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STATE OF WASHINGTON
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No. 33705-3-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

ORIGINAL

EMPLOYMENT SECURITY DEPARTMENT,
STATE OF WASHINGTON,

Appellant,

v.

SARA D. SPAIN

Respondent.

BRIEF OF RESPONDENT

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A. ISSUES ON APPEAL

1. Did Ms. Sara Spain have “good cause” to quit her job and qualify for unemployment insurance benefits when her employer had verbally and otherwise abused her and when undisputed findings of fact by an Administrative Law Judge (CP Comm. Rec. 47¹) stated that, among other things, the employer

- yelled at Ms. Spain and the other employees “on a regular basis” and called them “retards;”
- used profanity toward the employees;
- “would throw or kick inanimate objects in his anger” . . . “approximately once per week;” and
- brought Ms. Spain “and all the office employees outside in the freezing cold and proceeded to berate them for approximately three hours [and] [a]s it began to rain he told them he hoped they got soaked and that he did not care how they felt;”

and when under these circumstances the Thurston County Superior Court decided that the list of reasons under RCW 50.20.050 was not an exhaustive list of “good cause” reasons to quit one’s job? (Issue Pertaining to Appellant’s Assignment of Error 1).

2. Should the Superior Court’s holding that the list of “good cause” reasons to quit one’s job under RCW 50.20.050 is not an exhaustive list be upheld despite this court’s recent ruling to the contrary in *Starr v. Employment Security Department*? (Issue Pertaining to Appellant’s Assignment of Error 1).

¹ 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.

3. Should being verbally and otherwise abused by one's employer constitute "good cause" to quit one's job and qualify for unemployment insurance benefits under RCW 50.20.050(2)(a)? (Issue Pertaining to Appellant's Assignment of Error 1).
4. Should attorney fees and costs be awarded to counsel for Ms. Spain for work on this case at both the administrative and judicial review levels when the fees and costs are reasonable and when the Thurston County Superior Court reversed a Commissioner's Order in this case and awarded fees and costs?

B. STATEMENT OF THE CASE

1. Substantive Facts: Job Separation.

Sara Spain worked for Peterson Northwest, Inc. CP Comm. Rec. 53. 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 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.

2. Procedural Facts

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 hope 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 50.20.50(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 finding 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.

In a very recent decision, *Starr v. Employment Security Department*, Docket Number 33003-2-II, (Wash. Ct. App. Div. II Nov. 22, 2005), retrieved at <http://www.courts.wa.gov/opinions/?fa=opinions.opindisp&docid=330032MAJ>, this court has held that “RCW 50.20.050(2)(b) provides an exclusive list of ‘good cause’ reasons for voluntarily quitting employment” Slip Op. 2 (attached).

C. ARGUMENT

- 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 out, 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 by extension, this court in *Starr v. Employment Security Department*, Sara Spain did not have good cause to quit.

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. An employee is not expected to endure abuse and even one act of verbal abuse has been held sufficient to justify a good cause quit. The Commissioner’s Order to the contrary in Ms. Spain’s case that completely ignored these decisions should have been reversed, and 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). 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.

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 claimant in *Pischel, Groth, and Simpson* qualified for benefits after quitting because of the verbal abuse they received at work, so should have 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.

"Whether or not a voluntary termination is with good cause is a legal determination and is reviewed *de novo*." *Nielsen v. Employment Security Department*, 93 Wn. App. 21, 41, 966 P.2d 399 (1998).

Under the APA, a reviewing court may overturn a final agency decision on the basis that "the order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for the inconsistency." RCW 34.05.570(3)(h). This provides the reviewing court with the power to review certain "rules" that an agency may follow to determine whether those rules have a rational basis.

The Commissioner is authorized to issue two kinds of "rules." First, there are the administrative rules which must be promulgated pursuant to the APA. Secondly, there are "precedential Commissioner's Decisions," authorized by RCW 50.32.095, permitting the Commissioner to designate certain adjudicative decisions as "precedential." These precedential decisions have been frequently referred to by courts in interpreting decisions of ESD. *See, e.g., Vergyle v. Employment Security*, 28 Wn. App. 399, 403, 623 P.2d 736 (1981)[citing *In re Wedvik*, Comm. Dec. 1107 (1974)]. Courts impose a duty of consistency toward similarly situated persons and have held that "administrative agencies may not treat similar situations in dissimilar ways." *Vergyle, id.*, [citing *Jones v. Califano*, 576 F.2d 12 (2nd Cir. 1978)]. Pursuant to RCW 34.05.570(3)(h), a decision of the Commissioner

which is inconsistent with either precedential Commissioner's Decisions *or* administrative rules *and* fails to articulate a reason for this departure from Department rule should be overturned on the basis that the decision inconsistent with a rule of the agency.

