for full-time work pursuant to WAC 192-170-010.

III. ISSUES PERTAINING TO THE ASSIGNMENT OF ERROR

1. Whether this Court should reverse the Commissioner's Decisions when no substantial evidence supports the finding that Ms. Wolff was not able, not available, and not actively seeking work when (1) Ms. Wolff is physically able to perform work in her customary labor market; (2) Ms. Wolff makes three to five job contacts per week in a wide variety of work; and (3) Ms. Wolff is available to work between 25 to 30 hours per week. (Assignment of Error 1).
2. Whether this Court should reverse the Commissioner's Decision when the Commissioner erred in concluding that Ms. Wolff was not in compliance with the availability requirements pursuant to RCW 50.20.010(1)(c) and its related regulations when Ms. Wolff is the adopted mother of two twin boys with fetal alcohol syndrome who require medical care. (Assignment of Error 2).

3. Whether this Court should reverse the Commissioner's Decision when the Commissioner erred in concluding that Ms. Wolff failed to meet the two exceptions to the requirements that she be available for full-time work pursuant to WAC 192-170-010 when (1) Ms. Wolff is willing to work 25 to 30 hours per week; and (2) Ms. Wolff is the adopted mother of two twin boys with fetal alcohol syndrome who require medical care. (Assignment of Error 3).

IV. STATEMENT OF THE CASE

Ms. Wolff was employed by Gonzaga University (hereinafter Gonzaga) from February 23, 2009, until January 4, 2016. AR 284 (Finding of Fact (FF) 2). She is the mother of two adopted, twin boys with fetal alcohol syndrome. AR 16, 22. (Her sons were 10 years old at the time of her hearing.) AR 16. Ms. Wolff transferred from Gonzaga's athletic department to its law school to accept a position with reduced responsibility and fewer hours. AR 16-18, 19-20. Ms. Wolff transferred to this position to meet the increased needs of her children. AR 19-20.

Ms. Wolff informed Gonzaga's law school during her interview that she was applying for a position with reduced responsibility and less hours to provide additional care for her children. AR 20-21. Her employer was aware of Ms. Wolff's required work-home life balance. AR 20. At the

time of her resignation, Ms. Wolff was working 24 hours per week with intermittent FMLA. AR 13. Sometime after being approved for FMLA, Gonzaga substantially increased Ms. Wolff's duties and responsibilities, informing her that she would need to increase her hours to work both evenings and weekends. AR 20, 22.

Ms. Wolff reminded Gonzaga that she applied for this position so that she would have time to provide specialist and home support to foster her sons' development. AR 21. Gonzaga failed to remedy the situation. *Id.*; AR 25. Gonzaga informed Ms. Wolff that she had two options: she could either accept these substantial changes or resign. AR 23-24. Ms. Wolff resigned, and her last day with Gonzaga was January 4, 2016. AR 18.

During her job search, Ms. Wolff has been searching for a wide variety of work, making between three to five job contacts per week. AR 15. She hopes to secure a position as an administrative assistant, executive assistant, private consultant, grant drafter, or any part-time position through Express Employment Professionals. AR 13. She anticipates working between 25-30 hours per week to meet her sons' developmental needs. *Id.* Additionally, Ms. Wolff is willing to commute up to 25 miles in order to secure a job. AR 14.

The ESD denied unemployment benefits to Ms. Wolff in Determination Notices relating to Docket Nos. 022016-01245 and

032016-00381, dated February 13, 2016, and February 25, 2016 respectively. AR 29-33, 168-171. In its Determination Notices, the ESD determined that Ms. Wolff voluntarily quit without good cause and that she did not meet the eligibility requirements for benefits. *Id.* Ms. Wolff filed a timely appeal of both Determination Notices, AR 34-36, AR 172, and an administrative hearing was held on March 28, 2016, to address both matters. AR 283-299. ALJ Emmal reversed the decision of the ESD relating to Ms. Wolff's job separation, AR 286. However, ALJ Emmal also affirmed the ESD's determination that Ms. Wolff was ineligible for benefits from the period beginning January 17, 2016, through March 26, 2016, AR 295, concluding that Ms. Wolff was not available for full-time work and that she did not meet either exception to the requirement of being available for full-time work. *Id.* (Conclusion of Law (CL) 4, 5). Ms. Wolff filed a Petition for Review to the Commissioner's Review Office. AR 303-307. Review Judge D. Elias Freeman adopted the Office of Administrative Hearings' findings of fact and conclusions of law with respect to both matters. AR 309, 314. He also affirmed both of ALJ Emmal's Initial Orders. AR 311, 316. Accordingly, Ms. Wolff appeals the Commissioner Decisions relations to this matter to the Court of Appeals, Division II.

