

79878-8

NO. 79878-8

SUPREME COURT
STATE OF WASHINGTON
2007 MAY -1 P 3:05

SUPREME COURT OF THE STATE OF WASHINGTON

SARA D. SPAIN,

Petitioner,

v.

EMPLOYMENT SECURITY DEPARTMENT OF THE
STATE OF WASHINGTON,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Consistent with Washington law, the Court of Appeals issued an unpublished decision reversing the Thurston County Superior Court and reinstating Respondent Employment Security Department's decision that Petitioner Sara Spain did not have good cause for voluntarily quitting her employment. The Commissioner denied Spain unemployment benefits under the voluntary quit disqualification provision of the Employment Security Act, RCW 50.20.050(2) (as amended by Laws of 2003, 2nd sp. Sess., ch. 4, § 4), by determining that Spain voluntarily quit work without statutory good cause.¹

The Court of Appeals properly followed Washington law in concluding that the good cause exception to the voluntary-quit disqualification is limited to ten specifically enumerated circumstances. Spain fails to show that the Court of Appeals

¹ In a case completely unrelated to the statutory construction issues raised by Spain, the Court of Appeals recently addressed whether two of the three session laws affecting RCW 50.20.050 had constitutional defects. *See Batey v. Employment Sec. Dep't*, __ Wn. App. __, 154 P.3d 266 (2007)(motion for reconsideration pending). The decision in *Batey* gives no support to Spain's petition for review to challenge *Starr v. Employment Sec. Dep't*, 130 Wn. App. 541, 123 P.3d 513 (2005), *review denied*, 157 Wn.2d 1019, 142 P.3d 607 (2006).

decision is in conflict with precedent or that the issue raised is one of substantial public interest that requires further guidance from this Court. Because Spain fails to meet the criteria for review under Rules of Appellate Procedure (RAP) 13.4(b), the Department asks this Court to deny review.

II. COURT OF APPEALS DECISION

Spain seeks review of a February 7, 2007 unpublished Court of Appeals decision, *Spain v. Employment Sec. Dep't*, not reported in 2007 WL 404712 (Wash.App. Div. 2 Feb 07, 2007) (NO. 33705-3-II). A copy of the opinion is attached in Appendix A. Spain did not file a motion for reconsideration.

III. COUNTERSTATEMENT OF THE ISSUES

1. Did the Court of Appeals properly reinstate the Commissioner's denial of unemployment benefits when it is undisputed that Spain quit work for reasons that do not meet the statutory good cause exception to the voluntary-quit disqualification?

2. Is good cause for voluntarily quitting a job and receiving unemployment benefits limited to the factors enumerated in RCW 50.20.050(2)(b)(i)-(x)?

IV. COUNTERSTATEMENT OF THE CASE

Spain was employed by Peterson Northwest Inc., a roofing company. Commissioner's Record (CR) 1, 2, 15, 46(1).² She assisted the employer with general operations and with payroll. CR 9, 20, 46(1). She worked from February 6, 2004 until she voluntarily quit on June 18, 2004. CR 8, 9, 46(2).

After quitting, Spain applied for unemployment benefits. She told the Department that she quit due to the "mind games" of her employer. CR 41, 44. The Department denied Spain unemployment benefits, finding that she lacked good cause for quitting because her reason for quitting did not fall within the criteria set forth in RCW 50.20.050(2). CR 31-35.

² The number in parentheses represents the specific finding of fact made by the Administrative Law Judge and adopted by the Commissioner. CR 85-87.

Spain appealed the determination to the Office of Administrative Hearings (OAH). CR 38, 46. The employer did not appear and Spain provided the only testimony. CR 2, 46. Spain testified she quit because of the way the company president treated her, which the Administrative Law Judge (ALJ) concluded was unprofessional, demeaning, and unjustified. CR 49[5].³ Nonetheless, the ALJ concluded Spain did not have good cause to terminate her employment because her reason for quitting did not fall within RCW 50.20.050(2)(b), which is an exhaustive list. CR 48[4], 49[5]. Spain appealed to the Commissioner. CR 60-62. The Commissioner's delegate (Commissioner) adopted the ALJ's findings of fact and conclusions of law and upheld the denial of unemployment benefits. CR 62-63.

Spain then appealed to the Thurston County Superior Court, challenging only the Commissioner's determination that the RCW 50.20.050(2)(b) list is exhaustive. She did not

³ The number in brackets represents the conclusion made by the Administrative Law Judge and adopted by the Commissioner. CR 85-87.

challenge the Commissioner's determination that her reason for quitting did not fall within RCW 50.20.050(2)(b). The court affirmed the Commissioner's determination that Spain did not meet any of the reasons for quitting set forth in RCW 50.20.050(2)(b),⁴ but reversed the Commissioner's determination that good cause is limited to the ten criteria set forth in RCW 50.20.050(2)(b). The court remanded the matter to the Department to determine whether Spain had good cause to quit under RCW 50.20.050(2)(a).

The Department appealed to Division Two of the Court of Appeals. Based on *Starr v. Employment Sec. Dep't*, 130 Wn. App. 541, 123 P.3d 513 (2005) *review denied*, 157 Wn.2d 1019, 142 P.3d 607 (2006), the Court of Appeals reversed the Superior Court's decision and held that good cause is limited to the ten criteria set forth in RCW 50.20.050(2)(b). The only issue Spain raises is whether good cause for quitting is limited to the ten criteria listed in RCW 50.20.050(2)(b).

⁴ Spain did not appeal the Superior Court's determination that her reason for quitting did not meet any of the reasons found in RCW 50.20.050(2)(b).

V. REASONS WHY REVIEW SHOULD BE DENIED

RAP 13.4(b) provides the exclusive means for accepting review of a Court of Appeals' decision.

A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

While Spain has not specifically identified which of these grounds apply, she seems to seek review under RAP 13.4(b)(4). Because the Court of Appeals' decision is consistent with Washington law and Spain's petition does not raise an issue of substantial public interest that should be determined by this Court, the Department asks the Court to deny review.