In Ms. Spain's case, the Commissioner and the ALJ completely ignored the past decisions of the ESD that were discussed above (*Pischel, Groth, Simpson*) that have found that even one act of abuse toward an employee can justify that employee quitting his job and can qualify that employee for unemployment benefits. For this reason, the Commissioner's Order in this case should be reversed because it fails to follow the agency's own rules as represented by its past decisions in exactly analogous situations.

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 ESD, ALJ, and Commissioner in this case 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 “good cause” reasons for leaving work. RCW 50.20.50(2)(b)(i)-(x). This court has now held this list to be an “exclusive list.” *Starr*, Slip Op. at 2, 5.

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.” *Starr*, Slip Op. 4-5. But this opinion fails to explain why the nearly identical language of 1(b) had never been interpreted to have set up an exclusive list.

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. The decisions to the contrary by the Commissioner in Ms. Spain’s case and by this court in *Starr* were errors of law and should be reversed.

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 to reunite with a spouse:

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).

The *Bale* court held that the quoted language contemplated awarding unemployment benefits to those who voluntarily left work *with good cause* “whether or not the cause is ‘attributed to or connected with the employment.’” *In re Bale*, 63 Wn.2d at 87. Consequently, the Washington Supreme Court concluded, based on this language, that “it is patently obvious that . . . the act permits the allowance of benefits to those who *cease employment for personal reasons* without regard to whether the claimant has been involuntarily unemployed.” *Id.*

This court, however, in *Starr*, found *Bale* inapplicable because “it does not follow that the Legislature intended the same result” as occurred in *Bale* when the legislature made its 2004 amendments. *Starr*, Slip Op. at 5. The *Starr* court found an alternative explanation:

Rather, an alternative reasonable explanation for claims filed after January 4, 2004, under section (2)(a), is that the Legislature replaced section 1(c)'s 'work connected' restriction with section (2)(b)'s exhaustive list of 'good cause' circumstances, not all of which are work connected and some of which describe compelling personal reasons.

Starr, Slip Op. at 5.

Starr, Slip Op. at 5.

But the removal of the “work connected” restriction that the *Starr* court indicates occurred in the 2004 amendments also occurred in the amendments that were interpreted in *Bale*:

[W]e conclude that the legislature intended to remove, as a disqualification for the receipt of unemployment compensation benefits, the limitation provided by the 1943 amendment that good cause be “for reasons related to the work in question” and not “for a personal reason not connected with or related to his work”

In re Bale, 63 Wn.2d at 89.

As a consequence of this analysis, *Bale* held that “good cause” for termination of employment, under the statute, may include compelling personal reasons.” *In re Bale*, 63 Wn.2d at 90 (emphasis added).

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.

The same result should have occurred in *Starr* and should occur in the instant case so that Ms. Spain can receive the benefits to which she was entitled. This is especially true given recent

statutory amendments that were not noted in the *Starr* decision, amendments that insist the statute be interpreted liberally.

4. THE LIBERAL INTERPRETATION TO BE ACCORDED THE ESA TO FAVOR CLAIMANTS MANDATES THAT MS. SPAIN BE FOUND ELIGIBLE FOR BENEFITS.

No where in the *Starr* decision is there an acknowledgment that the statute is to be liberally interpreted or an acknowledgment that the legislature in 2005 amended the statute, once again, to emphasize that the statute is to be liberally interpreted. *Starr* fails to consider that insisting that there are ten and only ten “good causes” for quitting one’s job is directly counter to “liberal construction.” Liberally construing 2(b) of the present statute would show that when millions of Washington’s citizens are employed, a finite list of ten and only ten “good cause” reasons for quitting is absurd and could not have been intended by the legislature.

Ms. Spain’s case presents a compelling one for why the statute cannot be interpreted as allowing only ten reasons to quit: no Washington citizen, or citizen of any state, should be forced to endure an abusive employer or an abusive work environment.