V. ARGUMENT

The Court of Appeals reviews an ESD decision in accordance with the Administrative Procedure Act (APA). RCW 34.05.570; RCW 50.32.120. Although the Court of Appeals reviews the ESD Commissioner's Decision and not the decision of the administrative appeal tribunal, the court reviews the administrative agency record in determining whether the decision should be reversed, modified, or sustained. Kenna v. Emp't Sec. Dep't, 14 Wn. App. 898, 905, 545 P.2d 1248 (1976).

The APA and Washington law provide nine standards for judicial review of an agency order in an adjudicative proceeding. RCW 34.05.570(3); RCW 50.32.120. An agency's findings of fact are reviewed under the substantial evidence standard. RCW 34.05.570(3)(e). To overturn an agency's finding of fact, the claimant must establish that the finding is not supported by substantial evidence received by the court under the APA. *Id.* Substantial evidence is "evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premises." Heinmiller v. State Dep't of Health, 127 Wn.2d 595, 609-610, 903 P.2d 433 (1995), *cert. denied*, 518 U.S. 1006 (1996) (citations omitted). The court views the evidence in the light most favorable to the party who "prevailed in the highest forum that exercised fact-finding authority." Miotke v. Spokane Cnty, 181 Wn. App. 369, 376, 325 P.3d

434 (2014). Furthermore, an agency's conclusions of law can be reversed or modified if "[t]he agency has erroneously interpreted or applied the law." RCW 34.05.570(3)(d). An agency's conclusions of law are reviewed de novo. Premera v. Kreidler, 133 Wn. App. 23, 31, 131 P.3d 930 (2006). Whether a claimant is eligible for unemployment benefits is a mixed question of law and fact. Brandley v. Emp't Sec. Dep't., 23 Wn. App. 339, 342, 595 P.2d 565 (1979). To resolve a mixed question of law and fact, the court first establishes the relevant facts, determines the applicable law, and then applies the law to the facts. Tapper v. Emp't Sec. Dep't., 122 Wn.2d 397, 403, 858 P.2d 494 (1993).

Title 50, otherwise known as the Employment Security Act, RCW 50.01.005, was enacted to use the state's unemployment reserves "for the benefit of persons unemployed through no fault of their own." RCW 50.01.010; Safeco Ins. Co. v. Meyering, 102 Wn.2d 385, 392, 687 P.2d 195 (1984); Matson v. Hutt, 85 Wn.2d 836, 539 P.2d 852 (1975). With the ESA's purpose in mind, this title must be "liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to a minimum." RCW 50.01.010; Delagrave v. Emp't Sec. Dep't of State of Wash., 127 Wn. App. 596, 608-609, 111 P.3d 879 (2005). Meaning that, courts should not "narrowly interpret provisions to the worker's disadvantage when the statutory language does not suggest that

such a narrow interpretation was intended.” Delagrave, 127 Wn. App. at 609. “[T]he paramount concern...is to ensure that the statute is interpreted consistently with the underlying policy of this statute.” Safeco, 102 Wn.2d at 392.

