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STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

**SUPREME COURT  
OF THE STATE OF WASHINGTON**

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SARA D. SPAIN,

Petitioner,

vs.

EMPLOYMENT SECURITY DEPARTMENT OF THE STATE OF

WASHINGTON,

Respondent.

Court of Appeals

Cause No. 33705-3-II

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**PETITION FOR DISCRETIONARY REVIEW**

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## **I. IDENTITY OF PETITIONER**

Petitioner Sara D. Spain was initially denied unemployment compensation benefits by the Employment Security Department after she quit her job because of an abusive employer. The Thurston County Superior Court reversed the ESD holding that the list of “good cause” reasons for quitting one’s job and qualifying for unemployment benefits under RCW 50.20.050 was not an exhaustive list. Division II of the Court of Appeals reversed the superior court and affirmed the ESD’s denial of benefits.

## **II. CITATION TO COURT OF APPEALS DECISION**

Division II of the Court of Appeals filed a decision on the merits of Ms. Spain’s appeal on February 7, 2007, in *Sara D. Spain v. State of Washington, Employment Security Department*, Court of Appeals Cause No. 33705-3-II. A copy of the decision is attached to this Petition as Appendix A (“App.”).

## **III. ISSUES PRESENTED FOR REVIEW**

1. Is it an issue of substantial public interest that the court below interpreted the Employment Security Act, RCW 50.20.050(2)(a) & (b), as setting out ten and only ten “good causes” for quitting one’s employment and qualifying for unemployment benefits

when such an interpretation denies benefits to Washington workers who must quit their jobs because of a verbally and behaviorally abusive employer?

2. Is it an issue of substantial public interest that the court below interpreted the Employment Security Act, RCW 50.20.050(2)(a) & (b), as setting out ten and only ten “good causes” for quitting one’s employment and qualifying for unemployment benefits when the plain language that introduces the list (“an individual is not disqualified when”) says nothing about the list being exhaustive?
3. When the legislature deleted from RCW 50.20.050(1)(c) language limiting “good cause” to “work-connected factors,” effective January 4, 2004, did the legislature reinstate the holding of *In re Bale*, 63 Wn. 2d 83, 385 P. 2d 545 (1963) under which an individual may have good cause for leaving work based on compelling personal reasons as determined on a case-by-case evaluation of “good cause”?

#### **IV. STATEMENT OF THE CASE**

##### **A. Substantive Facts: Job Separation.**

Sara Spain worked for Peterson Northwest, Inc. CP Comm. Rec. 53.<sup>1</sup> She quit, according to the Administrative Law Judge's Findings of Fact, "because of the way the president of the company, Bryan Peterson, treated her." CP Comm. Rec. 46-47.

Ms. Spain represented herself at the appeal hearing regarding the denial of benefits and the employer, Bryan Peterson, did not appear. CP Comm. Rec. 1.

Ms. Spain testified that there was verbal abuse at her job on a daily basis toward her or other employees. CP Comm. Rec. 11. The verbal abuse included profanity. CP Comm. Rec. 12. She and other employees were called "retards," and a "lot of time it was like God damn it, retards . . . ." CP Comm. Rec. 13. The abuse began shortly after she began the job. CP Comm. Rec. 13. The abuse included being talked down to, being told she should work faster, and being asked why she was so slow. CP Comm. Rec. 11. The

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<sup>1</sup>The Commissioner's Record is the sole record for review in this matter but it is paginated separately from the rest of the Clerk's Papers; the Commissioner's Record therefore will be referenced as "CP Comm. Rec." followed by the page as it is referenced in the original Commissioner's Record, the abbreviation meaning essentially the page where the cited material appears in the Commissioner's Record that is part of the Clerk's Papers.

owner would “kick things and throw things,” including kicking shelves and throwing whatever was in his hands, such as boxes of nails or tools. CP Comm. Rec. 13-14. Both the kicking and throwing occurred on a weekly basis. CP Comm. Rec. 14.

Ms. Spain testified about many incidents, including this one:

[T]he guys had done some work on a roof and it wasn't to his standard, and so he made everybody in the office go stand out in the freezing cold for like three hours while he just went off on us.

\* \* \*

It was freezing. It was like starting to rain. And I'm not sure, I think he was even going I hope it does rain so you guys can get soaked and miserable. He says I don't give a shit what you guys, how you guys feel, he doesn't care.