A. There Is No Need For Supreme Court Determination Of This Issue When Appellate Case Law Already Holds That “Good Cause” For Voluntarily Quitting Work Is Limited To The Enumerated Situations Under RCW 50.20.050(2)(b).

Spain argues that RCW 50.20.050(2)(b) does not constitute an exhaustive list. That argument is contradicted by the plain language of the statute and a published Court of Appeals’ decision that considered the identical issue in *Starr v. Employment Sec. Dep’t*, 130 Wn. App. 541, 123 P.3d 513 (2005).⁵ This Court denied review in *Starr*. *Starr v. Employment Sec. Dep’t*, 157 Wn.2d 1019, 142 P.3d 607 (2006).

Principles of statutory construction have been well defined by case law and do not need determination by this Court. A reviewing court is obliged to give effect to the Legislature’s intent; it begins its review with the plain language of the statute. *Lacey Nursing Ctr., Inc. v. Dep’t of Revenue*, 128 Wn.2d 40, 53,

⁵ In addition to the plain language of RCW 50.20.050(2)(b) limiting what constitutes good cause for quitting, legislative intent also supports a finding that the list is exhaustive. *Starr*, 130 Wn. App. 550 n.7. Legislative history states that RCW 50.20.050(2)(b) “[n]arrows the reasons for ‘good cause’ quits and broadens the definition of misconduct.” House Bill Report, 2ESB 6097 (Wash. 2003), Appendix B at 1. It also states that “[t]he Commissioner’s discretion to determine that other work-related factors are good cause for leaving work is eliminated.” Appendix B at 6.

905 P.2d 338 (1995). If a statute is unambiguous, a court determines legislative intent from the statutory language alone. *Waste Mgmt. of Seattle v. Util. & Transp. Comm'n*, 123 Wn.2d 621, 629, 869 P.2d 1034 (1994) (cited by *Starr*, 123 P.3d at 516). On the other hand, if a statute is ambiguous, a court may look at the legislative history. *Starr*, 123 P.3d at 518 n.7.

In this case, the Court of Appeals, relying on *Starr*, found the statute to be unambiguous and properly looked at the plain language in accord with the rules of statutory construction. The Court of Appeals held that the voluntary quit statute contained a list of non-disqualifying reasons for voluntarily leaving employment and did not contain any open-ended circumstances. *Starr*, 123 P.3d at 516-517.

The current voluntary quit statute sets forth ten specific reasons, some of which are personal, that constitute good cause for quitting work:

- (b) 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;

(ii) 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 if:

(A) The claimant pursued all reasonable alternatives to preserve his or her employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated his or her employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii) He or she: (A) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: (I) Is outside the existing labor market area; and (II) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and (B) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, ... or stalking ...

(v) The individual's usual compensation was reduced by twenty-five percent or more;

(vi) The individual's usual hours were reduced by

twenty-five percent or more;

(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time; or

(x) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs.

RCW 50.20.050(2) (emphasis added). In *Starr*, the Court of Appeals examined RCW 50.20.050(2) and rejected the same statutory construction argument advanced by Spain in this case.

Good cause is limited to the factors enumerated in RCW 50.20.050(2)(b)(i)-(x). *Starr*, 130 Wn. App. at 549. The Court stated, "...we hold that RCW 50.20.050(2)(b)(i)-(x) provides the exclusive list of good cause reasons for voluntarily quitting employment that will not disqualify a claimant from receiving

unemployment compensation benefits.” Id. at 551.

RCW 50.20.050(2)(b) states, “An individual is not disqualified from benefits under (a) of this subsection *when . . .*” and then specifies specific situations. (Emphasis added) This is unlike the previous version of the statute which contained a general provision stating, *inter alia*,

In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies.

RCW 50.20.050(3)(2002), now codified as RCW 50.20.050(1)(c). This provision was repealed from the new voluntary quit provisions. At the same time, the list of “good cause” circumstances in RCW 50.20.050(2)(b) was expanded and made exhaustive. *Starr*, 130 Wn. App. at 547.

Spain argues that RCW 50.20.050(2)(a) expands the list of what constitutes good cause. That argument has been rejected. Starr, 130 Wn. App. at 548. Subsection (2)(a) states the rule that a claimant is disqualified if he or she does not have good cause. Subsection (2)(b) then defines good cause. These provisions must be read together. Consequently, the plain language of the statute indicates that good cause is limited to only those situations enumerated under RCW 50.20.050(2)(b). “This subsection [RCW 50.20.050(2)(b)] contains no additional open-ended circumstance of any type; and it clearly contains no general category entitled ‘compelling personal reasons’ . . . Nothing in this subsection or anywhere else in RCW 50.20.050 even hints that there could be other non-disqualifying circumstances.” *Starr*, 130 Wn. App. at 548.

Spain relies on the case *In re Bale*, 63 Wn.2d 83, 385 P.2d 545 (1963), in support of her argument that RCW 50.20.050(2)(b) is not an exhaustive list. This argument was addressed and rejected by the Court of Appeals in *Starr*, 130

Wn. App. at 549. The *Bale* court construed a 1945 version of RCW 50.20.050 which contained a general good cause provision entirely unlike the current version of the statute limiting good cause to specific factual situations.

Spain also argues that her reason for quitting constitutes good cause under three prior precedential Commissioner's decisions: *In re Pischel*, Comm'r Dec.2d 672 (1981); *In re Groth*, Comm'r Dec. 343 (1957); and *In re Simpson*, Comm'r Dec. 513 (1962).⁶ However, all three of the Commissioner's decisions were decided under a previous version of the voluntary quit statute which did not contain an exhaustive list of good cause reason for quitting.