- A. THIS COURT SHOULD REVERSE THE COMMISSIONER’S DECISIONS WHEN NO SUBSTANTIAL EVIDENCE SUPPORTS THE FINDING THAT MS. WOLFF WAS NOT ABLE, NOT AVAILABLE, AND NOT ACTIVELY SEEKING WORK WHEN (1) MS. WOLFF IS PHYSICALLY ABLE TO PERFORM WORK IN HER CUSTOMARY LABOR MARKET; (2) MS. WOLFF MAKES THREE TO FIVE JOB CONTACTS PER WEEK IN A WIDE VARIETY OF WORK; AND (3) MS. WOLFF IS AVAILABLE TO WORK BETWEEN 25 TO 30 HOURS PER WEEK

There is no substantial evidence on the record to support the finding that Ms. Wolff was not able, not available, and was not actively seeking work. With respect to Ms. Wolff’s ability to work, Ms. Wolff does not have any physical limitations that would prevent her from securing work in her customary labor market. AR 1-27. Relating to Ms. Wolff’s job search, she has been actively searching for a wide variety of work, making between three to five job contacts per week. AR 15. Based on her prior work experience, she has been applying for work as an administrative assistant, executive assistant, private consultant, grant drafter, or any part-time position through Express Employment Professionals, a temporary employment agency. Further, Ms. Wolff is not limiting herself on the jobs

she is willing to accept based on pay or distance. AR 14-15. Ms. Wolff is willing to travel up to twenty-five miles in order to secure a job. AR 14. Moreover, while she was making \$26 per hour in her prior position, Ms. Wolff is willing to accept work that pays less than she has customarily been making. AR 15.

With regards to Ms. Wolff's availability for work, although Ms. Wolff cannot accept a full-time position due to the medical needs of her disabled sons, this fact alone does not conclusively establish that Ms. Wolff was not able, not available, and was not actively seeking work between 25 and 30 hours a week. AR 13. Prior to her discharge, Ms. Wolff successfully worked for Gonzaga for 24 hours a week with intermittent FMLA. AR 14. She balanced the needs of her professional and personal life responsibly. For example, if she had an unexpected therapy session for her disabled sons, Ms. Wolff would use her lunch period to account for the time she spent at that appointment. AR 20. With respect to employment with Gonzaga, Ms. Wolff did her best at all times to work with her employer in order to accommodate additional duties and responsibilities. AR 23. Accordingly, Ms. Wolff is available for work. Therefore, there is no substantial evidence on the record to support the finding that Ms. Wolff was not able, not available, and was not actively seeking work.

B. THIS COURT SHOULD REVERSE THE COMMISSIONER'S DECISION WHEN THE COMMISSIONER ERRED IN CONCLUDING THAT MS. WOLFF WAS NOT IN COMPLIANCE WITH THE AVAILABILITY REQUIREMENTS PURSUANT TO RCW 50.20.010(1)(C) AND ITS RELATED REGULATIONS WHEN MS. WOLFF IS THE ADOPTED MOTHER OF TWO TWIN BOYS WITH FETAL ALCOHOL SYNDROME WHO REQUIRE MEDICAL CARE

Ms. Wolff has established that she is eligible to receive unemployment benefits pursuant to RCW 50.20.010(1)(c) and its related regulations. Pursuant to Title 50, claimants will be ineligible or disqualified from receiving unemployment benefits in certain situations. Chapter 50.20 RCW. One such situation occurs when claimants are not available to work. RCW 50.20.010(1)(c). The general rule for availability pursuant to the ESA states that:

[a]n unemployed individual shall be eligible to receive waiting period credits or benefits with respect to any week in his or her eligibility period only if the commissioner finds that: [h]e or she is able to work, and is available for work in any trade, occupation, profession or business for which he or she is reasonably fitted.

RCW 50.20.010(1)(c)(emphasis added).

The language of this provision implies that the claimant must not place any restrictions on her availability that would seriously affect her chances of securing a job. Jacobs v. Office of Unemployment Compensation and Placement, 27 Wn.2d 641, 660, 179 01 More specifically, according to

WAC 192-170-010, the ESD will consider someone available for work if the claimant:

(a) [Is] willing to work full-time, part-time, and accept temporary work during all of the usual hours and days of the week customary for the claimant's occupation...; (b) [Is] capable of accepting and reporting for any suitable work within the labor market in which the claimant is seeking work; (c) [Does] not impose conditions that substantially reduce or limit the claimant's opportunity to return to work at the earliest possible time; (d) [Is] available for work during the hours customary for the claimant's trade or occupation; and (e) [Is] physically present in the claimant's normal labor market area, unless the claimant is actively seeking and willing to accept work outside his or her normal labor market.