CP Comm. Rec. 21

When Ms. Spain offered a witness who would corroborate all that she had testified to regarding the abusive work environment, the ALJ declined to call the witness because he believed everything Ms. Spain had said:

**Judge Montes:** I don't need her [the additional witness] because *I've taken everything that you've told me as factual.*

CP Comm. Rec. 28 (emphasis added).

As a result of her employer's treatment of her, Ms. Spain quit her job on June 18, 2004, and applied for unemployment benefits. CP Comm. Rec. 9, 41, 44, 49.

### **B. Procedural History**

The ESD denied benefits. Ms. Spain appealed and after the hearing, the ALJ's findings adopted nearly everything that Ms. Spain had testified to about the abusive treatment she had received, including the following long list of abuses:

- she and other employees were called "retards" by the owner; she was berated for being too slow;
- she and other employees were faced with verbal, often profane, abuse from the owner;
- she and other employees witnessed the owner throwing and kicking inanimate objects on a weekly basis;
- she and other employees were forced to stand out in the "freezing cold" and rain for approximately "three hours" one day and were told by the owner that he hoped they "got soaked" and that he "did not care how they felt";
- she was called by the owner who was stuck in a traffic jam and he told her that had she joined him on the trip he

could have been in the carpool lane and he demanded that she find him the fastest way to his destination;

- she was further yelled at and abused when she told the owner that an employee's pay check had not cleared and the owner became angry because he had told Ms. Spain earlier that same day that the business was "in the red";
- she spoke to the owner and told him she did not like the way she was being treated and he promised to change his behavior but did not.

CP Comm. Rec. 47 (Findings of Fact 3, 4, 5, 6, 7).

The ESD and the ALJ denied Ms. Spain benefits because, according to the ESD, Ms. Spain had quit without "good cause" under the newly amended statute:

Although claimant's employer treated her in an unprofessional, demeaning and unjustified manner, based on the specific enumerated provisions above [of the Employment Security Act] these actions do not constitute good cause for quitting. Therefore, benefits are denied . . . .

CP Comm. Rec. 49. The Commissioner affirmed the ESD and the ALJ. CP Comm. Rec. 62; 32 (ESD decision); 49, 51 (ALJ decision); 62-63 (Commissioner's Order).

The Commissioner held as follows:

Here, claimant's reason for quitting her employment, viz., her employer's attitude and treatment of her, does not meet any of the statutory requirements set forth at RCW 50.20.050(2)(b)(i)-(x). Specifically, the record does not establish that (1) there was illegal activity at the workplace that (2) was reported to the employer and (3) which the employer failed to end. That being the case, claimant's reason for quitting does not constitute statutory "good cause."

CP Comm. Rec. 62.

On appeal of the Commissioner's Decision, the Honorable Paula Casey, Judge of the Thurston County Superior Court, reversed the commissioner's order, holding that the list of "good cause" quits was not an exclusive list. CP 20.

Specifically the Superior Court concluded as follows, in pertinent part:

[I]n retaining the term "good cause" in RCW 50.20.050(2)(a), the Legislature failed to accomplish its purposes in the language of the amendments. Thus, a claimant may qualify for benefits in one of two ways: (1) by establishing that he quit due to one of the ten factors set forth in RCW 50.20.050(2)(b), or (2) *by establishing that he had "good cause" under RCW 50.20.050(2)(a).* . . .

CP Sub 20 (emphasis added).

The ESD appealed this decision to Division II. Ms. Spain argued that the Superior Court was correct that the list of "good cause" quits in RCW 50.20.050(2)(b) was not an exclusive or

exhaustive list because it could not have been the intent of the Legislature to disallow benefits for those who quit due to a verbally and behaviorally abusive employer.

Division II disagreed and reversed the Superior Court based entirely on its prior decision: "This court considered these arguments in *Starr v. Employment Sec. Dep't* and determined that ... RCW 50.20.050(2)(b)(i)-(x) does, in fact, provide the exclusive list of non-disqualifying good cause reasons for quitting employment." *Spain v. ESD*, unpublished slip opinion at 2 (attached to this brief as Appendix A).