In sum, the Court of Appeals properly relied on the *Starr* decision in holding that good cause is limited to the circumstances enumerated in RCW 50.20.050(2)(b). No other circumstances, whether personal or work-connected, constitute

⁶Under RCW 50.32.095, the Commissioner may designate certain Commissioner's decisions as precedent. Such precedents are persuasive authority for the court. *Martini v. State, Employment Sec. Dep't*, 98 Wn. App. 791, 795, 990 P.2d 981, 984 (2000). A copy of the cited Commissioner's decisions are attached in Appendix C.

good cause. *Starr*, 130 Wn. App. at 548. The plain language of the statute supports that determination. Consequently, the Court of Appeals properly reinstated the Department's denial of unemployment benefits. Since there is already a published decision on this exact issue, there is no need for further determination by this Court. Spain has failed to show that her case raises an issue of substantial public interest. Therefore, review should be denied.

B. The Current Voluntary Statute Is Substantially Different Than The Previous Version.

Spain argues that the previous version of the voluntary quit statute was structurally similar to the current version. She further argues that the previous statute was not interpreted as an exhaustive list of good cause reasons. However, Spain fails to discuss subsection 3 of the previous statute.

(1) 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...

(2) An individual shall not be considered to have left work voluntarily without good cause when...

....

(3) In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies

RCW 50.20.050 (2002), now codified as RCW 50.20.050(1)(a)-(c). Under the prior law, subsection 3 gave the Commissioner discretion in deciding when a person had good cause.⁷ No such general provision exists under current law. Rather, the Legislature has specifically enumerated ten circumstances that constitute good cause under the statute.

It is undisputed that Spain's reason for quitting does not meet any of the circumstances found in RCW 50.20.050(2).

⁷ Under the previous law, to show good cause, a claimant had to demonstrate:

- (a) That he or she left work primarily because of a work connected factor(s); and
- (b) That said work connected factor(s) was (were) of such a compelling nature as to cause a reasonably prudent person to leave his or her employment; and
- (c) That he or she first exhausted all reasonable alternatives prior to termination [though employee need not perform futile acts].

WAC 192-16-009. See also *Terry v. Employment Sec. Dept.*, 82 Wn. App. 745, 750, 919 P.2d 111 (1996).

Spain has failed to prove that review of her case is warranted under RAP 13.4(b).

VI. CONCLUSION

Spain fails to satisfy any basis for review by this Court. The Court of Appeals properly analyzed this issue and relied on its published *Starr* decision. Spain's case does not raise an issue of substantial public interest as no further appellate determination is needed on this issue. The Department respectfully requests that the Court deny Spain's Petition for Discretionary Review.

RESPECTFULLY SUBMITTED this _____ day of April, 2007.

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APPENDIX A

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY lp
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

SARA D. SPAIN,

Respondent,

v.

STATE OF WASHINGTON EMPLOYMENT
SECURITY DEPARTMENT,

Appellant.

No. 33705-3-II

UNPUBLISHED OPINION

PENYOYAR, J. — The Employment Security Department (ESD) appeals a Thurston County Superior Court order reversing a decision by the ESD commissioner.¹ The commissioner denied Sara Spain unemployment benefits, finding that she voluntarily quit her job without good cause as contemplated by RCW 50.20.050. The superior court reversed that decision, holding that RCW 50.20.050(2)(b) does not provide an exclusive list of “good cause” reasons for leaving employment. We agree that the superior court erred and reinstate the commissioner’s decision.

¹ A commissioner of this court reviewed this matter pursuant to the court’s own motion on the merits and referred it to a panel of judges. See RAP 18.14.

Spain worked for Peterson Northwest, Inc., a roofing company, from February 6 to June 18, 2004. She asserted that she quit because of her employer's verbal abuse and "mind games." Commissioner's Record (CR) at 10, 13. The ESD denied benefits, and Spain appealed. An ESD administrative law judge found that the employer's behavior was unprofessional, demeaning, and unjustified, but that it did not constitute good cause for quitting under the statute. The ESD commissioner affirmed that decision, but the superior court reversed.

Spain argues that the lower court was correct because (1) RCW 50.20.050 has been consistently interpreted to allow for unemployment benefits when a compelling personal reason forces a claimant to quit his or her job; (2) RCW 50.20.050(2)(b) is not an exhaustive list of "good cause" reasons for leaving a job; and (3) the liberal interpretation to be accorded to claimants under the Employment Security Act mandates that she be found eligible for benefits.

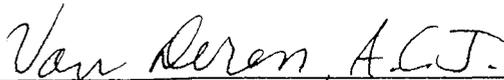
This court considered these arguments in *Starr v. Employment Sec. Dep't* and determined that cases addressing earlier versions of the statute are inapposite. RCW 50.20.050(2)(b)(i)-(x) does, in fact, provide the exclusive list of non-disqualifying good cause reasons for quitting employment. And, because the statute is unambiguous, there is no room for liberal construction. *See* 130 Wn. App. 541, 550-51, 123 P.3d 513 (2005), *review denied*, 157 Wn.2d 1019 (2006).

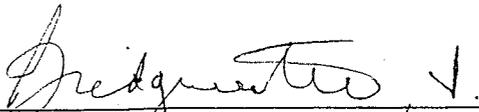
The superior court's decision is reversed. We reinstate the commissioner's decision and deny Spain's request for attorney fees.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.


PENOYAR, J.

We concur:


VAN DEREN, A.C.J.


BRIDGEWATER, J.

APPENDIX B

HOUSE BILL REPORT

2ESB 6097

As Passed House - Amended:

June 11, 2003

Title: An act relating to revising the unemployment compensation system through creating forty rate classes for determining employer contribution rates.

Brief Description: Revising the unemployment compensation system.

Sponsors: By Senators Honeyford and Mulliken.

Brief History:

Second Special Session

Floor Activity:

Passed House - Amended: 6/11/03, 52-38.