In determining whether work is suitable for a claimant, the ESA mandates that the commissioner:

[C]onsider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and such other factors as the commissioner may deem pertinent, including state and national emergencies.

RCW 50.20.100(1)(emphasis added).

In this matter, the Commissioner failed to consider the fact that Ms. Wolff is the mother of twin boys with fetal alcohol syndrome when he concluded that Ms. Wolff is ineligible for unemployment benefits. As previously mentioned, pursuant to WAC 192-170-010(1), one of the factors that the ESD considers when determining claimants available for work is whether the claimant is "capable of accepting and reporting for

any suitable work within the labor market in which the claimant is seeking work.” In determining whether work is ‘suitable’ for a claimant, the ESD is not limited to the factors listed in RCW 50.20.100(1). The ESD must consider “other factors as the commissioner may deem pertinent.” RCW 50.20.100(1). In this case, one such factor is that Ms. Wolff is the adopted mother of two boys with fetal alcohol syndrome who require medical care.¹

As a general rule, “[i]ncreased female participation in the labor market has not been matched by a reduction in working women’s domestic responsibilities.” Rebecca Smith et al., Between a Rock and a Hard Place: Confronting the Failure of State Unemployment Insurance Systems to Serve Women and Working Families, National Employment Law Project, 1 (July 2003) <http://www.nelp.org/content/uploads/2015/03/Between-a-Rock-and-a-Hard-Place-070103.pdf>. Nevertheless, more women than not participate in our labor force. The U.S. Bureau of Labor Statistics (BLS) reports that 57 percent of women participated in the labor force in 2014. Women in the Labor Force: a Databook, Bureau of Labor Statistics, 1,

¹ Ms. Wolff recognizes that WAC 192-170-010(1) lists five factors that the Commissioner considers when determining availability and that all five factors must be met for a claimant to be considered available. More specifically, Ms. Wolff is arguing that the fact that she is the adopted mother of two twin boys with fetal alcohol syndrome should have been considered when examining subsection b of WAC 192-170-010(1) and her availability generally.

(Dec. 2015) <https://www.bls.gov/opub/reports/womens-databook/archive/women-in-the-labor-force-a-databook-2015.pdf>. In particular, mothers with children between the ages of 6 to 17 years old have a labor force participation rate of 75.8 percent. *Id.* at 2. And yet, unmarried mothers have an even higher labor force participation rate than married mothers. *Id.* According to the BLS, in March 2014, 76.2 percent of “unmarried mothers with children under 18 years old were in the labor force, compared with 68.4 percent of married mothers with children in the same age range.” *Id.* However, despite the number of working women, “[w]omen are 15 percent less likely than men to collect unemployment insurance benefits.” Karen S. Czapanskiy, Unemployment Insurance Reform for Moms, 44 Santa Clara L. Rev. 1093, 1098 (2004). As each claimant’s unemployment claim is examined, particularly women’s unemployment claims, it’s important to recognize that unemployment insurance rules were “based on the assumption that men would be the primary, if not sole, income earner, [that] they disadvantage both male and female workers who have living or working arrangements that do not conform to these traditional roles.” Smith et al., supra; Deborah Maranville, Feminist Theory and Legal Practice: A Case Study on Unemployment Compensation Benefits and the Male Norm, 43 Hastings L.J. 1081, 1086 (1992). This stereotype that “men [are] assigned to market

work and women to family work” does not reflect the majority of today’s families. Carolyn McConnell, No Fault of Her Own: Redressing Family Responsibilities Discrimination in the State Unemployment Compensation Systems, 62 CCH Lab. Law. J. at 4 (2011). As a result, workers are often forced to choose between parenting and working. Here, Ms. Wolff is one such claimant who has been disadvantaged by the unemployment insurance system that assumes that she has a partner who supports their family by providing childcare and running their home. The Commissioner should have considered the fact that Ms. Wolff supports two children with fetal alcohol syndrome when ruling on Ms. Wolff’s availability.