## V. ARGUMENT

**THIS CASE PRESENTS A QUESTION OF SUBSTANTIAL PUBLIC INTEREST BECAUSE THE DECISION BELOW MEANS THAT WASHINGTON WORKERS DO NOT HAVE "GOOD CAUSE" TO QUIT JOBS IN WHICH THEY ARE ABUSED.**

- 1. Sara Spain Had Good Cause To Quit Because She Had Been Verbally, Often Profanely, Abused And Otherwise Harassed And Subjected To A Hostile Work Environment Created By The Employer Himself And In Denying Ms. Spain Benefits The Commissioner Failed To Follow The Agency's Prior Decisions.**

Ms. Spain gave extensive testimony, as detailed above, about the abusive work environment at Peterson Northwest, Inc. She was called names, she was cursed at, and she had to witness

the employer's angry outbursts: his kicking shelves and throwing boxes of nails and tools. She and her fellow employees were forced to stand in the cold and rain for three hours while being yelled at and abused by the employer. She asked the employer to stop his abuse and despite his promises to do so, the abuse continued. But, according to the Employment Security Department, and Division II in this case and in *Starr v. Employment Security Department*, 130 Wn. App. 541, 123 P.3d 513 (2005), Sara Spain did not have good cause to quit and qualify for unemployment benefits.

Sara Spain did not have good cause to quit, according to the ESD, and by extension, *Starr*, because the behavior she was faced with on a daily and weekly basis was not on the statutory list of "good causes" to quit. But such outrageous behavior by one's employer has historically been held by the ESD and the courts to constitute good cause to quit and good cause to qualify for unemployment benefits. Furthermore, as the Superior Court here held, subsection 2(a) of the statute still contains the unqualified phrase "good cause" as it existed in prior years:

(2) With respect to claims that have an effective date on or after January 4, 2004:

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

RCW 50.20.050(2)(a) (emphasis added).

An employee in Washington should not be expected to endure abuse and even one act of verbal abuse has been held sufficient to justify a good cause qui by prior Commissioner's Decisions. The Commissioner's Order to the contrary in Ms. Spain's case that completely ignored these decisions should have been reversed, as it was reversed by the Thurston County Superior Court.

The Employment Security Act provides benefits as its preamble states to those workers who are out of work "*through no fault of their own.*" RCW 50.01.010 (emphasis added). Ms. Spain's unemployment was through no fault of her own, but the fault of her employer. That it was not her fault was demonstrated by the ALJ's findings of fact and the ESD's past decisions demonstrate why she had good cause to quit.

For instance, a claimant who quit because "the plant manager behaved in a belligerent and overbearing manner toward"

the claimant and because the claimant's complaints about the situation to the director of operations did not change the manager's behavior was found to have satisfied the "good cause" test in *In re Pischel*, Comm'r Dec 2d Series 672 (1981). The Commissioner there found that "good cause" was proved in a verbal abuse situation:

It is fairly obvious that a belligerent and abusive fellow worker is a "work connected factor" with the meaning of the [ESA] ..... 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. 543 (1957); *In re Neuschwander*, Comm. Dec. 507 (1962); *In re Simpson*, Comm. Dec. 513 (1962). . . . 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.

*Id.* (emphasis added).

Similarly, Mr. Earl Groth was found to have had good cause to quit his construction job when *on one occasion* his supervisor "directed some obscene language towards" him and told him he "should've watched it" with regard to the fuel level in the "cat" or caterpillar equipment that Mr. Groth was operating. After the verbal abuse, Mr. Groth immediately terminated his employment and subsequently was granted benefits when the Commissioner found

that Mr. Groth “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 re Groth*, Comm’r Dec. 343 (1957).

Finally, a *single incident of disrespectful behavior* and profanity entitled another claimant to benefits in *In re Simpson*, Comm’r Dec. 513 (1962). In that case, Mr. Simpson, a member of the Operating Engineers Union who was working as a crusher operator with heavy equipment near Pullman, quit after the superintendent on the job “told me to get my finger out of my ass and get the belt back on, [and] not to stand there and let a 15-year old kid do it.” The Commissioner granted benefits to Mr. Simpson, finding that “[u]nrefuted testimony contained in this record establishes the fact that obscene language was directed to the petitioner by his immediate supervisor” and that “[w]e have previously held that an individual has good cause for voluntarily leaving his employment when exposed to scurrilous, profane, obscene, or abusive language. . . .”