**Brief Summary of Second Engrossed Bill
(As Amended by House)**

- Reduces the maximum weekly benefit amount to \$496 or 63 percent of the state average weekly wage, whichever is greater.
- Reduces the maximum benefit payable to the lesser of 26 times the weekly benefit amount or 1/3 of the total base year wages.
- Beginning in 2004, reduces an individual's weekly benefit amount to 3.9 percent of the average of the individual's wages in the two quarters of the base year in which wages were highest.
- Narrows the reasons for "good cause" quits and broadens the definitions of misconduct.
- Allows certain part-time workers to search for suitable part-time work.
- Creates a new tax array beginning in 2005 that has 40 rate classes and uses rates based on three factors.
- Caps the new tax rate at 6.0 percent for certain seasonal industries (fishing, agriculture, and food processing) and at 6.5 percent for other industries, except when a solvency surcharge applies.
- Requires that certain benefits are charged to the experience rating account of only the separating employer.

Establishes penalties for certain employer delinquencies and/or misrepresentations.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority/Minority Report: None.

Staff: Jill Reinmuth (786-7134); Chris Cordes (786-7103).

Background:

The unemployment compensation system is designed and intended to provide partial wage replacement for workers who are unemployed through no fault of their own. The Employment Security Department (Department) administers this system.

Under the Employment Security Act (Act), eligible unemployed workers receive benefits based on their earnings in their base year. Most covered employers pay contributions (payroll taxes) to finance benefits. The Act is to be liberally construed to reduce involuntary unemployment to the minimum.

I. BENEFITS

A. Eligibility

Benefits are payable to eligible unemployed workers. An individual is eligible to receive benefits if he or she: (1) worked at least 680 hours in covered employment in his or her base year; (2) was separated from employment through no fault of his or her own or quit work for good cause; and (3) is able to work and is actively searching for suitable work.

Most employment is covered under the Act. Employment excluded from coverage includes work performed by certain corporate officers, employees of churches and certain nonprofit organizations, and certain nonresident aliens who are temporarily in the United States to work.

Claimants must search for work according to customary trade practices and through other methods when directed by the Commissioner of the Department (Commissioner). "Suitable work" is employment in an occupation in keeping with the individual's prior work experience, education, or training (unless such work is not available in the general area). In most circumstances, "suitable work" is full-time. The Department must monitor the job search efforts of persons who have received five or more weeks of benefits.

B. Disqualification

Individuals are disqualified from receiving benefits if they leave work voluntarily without good cause or are terminated for work-connected misconduct or a felony or gross misdemeanor.

Good cause, as specified in the Act, means leaving work: (1) to accept other work; (2) because of illness or disability, after taking precautions to preserve employment status with the employer; (3) to relocate for the spouse's employer-initiated mandatory job transfer; and (4) to protect the claimant or an immediate family member from domestic violence. In addition, the Commissioner may determine that other work-related factors are good cause for leaving work.

"Misconduct" is an act or failure to act in willful disregard of the employer's interest where the effect is to harm the employer's business. If an individual is discharged for misconduct, the individual is disqualified from benefits for seven weeks and until he or she earns seven times his or her weekly benefit amount. If an individual is discharged for a felony or gross misdemeanor, the individual loses his or her wage credits from that employment.

C. Duration and Amount

The maximum amount payable in an individual's benefit year is the lesser of 30 times the individual's weekly benefit amount or 1/3 of the total gross wages in the base year. (This amount is commonly expressed in terms of duration. In those terms, the maximum duration of benefits is 30 weeks.)

The maximum weekly benefit amount may not exceed 70 percent of the average weekly wage, except that: (1) from July 1, 2002, through June 30, 2004, the maximum weekly benefit amount is frozen at \$496; and (2) from July 1, 2004, through June 30, 2010, the growth rate in the maximum weekly benefit amount is capped at 4 percent.

An individual's weekly benefit amount is $\frac{1}{25}$ (4.0 percent) of the average of the individual's wages in the two quarters of the base year in which wages were highest.

II. FINANCING

The unemployment compensation system requires covered employers to pay contributions on a percentage of their taxable payroll, except for certain employers that are exempt and certain employers that reimburse the Department for benefits paid to these employers' former workers. The contributions of covered employers are held in trust to pay benefits to unemployed workers.

A. Tax Rates

For most covered employers, contribution rates are determined by the rate in the employer's assigned rate class under the tax schedule in effect for that calendar year. The employer's position in the tax array depends on the employer's layoff experience relative to other employers' experience. This relationship is determined by the calculation of a benefit ratio, which is the total benefits charged in the last four years to the employer's experience rating account divided by the employer's taxable payroll in the same period. Based on the relationship of employers' benefit ratios, employers are placed in one of 20 tax rate classes.

The rates in these classes are determined by the tax schedule in effect. The Act establishes seven different tax schedules, from the lowest schedule of AA through the highest schedule of F. The tax schedule in effect for any given calendar year depends on the fund balance ratio, which compares the unemployment insurance trust fund balance on June 30 of the previous year to the total payroll in covered employment in the state for the completed calendar year prior to that June 30. The tax schedule in effect for 2003 is schedule B.

Several types of covered employers are not qualified to be assigned a rate class. Nonqualified employers include those who do not report enough periods of employment during the previous two years. These new employers pay the average industry rate in their industry, as determined by the Commissioner, but not less than 1 percent. The average industry rate also applies to certain successor employers who were not employers at the time of acquiring a business. Until a new successor employer becomes a qualified employer, the rate for a successor employer is the lower of the rate assigned to its predecessor or the average industry rate with a 1 percent minimum rate. For delinquent employers, the contribution rate is 5.6 percent.

Both qualified and nonqualified employers also may be required to pay an insolvency surcharge of 0.15 percent. This surcharge is added to all contribution-paying employer rates for rate year 2004 (unless the fund balance ratio is above a specified level).