Reading the statute as permitting ten and only ten good causes for quitting one’s job is just the sort of pinched reading the

legislature must have had in mind when in 2005 it enacted a new section of the ESA insisting on liberal interpretation. After the legislature amended the statute in 2004, it removed the language regarding the liberal interpretation that was to be accorded the statute, language that had been in the preamble of the statute for decades. When this removal began to have a negative impact on claimants' eligibility for benefits, the legislature amended its error and reinstated – emphatically – the language demanding that the statute be liberally interpreted.

On April 22, 2005, Governor Gregoire signed Engrossed House Bill 2255, Chapter 133, Laws of 2005, that had been passed by the State House of Representatives on April 18 and the State Senate on April 15. See <http://www.leg.wa.gov/pub/billinfo/2005-06/Htm/Bills/Session%20Law%202005/2255.SL.htm>.

Section 1 of 2255 adds a new section to the Employment Security Act and states in part that the *“legislature further finds that the system is falling short of [the Act’s] . . . goals by failing to recognize the importance of applying liberal construction for the purpose of reducing involuntary unemployment, and the suffering caused by it, to the minimum, and by failing to provide equitable benefits to unemployed workers.”* Engrossed House Bill 2255,

Chapter 133, Laws of Washington 2005, Sec. 1 (emphasis added). Additionally, the legislature also reinserted into the preamble of the ESA the mandate that “this title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.” *Id.*, Sec. 2 (emphasis in original due to underlining indicating the added language). Finally, another new section was added to the ESA to make the 2005 amendments and additions effective immediately:

This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Engrossed House Bill 2255, Chapter 133, Laws of Washington 2005, Sec. 12.

Even prior to these changes the Act should have been liberally construed. The statute is a remedial statute designed “to remedy any widespread unemployment.” RCW 50.01.010. Remedial statutes are to be liberally construed. *State v. Douty*, 92 Wn.2d 930, 603 P.2d 373 (1979); *State v. Grant*, 89 Wn.2d 678, 575 P.2d 210 (1978); *Kittilson v. Ford*, 23 Wn. App. 402, 595 P.2d 944 (1979); see generally, Norman J. Singer, *Sutherland Statutes and Statutory Construction* § 60.01 (5th ed. 1992 & Supp. 2001).

“Unemployment compensation statutes were enacted for the purpose of relieving the harsh economic, social and personal consequences resulting from unemployment. If these statutes are to accomplish their purpose, *they must be given a liberal interpretation.*” 3A Norman J. Singer, *Sutherland Statutory Construction* (2001 Revision & 2003 Cumulative Supplement) § 74.7 (citing cases from 35 states, including *Employees of Pac. Maritime Ass’n v. Hutt*, 88 Wn.2d 426, 562 P.2d 1264 (1977)).

Moreover, “[p]rovisions which disqualify employees from receiving unemployment benefits must be narrowly construed.” *Sutherland* § 74.7, *supra*. Consequently, under explicit statutory authority, case law, and scholarly analysis, the ESA is to be liberally interpreted and a liberal interpretation in Ms. Spain’s case mandates she be awarded benefits.

5. ATTORNEY FEES AND COSTS IN THIS CASE ARE MANDATED BY STATUTE WHEN A COMMISSIONER’S ORDER IS REVERSED ON JUDICIAL REVIEW.

A claimant who succeeds in convincing a court to reverse a Commissioner’s Order is allowed reasonable attorney fees and costs as mandated by statute:

It shall be unlawful for any attorney engaged in any appeal to the courts on behalf of an individual involving the individual's application for initial determination, or claim for waiting period credit, or claim for benefits to charge or receive any fee therein in excess of ***a reasonable fee to be fixed by the superior court in respect to the services performed in connection with the appeal taken thereto and to be fixed by the supreme court or the court of appeals in the event of appellate review, and if the decision of the commissioner shall be reversed*** or modified, such fee and the costs shall be payable out of the unemployment compensation administration fund. ***In the allowance of fees the court shall give consideration to the provisions of this title in respect to fees pertaining to proceedings involving an individual's application for initial determination, claim for waiting period credit, or claim for benefits.*** In other respects the practice in civil cases shall apply.