Ms. Spain’s case is analogous to each of these three cases, and the facts in Ms. Spain’s case are even more egregious. Ms. Spain suffered *ongoing* verbal abuse and *other harassment* from

her employer, the owner of the company, of such a nature and over such a period of time with no change as to compel a reasonably prudent person to finally leave her job, and nothing changed despite complaints to the owner about his behavior and his promises to change. That is exactly the way that Mr. Pischel was verbally abused over a period of time by a belligerent fellow worker and, despite complaints, he saw no change in his circumstances. Mr. Groth was found to have good cause *from one incident of obscene language* directed toward him by his supervisor; surely the ongoing abuse Ms. Spain endured surpassed the abuse that justified Mr. Groth's quitting. And one incident of an abusive, profane "reprimand" was sufficient to justify Mr. Simpson's quitting his job as well; the numerous profane and abusive "reprimands" that Ms. Spain endured should have equally qualified his quit as one for "good cause."

Consequently, for the same reasons that the claimants in *Pischel, Groth, and Simpson* qualified for benefits after quitting because of the verbal abuse they received at work, so should Ms. Spain have received benefits and the Commissioner's Order to the contrary should be reversed because it failed to follow the department's own rules and past decisions.

Review by this court is merited therefore because it is a matter of substantial public interest that Washington workers under the *Spain* and *Starr* decisions cannot quit and qualify for unemployment benefits even if they are abused by their employers.

**2. The Nearly Identical “Plain Language” In Subsection 1(b) Of RCW 50.20.050, Pertaining To Claims Prior To 2004, Had Never Been Interpreted As Mandating An “Exclusive List” Of Good Causes For Quitting One’s Work And Therefore Interpreting 2(b) To Mandate Such An Exclusive List Was Error.**

The decision below essentially denied benefits to Ms. Spain because the cause of her quitting her job did not appear in the list of reasons for “good cause” to quit under RCW 50.20.050(2)(b). The Thurston County Superior Court reversed these holdings, finding that the list in the statute was not exhaustive because the Legislature had retained the general “good cause” language in subsection (2)(a) of the statute.

The Employment Security Act’s section pertaining to “good cause” quits, for claims arising *prior to* January 4, 2004, reads in pertinent part as follows:

(1) With respect to claims that have an effective date before January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he

or she has left work *voluntarily without good cause* and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

\* \* \*

***(b) An individual shall not be considered to have left work voluntarily without good cause 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 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 the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment: PROVIDED, That these precautions need not have been taken 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;

(iii) He or she has left work to relocate for the spouse's employment that is due to an employer-initiated mandatory transfer that is outside the existing labor market area if the claimant remained employed as long as was reasonable prior to the move; or

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.

RCW 50.20.050(1)(i)-(iv). The four reasons enumerated in i – iv above were **never** interpreted as an “exclusive list.” See, e.g., *Ayers v. Employment Security Department*, 85 Wn.2d 550, 536 P.2d 610 (1975); *G & G Electric v. Employment Security Department*, 59 Wn. App. 410, 793 P.2d 987 (1990); *Hussa v. Employment Security Department*, 34 Wn. App. 857, 664 P.2d 1286 (1983); *Vergeyle v. Employment Security Department*, 28 Wn. App. 399, 623 P.2d 736 (1981); *Coleman v. Employment Security Department*, 25 Wn. App. 405, 607 P.2d 1231 (1980).

The statute for claims arising after January 4, 2004, and interpreted by this court in *Starr*, reads as follows:

(2) With respect to claims that have an effective date on or after January 4, 2004:

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

\* \* \*

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

\* \* \*

RCW 50.20.050(2)(b). Following subsection “b,” the statute lists ten reasons for leaving work. RCW 50.20.50(2)(b)(i)-(x). Division II has held this list to be an “exclusive list.” *Starr*, 130 Wn. App. at 546, 549.

Only after the legislature amended the statute for claims filed in 2004 and thereafter did the Employment Security Department begin to construe the language of 2(b) as setting up an exclusive list. The *Starr* decision holds the language of 2(b) is so “plain” as to admit to no other interpretation except “exclusivity,” but relies on an *inference* from that language rather than the language itself:

[B]ecause the Legislature specified in section (2)(b) ten circumstances that will not disqualify an individual from unemployment benefits under section (2)(a), ***we infer that RCW 50.20.050(2)(b) comprises the Legislature's exclusive list of circumstances*** that will not defeat a claim for unemployment compensation when a worker voluntarily quits employment.

*Starr*, 130 Wn. App. at 549.

But this opinion fails to explain why the nearly identical language of 1(b) had never been interpreted to have – by inference - set up an exclusive list prior to 2004.