Moreover, Ms. Wolff’s availability is distinguishable from prior cases where the Commissioner ruled claimants unavailable due to lack of child care. See In re Yeoman, Empl. Sec. Comm’r Dec. 1200 (1974); In re Lininger, Empl. Sec. Comm’r Dec.2d 213 (1976). The Yeoman claimant was divorced and had custody of her ten-year old son. *Id.* at *1. Her former husband was violent, which caused the claimant concern when she left her son in the care of a non-adult babysitter when she was working. *Id.* She was unable to locate an adult babysitter to care for her son during late night hours. *Id.* As a result, the Commissioner concluded that the Yeoman claimant was unavailable because her customary occupation required her to be available for swing shift or graveyard shift work. *Id.* at *2.

Additionally, the Yeoman claimant did not have reliable transportation in her labor market area. *Id.* In this case, Ms. Wolff should be eligible for benefits based on her availability unlike the Yeoman claimant. In addition to this case being outdated, the Yeoman claimant limited her availability to only day shift and early swing shift, and graveyard shift. Unlike the Yeoman claimant, Ms. Wolff has not limited her hours by half the hours required for her job. Ms. Wolff has not even limited the timeframe she is willing to work for an employer. Ms. Wolff has simply stated that she is willing to work between 25 to 30 hours per week in order to meet the medical needs of her disabled sons. AR 13. Furthermore, Ms. Wolff does not have any other additional factors that make her unavailable for work like the unlike the Yeoman claimant. AR 1-27. In contrast to the Yeoman claimant, Ms. Wolff has reliable transportation to take her to and from work. She has been searching for jobs up to 25 miles away in order to ensure that she secures a position. AR 14.

Ms. Wolff's case can also be distinguished from the claimant in Lininger. The Lininger claimant was found to be unavailable due to an absence of childcare. Ms. Wolff has access to childcare. Further, the claimant in Lininger was also found to not be making an active work search; Ms. Wolff is seeking suitable employment and is making at least three job contacts each week. Ms. Wolff is not an unemployed claimant

who would prefer to receive unemployment rather than secure a job. *See e.g., Hermesen v. Empl. Sec. Dep't*, 39 Wn.2d 903, 239 P.2d 863 (1952).

C. THIS COURT SHOULD REVERSE THE COMMISSIONER'S DECISION WHEN THE COMMISSIONER ERRED IN CONCLUDING THAT MS. WOLFF FAILED TO MEET THE TWO EXCEPTIONS TO THE REQUIREMENTS THAT SHE BE AVAILABLE FOR FULL-TIME WORK PURSUANT TO WAC 192-170-010 WHEN (1) SHE IS WILLING TO WORK 25 TO 30 HOURS PER WEEK; AND (2) SHE IS THE ADOPTED MOTHER OF TWO TWIN BOYS WITH FETAL ALCOHOL SYNDROME WHO REQUIRE MEDICAL CARE

WAC 192-170-010 lists two exceptions to the requirement that claimants be available for full-time work. *See* WAC 192-170-050(1)(b) and WAC 192-170-070. In the first instance, the ESD may determine that less than full-time work is suitable if a claimant has a disability that prevents her from “working the number of hours that are customary to the occupation.” WAC 192-170-050(1)(b)(i). In order to meet the requirements of this exception, claimants must also seek work for “the occupation and hours [they] have the ability to perform” and demonstrate that the “restriction on the number of hours [they] can work, the essential functions [they] can perform, and the occupations [they] are seeking does not substantially limit [their] employment prospects in [their] general area.” WAC 192-170-050(1)(b)(ii-iii). In the second instance, claimants may limit their availability for work, if they are a part-time eligible worker

as defined in RCW 50.20.119. WAC 192-170-070(1). These regulations allow claimants to limit their availability for work to 17 or fewer hours per week. Nonetheless, claimants must be “available for work during the usual hours of [their] occupation,” as well as “available for work all days of the week that are usual for [their] occupation, even if [they] have not worked those days in the past.” WAC 192-170-070(2-3).