B. Taxable Wage Base

The amount of tax that an employer pays is determined by multiplying the employer's tax rate by the employer's taxable wage base. The taxable wage base is the amount of each employee's wages subject to tax for a given rate year. This amount increases by 15 percent each year from the previous year's taxable wage base, with a cap of 80 percent of the state "average annual wage for contribution purposes." The "average annual wage for contribution purposes" is based on the average of the three previous years' wages. "Wages" includes "the cash value of all compensation paid in any medium other than cash."

C. Experience Rating

Under the experience rating system, most benefits paid to claimants are charged to their base year employers' accounts. In the case of multiple base year employers, benefit charges are prorated in proportion to wages paid.

Some benefits, however, are pooled costs within the system and are generally referred to as socialized costs. One kind of socialized cost is "noncharged benefits." Benefits that are not charged to employer accounts include benefits paid to claimants who requalify after a "voluntary quit" and benefits paid to claimants found to be marginally attached to the labor force. Other socialized costs include "ineffective charges" that occur when the benefits charged to an employer's account exceed the contributions that the employer pays. Costs are also socialized when an employer has an "inactive account," such as after going out of business, and is unable to pay contributions that were assessed.

D. Penalties

Employers who fail to file timely and complete quarterly unemployment tax reports are subject to a minimum penalty of \$10 per violation plus a percent of the amount that is delinquent for the first, second, and third month of delinquency.

Summary of Amended Bill:

Numerous provisions of the Act governing benefits and contributions are modified. The direction that the Act be liberally construed is deleted.

I. BENEFITS

A. Eligibility

Work by nonresident immigrants in the H-2A (agricultural guest worker) and H-2B (other guest worker) programs is excluded from covered employment.

Work search requirements are modified in several ways. Claimants who fail to actively search for work in accordance with the Act lose benefits for weeks in which they were not in compliance and must repay those benefits.

The customary trade practices that claimants must follow when searching for work are modified. If a labor agreement or dispatch rules applies, such customary trade practices must be in accordance with the applicable agreement or rules.

The requirement that "suitable work" be full-time work is modified. For part-time workers, "suitable work" includes work for 17 or fewer hours per week. "Part-time workers" are defined as those workers who earn wages in at least 40 weeks of the base year and who do not earn wages in more than 17 hours per week in any weeks of the

base year.

The Department's job search monitoring duties are increased. In addition to its existing duties, the Department must contract with employment security agencies in other states to ensure that out-of-state claimants in those states are actively engaged in searching for work in accordance with Washington job search requirements. The Department also may use certain electronic means to ensure that individuals are subject to job search monitoring, regardless of whether they reside in Washington or elsewhere.

These changes generally apply beginning with claims that are effective on or after January 4, 2004.

B. Disqualification

The reasons specified in the Act as good cause for leaving work voluntarily are limited. Individuals are not disqualified from receiving benefits if they leave work voluntarily for the following reasons: (1) to accept other work; (2) illness or disability, so long as the individual is not entitled to reinstatement; (3) to relocate for the spouse's mandatory military transfer; (4) to protect the claimant or an immediate family member from domestic violence; (5) a reduction of 25 percent or more in compensation or hours; (6) a change in the worksite that causes increased distance or difficulty of travel; (7) deterioration of work site safety; (8) illegal activities in the worksite; or (9) a change in the individual's usual work that violates his or her religious convictions or sincere beliefs. The Commissioner's discretion to determine that other work-related factors are good cause for leaving work is eliminated.

The definition of "misconduct" is changed, and related requalification requirements are increased. "Misconduct" is redefined as willful or wanton disregard of the employer's or another employee's rights, deliberate violations or disregard of standards of behavior, carelessness or negligence that causes or would likely cause serious bodily harm to the employer or another employee, or carelessness or negligence that shows an intentional or substantial disregard of the employer's interest. An individual who is discharged for misconduct is disqualified from receiving benefits for 10 weeks and until he or she earns 10 times his or her weekly benefit amount.

A definition of "gross misconduct" is added, and related penalties are increased. "Gross misconduct" is defined as a criminal act in connection with an individual's work, or conduct that demonstrates a flagrant and wanton disregard for the employer's or another employee's rights. An individual who is discharged for gross misconduct has his or her wage credits based on that employment or 680 hours of wage credits, whichever is greater, cancelled.

These changes generally apply beginning with claims that are effective on or after

January 4, 2004.

C. Duration and Amount

The maximum benefits payable are reduced. Beginning in the first month after the Commissioner finds that the state's unemployment rate is 6.8 percent or less, the maximum benefits payable are the lesser of 26 times the weekly benefit amount or 1/3 of the total gross wages in the base year. (The maximum duration of benefits is 26 weeks.)

The maximum weekly benefit amount is also reduced. For claims with an effective date on or after January 4, 2004, the maximum weekly benefit amount is 63 percent of the state average weekly wage or \$496, whichever is greater.

The formula for calculating an individual's weekly benefit amount is modified. For claims with an effective date on or after January 4, 2004, an individual's weekly benefit amount is 3.9 percent (instead of 4.0 percent) of the average of the individual's wages in the two quarters of the base year in which wages were highest.

II. FINANCING

A. Tax Rates

A new tax array with 40 rate classes is created beginning in rate year 2005. Employers are assigned one of the 40 rate classes based on the employer's benefit ratio.

Qualified employer rates are the sum of two separate rates:

- The array calculation factor rate is determined by the rate class, and ranges from 0.0 percent in rate class 1 to 5.4 percent in rate class 40.
- The graduated social cost factor rate is determined by calculating the flat social cost factor rate and multiplying by a graduated social cost factor that ranges from 78 percent to 120 percent of the flat social cost factor depending on the rate class.

The sum of the array calculation factor rate and the graduated social cost factor rate may not exceed 6.0 percent for certain seasonal industries (fishing, agriculture, and food processing) and 6.5 percent for other industries, except when a solvency surcharge applies.

Nonqualified employer rates are also the sum of two separate factors.