Therefore, because the “plain language” of 1(b) was never interpreted to set up an exclusive list, neither should the “plain

language” of 2(b) be interpreted to set up an exclusive list. And finally, *Starr* is distinguishable from *Spain* because the claimant in *Starr* was forced to leave his job due to his family obligations unrelated to his job: Ms. Spain was forced to leave her job because of an abusive employer that was at the center of her job. Therefore, because the decision below misinterprets the statute and fails to acknowledge that *Starr* and *Spain* were radically different situations, this case presents an issue of substantial public interest for all Washington workers facing an abusive work environment.

**3. The Identical “Plain Language” In Subsection 1(a) Of RCW 50.20.050, Pertaining To Claims Prior To 2004, Has Been Interpreted By The Washington Supreme Court To Include “Compelling Personal Reasons” For Leaving One’s Employment That Are Not Listed In The Statute And The Identical Language In 2(a) Should Be Interpreted In The Same Way.**

Section 1(a) of the ESA pertaining to “good cause” quits for claims arising prior to January 4, 2004, reads in pertinent part as follows:

(1) With respect to claims that have an effective date before January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she ***has left work voluntarily without good cause*** and

thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

RCW 50.20.050(1)(a) (emphasis added).

Section 2(a) of the ESA pertaining to “good cause” quits for claims arising after January 4, 2005, reads in pertinent part as follows:

(2) With respect to claims that have an effective date on or after January 4, 2004:

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

RCW 50.20.050(2)(a) (emphasis added).

In interpreting exactly the same language – “has left work voluntarily without good cause” - in the 1963 statute as exists in the statute pertaining to claims filed either before or after 2004, the Washington Supreme Court found, based on the following language, “good cause” for quitting for reasons not enumerated in the statute:

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 (as it was written in 1963) (emphasis added) as cited in *In re Bale*, 63 Wn.2d 83, 87, 385 P.2d 545 (1963).

Similarly in the instant case, the Thurston County Superior Court found that the Legislature's retention of the language regarding "good cause" in subsection (2)(a) of the statute allowed for "good cause" reasons to quit other than the ten listed after (2)(b). CP Sub 20. That decision was the correct one.

## **VI. CONCLUSION**

Ms. Spain asks this Court to accept review, to reverse the decision of the Court of Appeals affirming the Commissioner's final determination, and to remand this case to the Commissioner for an award of unemployment benefits under RCW 50.20.050(2). Ms. Spain also asks this court to award a reasonable attorney's fee under RCW 50.32.160.

Dated this \_\_\_\_ day of February 2007.

Respectfully submitted,

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Marc Lampson, WSBA # 14998  
Attorney for Petitioner Ms. Spain

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IN THE SUPREME COURT  
FOR THE STATE OF WASHINGTON

SARA D. SPAIN,	)	
	)	
Petitioner,	)	
	)	
and	)	Division II, Court of Appeals
	)	Case No.: 33705-3 II
STATE OF WASHINGTON,	)	
EMPLOYMENT SECURITY	)	
DEPARTMENT,	)	<b>CERTIFICATE OF SERVICE BY MAIL</b>
Respondent.	)	

**CERTIFICATE**

I certify that I mailed a copy of the Petitioner's Petition for Discretionary Review in this matter postage prepaid, on February 28, 2007 to the Respondent ESD's attorney, Erika Uhl, WSBA # 30581, Assistant Attorney General, Office of the Attorney General, Licensing & Administrative Law Div., 800 Fifth Ave., Suite 2000, Seattle, WA 98104-3188.

Dated this February 28, 2007.



Marc Lampson  
WSBA # 14998  
Attorney for Petitioner Sara Spain



**SUPREME COURT  
OF THE STATE OF WASHINGTON**

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SARA D. SPAIN,

Petitioner,

vs.

EMPLOYMENT SECURITY DEPARTMENT OF THE STATE OF

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Court of Appeals

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**PETITION FOR DISCRETIONARY REVIEW**

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**APPENDIX A      DECISION OF THE  
COURT OF APPEALS  
IN THIS CASE FOR  
WHICH REVIEW IS  
SOUGHT**

FILED  
COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

BY lo  
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

PENOYAR, J. — The Employment Security Department (ESD) appeals a Thurston County Superior Court order reversing a decision by the ESD commissioner.<sup>1</sup> 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.