RCW 50.32.160 (emphasis added). The fees and costs contemplated in this statute are stated in mandatory terms: "such fee and the costs *shall* be payable out of the unemployment compensation administration fund." *Id.*

The law with regard to those fees and costs is discussed below to demonstrate that such a request is 1. Reasonable in relation to similar administrative and judicially decided public benefits appeals cases in 2004-05 in Western Washington and going back some ten years; 2. Commensurate with the time and labor required as well as the experience and ability of the lawyers performing the services; and 3. Consistent with statutes and case

law that allow attorney fees for work performed both in administrative and judicial arenas.

- a) **An Hourly Rate Of \$225 Is Reasonable Because The Fee Is Similar To Attorney Fee Rates In Recent Administrative And Judicial Proceedings In Western Washington, Including Others In Which Present Counsel Has Been Awarded Fees.**

Objective measures indicate that \$225.00 is a reasonable hourly fee for the attorney fee in this case. Determining a “reasonable attorney fee” is sometimes difficult because both sides in an attorney fee dispute are “interested parties,” so affidavits from other attorneys in the offices of the interested attorneys are unlikely to carry much weight. To complicate matters, few reported cases specify an exact dollar amount to provide an “objective” indication of a “reasonable” attorney fee.

However, a recent decision from February 2004 involving an administrative agency hearing and a public interest law firm in Seattle provides an objective measure. In *Gutierrez v. Regents of the University of California* (retrieved initially on July 1, 2004, at http://www.oalj.dol.gov/public/arb/decsn2/99_116b.erap.pdf) (attached), attorneys were awarded \$200 and \$250 hourly fees as

a result of a hearing before the federal Administrative Review Board, for a total of \$19,294.55. The *Gutierrez* case is a more objective statement of a reasonable attorney fee in administrative cases this year in Seattle than an affidavit from an interested attorney.

The *Gutierrez* case states as follows:

We find that an hourly rate of \$200 to be appropriate for Mrs. Gold. We find an hourly rate of \$250 appropriate for Mr. Sheridan and Mr. Taylor based upon their years of practice and expertise.

Gutierrez, at 3 (attached). This case is analogous to the current case because *Gutierrez* involved administrative law, it involved a government agency, and the attorneys who were awarded attorneys' fees were working for a public interest law firm, the Government Accountability Project with offices in Seattle.

The attorneys in *Gutierrez* had fewer years of experience than counsel in the present case. Attorney Jack Sheridan (admitted to WSBA in 1992, Bar No. 21473) in *Gutierrez*, is a Washington State attorney and he was awarded \$250.00 per hour attorneys' fees; attorney Dana Gold (admitted to WSBA 1995, Bar No. 25219) is a Washington State attorney and she was awarded \$200.00 per hour in attorney's fees.

Similarly, nearly ten years ago the Washington Court of Appeals upheld an award of attorney fees at an hourly rate of \$225 for an attorney with 20 years practice in *Absher Construction Co. v. Kent School District*, 79 Wn. App. 841, 917 P.2d 1086 (1995), where the court held that “[w]e conclude that the hourly rates requested are reasonable in the absence of evidence that they are not.” *Id.* at 848.

Further, counsel has received this fee in prior fee awards from the Superior Courts in Washington in cases involving unemployment benefits.

Therefore, the attorney fee hourly rate in the instant case is reasonable based upon *Gutierrez*, *Absher*, and prior awards to counsel. Counsel in the instant case was admitted to practice law in Washington in 1985, 20 years ago, and has worked for a personal injury firm, Evergreen Legal Service’s Institutional Legal Services Project, the Washington Appellate Defender Association, the Unemployment Law Project, and as a contract attorney for numerous firms; he has taught legal writing, research, pretrial litigation, oral advocacy, and appellate advocacy in 11 plus years of teaching at Seattle University School of Law and Basic Legal Skills for two quarters at the University of Washington School of Law, and

has taught in many paralegal programs in the Seattle and Tacoma areas. His practice experience has included practicing in trial and appellate courts, in federal and state courts, and in both the civil and criminal arenas.

The Unemployment Law Project, similar to the Government Accountability Project in *Gutierrez*, is a public service “not for profit” law firm founded in 1984. It represents unemployed citizens of Washington in their applications for unemployment benefits and is funded largely by donations. Its attorneys, paralegals, and volunteers represent on average 1000 claimants a year.