- For a new employer, the array calculation factor is the average industry rate plus 15 percent of that rate, but not more than 5.4 percent (the rate in rate class 40). The graduated social cost rate is the average industry rate plus 15 percent of that rate, but

not more than the rate assigned to rate class 40.

- A successor employer with substantial continuity of ownership or management of the predecessor's business must pay at the rate assigned to the predecessors and will have the experience of the predecessors transferred to its account as part of the array calculation factor rate beginning in January following the transfer. A successor employer that has acquired two or more businesses must pay at the rate assigned to the predecessor employer with the largest taxable payroll, rather than the highest tax rate class, until it qualifies for its own rate.
- For delinquent employers, the array calculation factor rate is 5.6 percent (two-tenths higher than the rate in rate class 40) and the graduated social cost rate is the same rate as the rate assigned to rate class 40.

A solvency surcharge of up to 0.2 percent replaces the insolvency surcharge. This surcharge is added to all contribution-paying employer rates for a particular rate year only if the fund balance is determined to be an amount that will provide fewer than six months of unemployment benefits.

B. Taxable Wage Base

Beginning in 2007, the state "average annual wage for contribution purposes" is determined using wage data from the previous year (rather than by averaging wage data from the three years prior to the calculation). Income attributable to the exercise of stock options is excluded from "wages" for contribution purposes.

C. Experience Rating

The charging of benefits paid to claimants who separated from employment for certain work-related reasons is changed beginning with benefits charged for claims that have an effective date on or after January 4, 2004. These benefits are charged to the experience rating account of only the separating employer. The work-related reasons are: (1) leave to accept other work; (2) reduction of 25 percent or more in compensation or hours; (3) change in work site that causes increased distance or difficulty of travel; (4) deterioration of work site safety; (4) illegal activities in the worksite; and (5) change in usual work that violates the individual's religious convictions or sincere beliefs.

The noncharging of benefits paid to claimants who are marginally attached to the labor force is eliminated.

D. Penalties

Penalties for certain employer delinquencies and/or misrepresentations are established. If quarterly tax reports are not timely or complete, the penalty is \$250 or 10 percent of the

contributions, whichever is less. If there is a knowing misrepresentation of payroll, the penalty is 10 times the amount of the difference in contributions that were paid and that should have been paid, and audit costs. If the delinquency is due to an intent to evade the successorship provisions, the penalty is the assignment of the maximum tax rate for five quarters.

III. ADMINISTRATION

The Department must require claimants filing claims telephonically or electronically to provide additional proof of identity.

The Department must conduct several studies and report its findings and recommendations to the Legislature by December 1, 2003. In consultation with a business-labor advisory committee, the Department must identify programs funded with special administrative contributions. The Department also must review employer turnover in the unemployment compensation system. Finally, the Department must study the potential for year to year volatility in the rate classes to which employers are assigned.

The Act is modified to specify that various funds in the unemployment insurance system must be used solely for unemployment insurance purposes.

Appropriation: Senate Bill 6099 appropriates \$11.5 million from Reed Act funds to implement Second Engrossed Substitute Bill 6097.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: None.

Testimony Against: None.

Testified: None.

APPENDIX C



Employment Security Department
STATE OF WASHINGTON

Pischel CD 672 (2nd Series)

Voluntary Quit -- Quit, abusive co-worker

**BEFORE THE COMMISSIONER OF
THE EMPLOYMENT SECURITY DEPARTMENT
OF THE STATE OF WASHINGTON**

Review No. 38559

<i>In re</i>	)	Case No. 672 (2nd Series)
	)	Docket No. 1-00862
ERNEST P. PISCHEL)	
	)	DECISION OF
	)	COMMISSIONER
Petitioner)	

ERNEST P. PISCHEL duly petitioned the Commissioner for a review of a Decision of an Appeal Tribunal entered in this matter on the 6th day of February, 1981, 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 interested employer was duly notified of the time and place of the hearing, but failed to appear thereat; consequently, the Findings and Conclusions herein are based upon evidence adduced by or on behalf of petitioner.

II

Petitioner worked for the interested employer as a material take-off manager, non-union, from September 9, 1978, until November 12, 1980, at a wage of \$18,700 per year. His duty was to prepare lists of specifications and quantities of materials to be used by the plant manager in supplying construction projects. Petitioner and the plant manager were both under the supervision of the director of operations.

III

In September, 1980, the plant manager behaved in a belligerent and overbearing manner toward petitioner, whereupon petitioner complained to the director of operations. The director promised to have a discussion with the plant manager about this, but so far as petitioner is aware the discussion never occurred. The plant manager continued to be belligerent and overbearing toward petitioner and petitioner's assistant when communicating with them in person and by telephone, often using profanity. On one occasion the plant manager made a show of belligerence in the presence of the director, who calmed him down for the moment. Sometime prior to October 11, 1980, petitioner told the director that he was considering quitting because of working conditions, including the problem of communications between petitioner's office and management. The director was about to take a trip at the time. He asked petitioner to write him a letter listing the unsatisfactory working conditions and to continue working until he, the director, returned, promising that he would take some action on the matter. Petitioner did as requested.

IV

On November 12, after one of the plant manager's assistants had criticized a materials list which petitioner had approved, the plant manager burst into petitioner's office, shouting profanity, and waving his finger and his fist at petitioner in a belligerent manner. Petitioner was upset, and told the plant manager that he must leave or he, petitioner, would quit. When the plant manager departed, petitioner sent a message to the director requesting a meeting, but the director was busy at a meeting. Petitioner went home to quiet his nerves, and on November 14, when his emotional state had improved, he telephoned the director and again requested a meeting, indicating that he was thinking of resigning as an alternative to the unsatisfactory working conditions. The director informed petitioner that he did not want to discuss the matter, and requested that petitioner send him a copy of the resignation. Petitioner resigned on November 15, 1980.

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

ISSUE

Did petitioner voluntarily leave this employment with "good cause" within the meaning of RCW 50.20.050?