<sup>1</sup> 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).

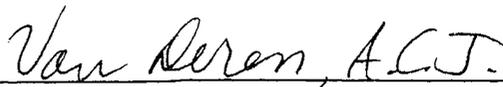
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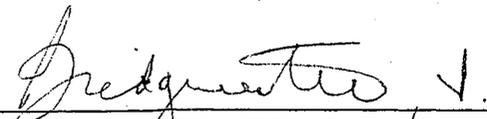
The superior court's decision is reversed. We reinstate the commissioner's decision and deny Spain's request for attorney fees.

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    RCW 50.20.050**

**RCW 50.20.050****Disqualification for leaving work voluntarily without good cause.**

(1) With respect to claims that have an effective date before January 4, 2004:

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

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual shall not be considered to have left work voluntarily without good cause 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 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 the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment: PROVIDED, That these precautions need not have been taken 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;
- (iii) He or she has left work to relocate for the spouse's employment that is due to an employer-initiated mandatory transfer that is outside the existing labor market area if the claimant remained employed as long as was reasonable prior to the move; or
- (iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.

(c) 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. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the individual at the time he or she accepted the employment and where, in the judgment of the department, the distance is customarily traveled by workers in the individual's job classification and labor market, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment, unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual were he or she required to continue in the employment.

(d) Subsection (1)(a) and (c) of this section shall not apply to an individual whose marital status or domestic responsibilities cause him or her to leave employment. Such an individual shall not be eligible for unemployment insurance benefits beginning with the first day of the calendar week in which he or she left work and thereafter for seven calendar weeks and until he or she has requalified, either by obtaining bona fide work in employment covered by this title and earning wages in that employment equal to seven times his or her weekly benefit amount or by reporting in person to the department during ten different calendar weeks and certifying on each occasion that he or she is ready, able, and willing to immediately accept any suitable work which may be offered, is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and placement services as are available through the department. This subsection does not apply to individuals covered by (b)(ii) or (iii) of this subsection.

(2) With respect to claims that have an effective date on or after January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has

obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of the individual's training and experience.

(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)(A) With respect to claims that have an effective date before July 2, 2006, he or she: (I) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: (1) Is outside the existing labor market area; and (2) 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 (II) remained employed as long as was reasonable prior to the move;

(B) With respect to claims that have an effective date on or after July 2, 2006, he or she: (I) Left work to relocate for the spouse's employment that, due to a mandatory military transfer, is outside the existing labor market area; and (II) 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, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

(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.

[2006 c 13 § 2. Prior: 2006 c 12 § 1; 2003 2nd sp.s. c 4 § 4; 2002 c 8 § 1; 2000 c 2 § 12; 1993 c 483 § 8; 1982 1st ex.s. c 18 § 6; 1981 c 35 § 4; 1980 c 74 § 5; 1977 ex.s. c 33 § 4; 1970 ex.s. c 2 § 21; 1953 ex.s. c 8 § 8; 1951 c 215 § 12; 1949 c 214 § 12; 1947 c 215 § 15; 1945 c 35 § 73; Rem. Supp. 1949 § 9998-211; prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

**Notes:**

**Conflict with federal requirements -- Part headings not law -- Severability -- 2006 c 13:** See notes following RCW 50.20.120.

**Retroactive application -- 2006 c 12 § 1:** "Section 1 of this act applies retroactively to claims that have an effective date on or after January 4, 2004." [2006 c 12 § 2.]

**Conflict with federal requirements -- Severability -- Effective date -- 2003 2nd sp.s. c 4:** See notes following RCW 50.01.010.

**Application -- 2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15:** See note following RCW 50.22.150.

**Conflict with federal requirements -- Severability -- Effective date -- 2000 c 2:** See notes following RCW 50.04.355.

**Effective dates, applicability -- Conflict with federal requirements -- Severability -- 1993 c 483:** See notes following RCW 50.04.293.

**Severability -- Conflict with federal requirements -- 1982 1st ex.s. c 18:** See notes following RCW 50.12.200.

**Severability -- 1981 c 35:** See note following RCW 50.22.030.

**Severability -- 1980 c 74:** See note following RCW 50.04.323.

**Effective dates -- Construction -- 1977 ex.s. c 33:** See notes following RCW 50.04.030.

**Effective date -- 1970 ex.s. c 2:** See note following RCW 50.04.020.