Further, while not determinative, the Rules of Professional Conduct, specifically RPC 1.5(a), provide some guidance for “reasonable” attorney fees, and the State often uses 1.5 in its opposition to fees in these matters. The pertinent factors in 1.5 are (1) the time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly; (2) the fee customarily charged in the locality for similar legal services; and (3) the experience, reputation, and ability of the lawyer or lawyers performing the services.

“The fee customarily charged in the locality for similar legal services” is best provided by an objective source such as *Gutierrez*,

and other similar awards in similar cases in Western Washington. Regarding the “difficulty” of the issue, it was apparently sufficiently difficult to create contradictory decisions from the ALJ and the Commissioner, both of whom applied different tests. Finally, the work done in this case by counsel is sufficient for the court to judge “the ability, reputation, and experience of the lawyers involved,” and thus, under RPC 1.5, as well as the other considerations discussed above, an hourly fee of \$225 here is reasonable.

b) **The Hours Spent In Writing The Superior Court and Court of Appeals Briefs In This Case Were Reasonable Because Writing Included Reading The Commissioner’s Record, Doing Legal Research, Writing The Brief, Revising It, Cite-Checking The Law Cited, And Otherwise Finalizing The Brief For Filing.**

Good writing takes time. The time expended on the briefs in this case was reasonable, and the best evidence is the final product. It can be reasonably anticipated that the State will argue that the time spent on the case was not reasonable. To the contrary, the time spent was consistent with the product produced: a successful appeal.

Counsel for the petitioner has been writing appeal briefs since the beginning of his legal career as a paralegal in 1980,

writing arbitration appeal briefs for a labor-side labor law firm. As an attorney he has handled civil appeals and specialized in appeals when working for the Washington Appellate Defender Association and writing and contributing to several editions of the *Washington Appellate Practice Deskbook*. Additionally, he has taught legal writing and advocacy for over twelve years and has taught and supervised appellate advocacy clinics. This work has revealed at least one firm lesson: good writing takes time.

Further, the hours spent in “writing” include various tasks such as reading the record, and re-reading the record, and legal research, and additional legal research for the Court of Appeals brief, and more writing of the Court of Appeals brief, and cite-checking and doing time-consuming tasks such as generating a Table of Authorities. The numbers of hours spent therefore were reasonable.

“[C]osts and a *reasonable* attorneys’ fee for administrative or court proceedings are to be awarded to a claimant in the event that the decision of the commissioner shall be reversed or modified.” *Gibson v. Employment Security Department*, 52 Wn. App. 211, 220-221, 758 P.2d 547 (1988) (attached). Because the time expended was “reasonable” on this case, fees and costs are

respectfully requested in the amounts set forth in the accompanying cost bill.

c) **Time And Costs Expended In Both Administrative And Judicial Proceedings Are Compensable Because The Employment Security Act And Cases Interpreting It Permit Attorney Fees For Work In Both Arenas And There Is No Logical Reason Not To Award Them, Particularly When An Order Is Reversed And Remanded.**

Case law allows an award of attorney's fees for attorney hours spent in both administrative and judicial proceedings in unemployment benefits cases. In the State's opposition to attorney fees in other cases, the State frequently quotes a sentence from a case that appears to mandate to the contrary – but the quote is taken out of the context of the three sentences that precede it:

We believe the purpose of the statutes when read together is to provide for regulation of attorney fees incurred in relation to administrative or court proceedings. Furthermore, when the commissioner erroneously denies unemployment compensation, the subsequent fees and costs incurred in court proceedings are compensable from state funds. Since there is no evidence in the record showing how the superior court determined the fees allowed, we must remand this case for a determination as to what would constitute reasonable attorney fees at both the administrative level and in the superior court.

Ancheta v. Daly, 77 Wn.2d 255, 266-267, 461 P.2d 531 (1969),

(emphasis added). The sentence the State quotes follows these

three sentences and apparently pertains to the facts in that particular case, not to all cases on appeal from unemployment benefits orders.

In fact, *Ancheta*, has been cited by later cases precisely for the proposition that attorney fees are payable for both administrative and judicial proceedings:

We further remand this case to the Superior Court for a determination of reasonable attorney's fees "*at both the administrative level and in the superior court*" in accordance with *Ancheta v. Daly, supra* at 266.

Vergeyle v. Employment Security Department, 28 Wn. App. 399, 405, 623 P.2d 736 (1981) (emphasis added).