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

CONCLUSIONS

The applicable provisions of statute and the Washington Administrative Code are set out in the Appeal Tribunal's Decision, the following excerpt from WAC 192-16-009 being of dispositive relevance here:

"Except as provided in WAC 192-16-011 and WAC 192-16-013, in order for an individual to establish good cause within the meaning of RCW 50.20.050(1) for leaving work voluntarily it must be satisfactorily demonstrated: (a) that he or she left work primarily because of a work connected factor(s); and (b) that said work connected factor(s) was (were) of such a compelling nature as to cause a reasonably prudent person to leave his or her employment; and (c) that he or she first exhausted all reasonable alternatives prior to termination: Provided, That the individual asserting 'good cause' may establish in certain instances that pursuant of the otherwise reasonable alternatives would have been a futile act, thereby excusing the failure to exhaust such reasonable alternatives."

WAC 192-16-011 and 192-16-013 refer, respectively, to circumstances where an individual has left work to accept a bona fide offer of work elsewhere, and where an individual has left work because of illness or disability in his or her immediate family.

It is fairly obvious that a belligerent and abusive fellow worker is a "work connected factor" within the meaning of the above excerpted code. The Commissioner has long held that indecent or abusive language directed at an individual by the employer or a supervisor may be the basis of "good cause" for that individual to quit the work. *In re Groth*, Comm. Dec. 343 (1957); *In re Neuschwander*, Comm. Dec. 507 (1962); *In re Simpson*, Comm. Dec. 513 (1962). There appears no rational basis for a distinction, in respect to "good cause" between an instance where the employer or a supervisor has so abused the claimant and an instance where, as here, the supervisor has knowingly permitted a fellow worker to so abuse the claimant. In both instances, the above is a working condition "work connected factor" which would not and should not be tolerated by a person of reasonable prudence; and working condition from which a reasonably prudent person would feel compelled to extricate himself or herself. The evidence herein establishes that on at least three occasions prior to quitting his job, petitioner contacted his supervisor seeking a way to end the belligerence and verbal abuse he suffered at the hands of his fellow worker; that the supervisor had authority over both petitioner and the belligerent fellow worker; and that the supervisor made no reasonable effort to exercise his authority in order to change that intolerable working condition. The undersigned concludes from these circumstances that petitioner voluntarily quit subject employment because of a work connected factor which was compelling in nature, and only after exhausting all reasonable alternatives to quitting; wherefore good cause for quitting has been established. Now, therefore,

IT IS HEREBY ORDERED that the Decision of the Appeal Tribunal entered in this matter on the 6th day of February, 1981, shall be SET ASIDE. Petitioner is not subject to disqualification under RCW 50.20.050(1) and benefits are accordingly allowed provided he his otherwise qualified and eligible therefor.

DATED at Olympia, Washington, MAY 22, 1981.

ROBERT E. JACKSON

Commissioner's Delegate
Employment Security Department

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Page Modified: **02-06-2004**



Simpson CD 513

Voluntary Quit -- Profane, abusive, or obscene language directed at claimant good cause for quit

**BEFORE THE COMMISSIONER OF
THE EMPLOYMENT SECURITY DEPARTMENT
OF THE STATE OF WASHINGTON**

Review No. 6053

<i>In re</i>	)	Case No. 513
	)	Docket No. A-47199
JOHN W. SIMPSON)	
	)	DECISION OF
	)	COMMISSIONER
Petitioner)	

JOHN W. SIMPSON, duly petitioned the undersigned Commissioner to review a Decision of an Appeal Tribunal entered in this matter on the 23rd day of August, 1962. Having now completed a thorough examination of the record and files herein, thereby being fully advised in the premises, the Commissioner hereby adopts the Findings of Fact of the Appeal Tribunal which, for purposes of clarity, are hereinafter set forth in their entirety:

FINDINGS OF FACT

"Appellant is a member of the Operating Engineers Union, Local 370, of Spokane. He was dispatched by his union to Carl Carbon, a contractor, to work as a crusher operator on a job near Pullman, Washington. He was employed at union scale from June 13, 1962, through July 3, 1962, when he terminated his employment voluntarily.

"The reason the appellant quit his job resulted from an incident during the night shift on July 2, 1962. He described this incident to an interviewer in the Spokane employment office on July 20, 1962, and signed the following statement as a summation of his reason for quitting his job:

"I quit the job at Carl Carbon because he, the superintendent, gave me an order that was unreasonable. We were replacing some belts on some machinery; the superintendent's 15-year old son was attempting to do the job and there was only room for one person to work.

"The superintendent told me to get my finger out of my ass and get the belt on, not to stand there and let a 15-year old kid do it.

"I then quit because it wasn't my place to tell the 15-year old to get out of the way and furthermore, I did not care to be sworn at."

"The appellant states that he had no supervisory responsibilities over the superintendent's son, who was working on another job on this project. He had returned to the machine after getting a tool when he found the superintendent's son under the machine, taking up the only space available to effect a repair. The superintendent was standing along side the machine when the appellant found the boy was attempting to repair the belt. It was his belief that it was not his responsibility to get the boy out of the machine and, consequently, he waited for the superintendent to give the orders. Instead he received the comment outlined in his statement. As it was nearing the close of the shift, he said nothing at all about the incident that night, but told the superintendent the next day this would be his last shift. He gave no reason for his leaving, and did not file a grievance with his union. He was paid wages of approximately \$43.00 for the two days ending July 3, 1962."

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

ISSUE

I

Did the petitioner voluntarily quit work without good cause, thereby properly incurring the disqualification provided under Section 73 of the Act?

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

CONCLUSION

I

Section 73 of the Act provides as follows:

"SEC.73. Disqualification for Voluntary Quit. An individual shall be disqualified for benefits for the calendar week in which he has "left work voluntarily without good cause and for the five calendar weeks which immediately follow such week." (RCW 50.20.050)

There is no question in the instant case concerning the fact that the petitioner voluntarily quit his former employment with Carl Carbon. The sole issue revolves around the question of whether or not he had "good cause" for so doing.