The Commissioner should have found that Ms. Wolff met the exception to full-time work relating to disabled workers when ruling on her availability. Although Ms. Wolff does not have a disability herself, Ms. Wolff’s adopted sons require additional and regular medical care to treat their fetal alcohol syndrome. AR 16, 22. It is Ms. Wolff’s responsibility as a parent to arrange for her sons’ medical appointments, determine transportation, and advocate for her sons to the specialists who work to improve their neurological development. AR 1-27. As children, Ms. Wolff’s sons do not have the ability to perform these tasks for themselves; Ms. Wolff is their only caretaker.

In general, Title 50 recognizes the time constraints that illness and disability place on people with disabilities and their family members. *See* RCW 50.20.050(2)(b)(ii). RCW 50.20.050(2)(b) lists reasons claimants can quit their jobs and receive unemployment benefits. One of the eleven, exclusive reasons provides that claimants can quit and receive benefits if

the “separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant’s immediate family.” RCW 50.20.050(2)(b)(ii)(emphasis added).

With this recognition that a person’s disability affects both the individual and their family members, the Commissioner should have applied Title 50’s exception for full-time work due to disability to Ms. Wolff, allowing her to work less than full-time. Parents and children have a familial relationship that is distinct in that society expects that the child’s responsibilities will be shared by their parents and their needs fulfilled by their parents. In a similar vein, the burden of parents’ responsibilities and unmet needs are often shared by their children. The Commissioner should have found that Ms. Wolff met the exception to full-time work relating to disabled workers when ruling on availability.

Lastly, Ms. Wolff and her family should not be denied unemployment benefits by a narrow interpretation of Title 50’s availability requirements and its accompanying case law. The Preamble of Title 50 mandates that its provisions be liberally construed “for the purpose of reducing involuntary unemployment and suffering caused thereby to the minimum.” RCW 50.01.010. Unemployment compensation was intended to be “used for the benefit of persons unemployed through no fault of their own.” *Id.* The Commissioner’s conclusion that Ms. Wolff is unavailable for work

because she cannot work full-time is against the legislature's purposive intent. Ms. Wolff did not intend to be unemployed. *See* AR 23-24. The Commissioner recognized this fact by affirming the ALJ's ruling that Ms. Wolff should not be disqualified pursuant to RCW 50.20.050 or RCW 50.20.066. AR 311; 316; . Yet, Ms. Wolff has been denied benefits on the sole fact that she cannot work full-time because she is the mother of two twin boys with fetal alcohol syndrome who require ongoing medical care. The Commissioner erred in concluding that Ms. Wolff is unavailable for work in opposition to the purposive intent of Title 50.

VI. CONCLUSION

Accordingly, for the reasons stated above, Ms. Wolff respectfully requests that the Court of Appeals, Division II, reverse the Commissioner's Decisions in review number 2016-1197 and 2016-1198 and conclude that Ms. Wolff was available pursuant to RCW 50.20.010(1)(c), allowing Ms. Wolff to be eligible for unemployment benefits in this case.

Ms. Wolff further requests that reasonable attorney fees be awarded in an amount to be determined upon filing of a cost bill subsequent to this order. RCW 50.32.160 (mandating that attorney fees and costs shall be awarded upon reversal or modification of a Commissioner's order.)

Dated this 27th day of October 2017.

Respectfully submitted,



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DIVISION II

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STATE OF WASHINGTON

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COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

JANA WOLFF,)	
)	
Appellant,)	
)	
v.)	
)	No. 50669-6-II
STATE OF WASHINGTON,)	
DEPARTMENT OF EMPLOYMENT)	
SECURITY,)	
)	
Appellant.)	

CERTIFICATE OF SERVICE BY MAIL

I certify that I emailed an electronic copy and mailed a paper copy of the Appellant's Opening Brief in this matter postage prepaid, on October 27, 2017, to the Respondent ESD's attorney, Jonathan Pitel, Office of the Attorney General, PO Box 40110, Olympia, WA 98504-0110.

Dated this 27th day of October 2017, in Seattle, WA.



 John Tirpak
 WSBA # 28105
 Attorney for Respondent