Similarly, *Ancheta* was again used to stand for the proposition that *both* administrative and court proceedings are considered in awarding attorney's fees:

Under RCW 50.32.160, costs and a reasonable attorneys' fee *for administrative or court proceedings are to be awarded to a claimant in the event that the decision of the Commissioner shall be reversed or modified. Ancheta*, 77 Wn.2d at 265-66.

Gibson v. Employment Security, 52 Wn. App. 211, 220-221, 758 P.2d 547 (1988) (emphasis added).

These judicial interpretations allowing attorney fees for both court and administrative proceedings are based as they must be on the plain language of the statute, which states in part as follows:

In the allowance of fees the court shall give consideration to the provisions of this title in respect to fees pertaining to proceedings involving an individual's application for initial determination, claim for waiting period credit, or claim for benefits. In other respects the practice in civil cases shall apply.

RCW 50.32.160 (emphasis added). The other “provisions” in the Employment Security Act pertaining to fees contemplate that fees may be granted for administrative hearings:

Costs. In all proceedings provided by this title prior to court review involving dispute of an individual's initial determination, or claim for waiting period credit, or for benefits, the fees of all witnesses attending such proceedings pursuant to subpoena shall be paid at the rate fixed by such regulation as the commissioner shall prescribe and such fees and all costs of such proceedings otherwise chargeable to such individual, except charges for services rendered by counsel or other agent representing such individual, shall be paid out of the unemployment compensation administration fund. In all other respects and in all other proceedings under this title *the rule in civil cases as to costs and attorney fees shall apply. Provided, That cost bills may be served and filed and costs shall be taxed in accordance with such regulation as the commissioner shall prescribe.*

RCW 50.32.100. (emphasis added except “Provided” emphasized in original). Specifically with regard to attorney fees, the “other

provisions” of the ESA *explicitly* allow counsel to receive a reasonable attorney fee:

Fees for administrative hearings. No individual shall be charged fees of any kind in any proceeding involving the individual’s application for initial determination, or claim for waiting period credit, or claim for benefits, under this title *by the commissioner or his representatives, or by an appeal tribunal, or any court, or any officer thereof.* Any individual in any such proceeding *may be represented by counsel or other duly authorized agent* who shall neither charge nor receive a fee for such services in excess of an amount found reasonable by the officer conducting such proceeding.

RCW 50.32.110 (emphasis added)(attached). This statute prohibits the ESD or the courts from charging a fee, *not* counsel, and in fact anticipates that counsel *may* receive a fee so long as it is found to be reasonable.

Thus, fees and costs incurred at both the administrative and judicial levels are compensable in light of this case law and the plain language of the pertinent statutes that allow for attorney fees for *both* administrative and court proceedings. It is simply illogical that counsel and the other attorneys and staff of the public interest law firm for which counsel works should not receive a fee for work on the administrative level, work that employs the same legal skills employed on the judicial level: analysis, research, and advocacy – both written and oral. Moreover, the statutes allow counsel to

charge a client a fee on the administrative level and it is therefore logical that counsel can *receive* fees for work done on the administrative level.

Further, our courts have held that fees may be awarded for time spent on legal matters by paralegals. *Absher Construction co. v. Kent School District*, 79 Wn. App. 841, 917 P.2d 1086 (1995). In that case from nearly ten years ago, the court stated that “[w]e do allow an award for [paralegal] time spent preparing the briefs and related work. In computing the time we allow for him, we will assume, absent any other evidence in the record, that the hourly rate of \$67.00 is reasonable for this type of work.” *Id.* at 845. In the instant case the paralegal, often a law clerk, prepared the claimant for the hearing, represented the claimant at the hearing, and wrote the petition for review and we have requested, ten years after *Absher*, an hourly rate of \$75.00. *See also, Missouri v. Jenkins*, 491 U.S. 274 (1989) (paralegal fees awardable in fee awards).

Finally, an award of attorney fees in the instant case is also consistent with sound public policy as it has been expressed in decisions from the Washington Supreme Court regarding attorney fees in public benefits cases. In a welfare benefits case where the

claimant had been represented at no cost through both the administrative and appellate levels by a legal services office, the Court stated the policy regarding attorney fees in such cases as follows:

We conclude that the fundamental underpinning of the fee award provision is a policy at once punitive and deterrent – a corrective policy which would discipline respondent [Department of Social & Health Services] for violations of Title 74 RCW or of its own regulations, by shifting to the respondent the costs of righting its mistakes. . . . At present, it is contended, the private bar shuns welfare cases, leaving them to SCLS; the respondent thus has rarely been assessed fees where incautious, careless, or wrongful actions by its employees *have improperly denied benefits and required correction by an appellate court*. Clearly an incentive to more careful scrutiny is not out of place.