Unrefuted testimony contained in this record establishes the fact that obscene language was directed to the petitioner by his immediate supervisor. There is a total absence of evidence which would indicate that the petitioner had, through his own action or inaction, invited his supervisor's caustic comment. While we are not in disagreement with the principles enunciated by the Appeal Tribunal, it is our opinion that the present record, taken as a whole, establishes the fact that the petitioner's moral standards were grievously offended by the supervisor's remarks. We find no evidence which would lead us to believe that the petitioner is possessed of a higher degree of sensitivity than one would expect of a normally prudent person faced with a similar outburst from his supervisor. We have previously held that an individual has good cause for voluntarily leaving his employment when exposed to scurrilous, profane, obscene, or abusive language (See *In re Groth*, Docket No. A-31379, Review No. 4183 [CD 343]). It is our opinion that the petitioner had good cause for voluntarily leaving his work under the circumstances presented herein, notwithstanding his failure to comply with our general principle that, benefits will not be allowed in cases involving a voluntary quit because of a personal grievance with the employer, unless or until a grievance has been filed with the employer and/or labor organization having a working agreement in force with the employing establishment. Accordingly,

IT IS HEREBY ORDERED that the Decision of the Appeal Tribunal entered in this matter on the 23rd day of August, 1962, shall be SET ASIDE. Benefits shall be allowed the petitioner commencing with the calendar week ending July 7, 1962, through the calendar week ending August 11, 1962, providing he is otherwise eligible and qualified therefor.

DATED at Olympia, Washington, September 7, 1962.

OTTO S. JOHNSON

Acting Commissioner
Employment Security Department

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Groth CD 343

Voluntary Quit -- Chastisement of employee by use of obscenities good cause for quit

**BEFORE THE COMMISSIONER OF
THE EMPLOYMENT SECURITY DEPARTMENT
OF THE STATE OF WASHINGTON**

Review No. 4138

<i>In re</i>	)	Case No. 343
	)	Docket No. A-31379
EARL W. GROTH)	
	)	DECISION OF
Petitioner	)	COMMISSIONER

EARL W. GROTH having duly petitioned the undersigned Commissioner to review a Decision of an Appeal Tribunal entered in this matter on the 18th day of January, 1957, and the Commissioner having carefully examined the entire record herein, thereby being fully advised in the premises, does hereby enter the following findings of fact.

The petitioner, aged 32, is an operator of construction equipment. He is a member of the Operating Engineers and is affiliated with Local 370 of Spokane, Washington. The petitioner commenced work for Cherf Brothers and Sandkey, Inc. at an hourly pay of \$2.85. Although receiving his pay from Cherf Brothers, the petitioner testified that he was working under the

direct supervision of one Carl Hohner, a sub-contractor on the job.

About 4:20 p.m. on October 27, 1956, the petitioner was in the process of pushing poles up a hill with a "cat". On his last trip up the hill, he noticed that his gas was getting low, as the "cat" would miss when going up the hill. After returning to the bottom of the hill, the petitioner observed Carl Hohner standing nearby. The petitioner asked Mr. Hohner whether he should attempt to push another pole up the hill or whether he should stop his work long enough to refill the gas tank. Mr. Hohner directed some obscene language towards the petitioner, advising him that he "should've watched it". The remark apparently was directed to the fact that the petitioner should have watched his gas consumption and had it refilled earlier in the day. The petitioner, feeling that he did not have to take such a remark, immediately terminated his employment.

The petitioner testified that he had never before had a conversation with Mr. Hohner and was totally unaware of the fact that Mr. Hohner was disposed to use profane language. It was the petitioner's position that he was used to profanity and had had it directed at him by others on prior occasions. However, as the petitioner stated, "it's not what they say, it's how they say it". The petitioner felt that Mr. Hohner, in directing the remark which he did to the petitioner, sincerely meant what he said. Andrew B. Olson, the dispatcher of the petitioner's local, appeared and testified to the fact that the union was aware of Mr. Hohner's propensity for using profanity. It was the position of the union that Mr. Hohner's conduct was detrimental to establishing good employer-employee relations, and that other former employees had left the employ of Mr. Hohner for the same reasons as were present in this case.

Turning now to the conclusions to be drawn from the foregoing facts, there is no question but that the petitioner left his work voluntarily. It remains to be determined whether such leaving was with "good cause". The Appeal Examiner reached the decision that the petitioner did not have good cause for leaving his employment. The basis for the Appeal Examiner's decision rests upon the Examiner's opinion that the employer did not use profanity with an intent to offend the petitioner.

Although it may be conceded, for the purposes of argument, that the intent of Mr. Hohner would be determinative of the basic issue presented herein, it must be noted that the record is devoid of any testimony upon which Mr. Hohner's intent could be determined. The employer, although receiving adequate notice of the issues involved, failed to provide this department with any information concerning the circumstances of the petitioner's job separation. Likewise, the employer failed to enter an appearance at the hearing or request a continuance thereof to provide for appearance at a later date. Inasmuch as the record

contains only the sworn testimony of the petitioner, which testimony is corroborated by the testimony given by Mr. Olson of the union, it is the considered opinion of the Commissioner that the petitioner has established good cause for having left his employment voluntarily. The preponderance of the evidence establishes that the petitioner was subjected to intentional profanity by his immediate superior thereby giving rise to complete justification for leaving the job without further discussion with his employer. In accordance with these conclusions, now therefore

IT IS HEREBY ORDERED that the Decision of the Appeal Tribunal entered in this matter on the 18th day of January, 1957, shall be SET ASIDE. Benefits shall be allowed the petitioner commencing with the calendar week ending November 10, 1956, providing he is otherwise eligible and qualified therefor.

DATED at Olympia, Washington, February 5, 1957.

PETER R. GIOVINE

Commissioner
Employment Security Department

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