Tofte v. Social & Health Services, 85 Wn.2d 161, 165, 531 P.2d 808 (1975) (emphasis added). The same policy considerations pertain to improperly denied unemployment benefits as well and fees for both the administrative and judicial proceedings are proper.

d) **Counsel Is Entitled To Attorney Fees For Establishing Entitlement To And The Amount Of Attorney Fees In This Case Because Case Law Allows It And The State's Opposition To Fees Is Anticipated On Grounds That Have Been Previously Rejected.**

Counsel has invested an additional several hours of attorney time in supporting this argument for attorney fees in the context of the Court of Appeals brief. The writing has included the original draft, as well as revising, cite-checking, proofreading, copying, and arranging for service and filing. The general rule in Washington is to allow fees for this time:

The general rule is that time spent on establishing entitlement to, and amount of, a court awarded attorney fee is compensable where the fee shifts to the opponent under fee shifting statutes.

Fisher Properties v. Arden-Mayfair, 115 Wn.2d 364, 378, 798 P.2d 799 (1990).

Counsel therefore respectfully requests that upon reversal of the Commissioner's Order in this case, that attorney fees and costs be awarded under RAP 18.1 in an amount to be determined by subsequent filing of an affidavit of fees and expenses as required under RAP 18.1(d).

D. CONCLUSION

For the foregoing reasons, Ms. Spain respectfully requests the following relief:

First, Ms. Spain requests the court affirm the Superior Court's holding that the list of good cause quits is not exhaustive.

Second, upon affirming, respondent respectfully requests that in the interest of judicial economy and equity this court order that Ms. Spain be awarded the unemployment benefits to which she was originally entitled.

Finally, the petitioner respectfully requests that upon affirming the reversal of the Commissioner's Order in this case, that attorney fees and costs be awarded as mandated by statute.

Dated this 9th Day of December 2005.

Respectfully submitted,



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APPENDICES TO RESPONDENT'S BRIEF

**EMPLOYMENT SECURITY DEPARTMENT V. SPAIN,
DOCKET NO. 33705-3-II**

A - RCW 50.20.050

B - RCW 50.32.100

C - RCW 50.32.110

D - RCW 50.32.160

E - *Gutierrez v. Regents of the University of California* (retrieved initially on July 1, 2004, at http://www.oalj.dol.gov/public/arb/decsn2/99_116b.erap.pdf)

F - *Starr v. Employment Security Department*, Docket Number 33003-2-II, (Wash. Ct. App. Div. II Nov. 22, 2005), retrieved at <http://www.courts.wa.gov/opinions/?fa=opinions.opindisp&docid=330032MAJ>

A - 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) 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, 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.

[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 -- 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.

B - RCW 50.32.100

RCW 50.32.100
Costs.

In all proceedings provided by this title prior to court review involving dispute of an individual's initial determination, or claim for waiting period credit, or for benefits, the fees of all witnesses attending such proceedings pursuant to subpoena shall be paid at the rate fixed by such regulation as the commissioner shall prescribe and such fees and all costs of such proceedings otherwise chargeable to such individual, except charges for services rendered by counsel or other agent representing such individual, shall be paid out of the unemployment compensation administration fund. In all other respects and in all other proceedings under this title the rule in civil cases as to costs and attorney fees shall apply: PROVIDED, That cost bills may be served and filed and costs shall be taxed in accordance with such regulation as the commissioner shall prescribe.

[1945 c 35 § 126; Rem. Supp. 1945 § 9998-264.]

Notes:

Costs and attorneys' fees: Chapter 4.84 RCW.

C - RCW 50.32.110

RCW 50.32.110

Fees for administrative hearings.

No individual shall be charged fees of any kind in any proceeding involving the individual's application for initial determination, or claim for waiting period credit, or claim for benefits, under this title by the commissioner or his representatives, or by an appeal tribunal, or any court, or any officer thereof. Any individual in any such proceeding before the commissioner or any appeal tribunal may be represented by counsel or other duly authorized agent who shall neither charge nor receive a fee for such services in excess of an amount found reasonable by the officer conducting such proceeding.

[1945 c 35 § 127; Rem. Supp. 1945 § 9998-265.]

D - RCW 50.32.160

RCW 50.32.160
Attorneys' fees.

It shall be unlawful for any attorney engaged in any appeal to the courts on behalf of an individual involving the individual's application for initial determination, or claim for waiting period credit, or claim for benefits to charge or receive any fee therein in excess of a reasonable fee to be fixed by the superior court in respect to the services performed in connection with the appeal taken thereto and to be fixed by the supreme court or the court of appeals in the event of appellate review, and if the decision of the commissioner shall be reversed or modified, such fee and the costs shall be payable out of the unemployment compensation administration fund. In the allowance of fees the court shall give consideration to the provisions of this title in respect to fees pertaining to proceedings involving an individual's application for initial determination, claim for waiting period credit, or claim for benefits. In other respects the practice in civil cases shall apply.

[1988 c 202 § 48; 1971 c 81 § 121; 1945 c 35 § 132; Rem. Supp. 1945 § 9998-270. Prior: 1941 c 253 § 4.]

Notes:

Severability -- 1988 c 202: See note following RCW 2.24.050.

Attorneys' fees: Chapter 4.84 RCW.

Costs: RCW 50.32.100.

Costs on appeal: Chapter 4.84 RCW.

E - *Gutierrez v. Regents of the University of California* (retrieved initially on July 1, 2004, at http://www.oalj.dol.gov/public/arb/decsn2/99_116b.erap.pdf)



In the Matter of:

JOE GUTIERREZ,

ARB CASE NO. 99-116

COMPLAINANT,

ALJ CASE NO. 98-ERA-19

v.

DATE: February 6, 2004

REGENTS OF THE UNIVERSITY OF CALIFORNIA,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Dana L. Gold, Esq., *Government Accountability Project, Seattle, Washington*

For the Respondent:

Ellen Cain Castille, Esq., *Los Alamos National Laboratory, Los Alamos, New Mexico*

ORDER AWARDING ATTORNEYS' FEES AND COSTS

This case arose out of a complaint Joe Gutierrez filed claiming that his employer, Los Alamos National Laboratory (LANL or Laboratory) violated the employee protection (whistleblower) provision of the Energy Reorganization Act of 1974, as amended, 42 U.S.C.A. § 5851 (West 1995) (ERA or Act), when it added a negative comment to his performance evaluation and gave him a reduced pay increase in 1997. After a formal hearing, an Administrative Law Judge (ALJ) issued a Recommended Decision and Order finding that LANL violated the Act and recommending relief for Gutierrez. The ALJ recommended a retroactive 4% salary increase, reimbursement of used vacation days, expungement of the negative comment from the performance evaluation and an award of attorneys' fees and costs in the amount of \$49,104.37. The ALJ also recommended an award in the amount of \$15,000 for emotional distress.¹

¹ The ALJ issued an August 16, 1999 recommended decision and order approving attorneys' fees and costs. An electronic copy of both of the ALJ's recommended decision and orders is available at the Office of Administrative Law Judges' website: <http://www.oalj.dol.gov/public/wblower/refmc/eralist5.htm>.

On November 13, 2002, we issued a final decision and order, affirming in part and reversing in part, the ALJ's Recommended Decision and Order in this case. *Gutierrez v. Regents of the Univ. of Cal.*, ARB No. 99-116, ALJ No. 98-ERA-19.² With the exception of the award for emotional distress, we affirmed the ALJ's findings. We reversed the award for emotional distress because the record lacked any supporting evidence for the award.

The Secretary of Labor "at the request of the complainant shall assess against the person against whom an order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued." 42 U.S.C.A. § 5851(b)(2)(B). We granted the Complainant 20 days from the date of our Decision and Order to submit to this Board an itemized petition for additional attorneys' fees and other litigation expenses incurred on or after June 10, 1999, and directed the Complainant to serve the petition on the Respondent, who was given 30 days after issuance of our Decision and Order to file objections to the petition with the Board. The Complainant filed his petition on January 3, 2003. The Respondent did not object to the fee petition.

The Government Accountability Project (GAP) represented the Complainant during the appeal process. GAP has submitted a fully itemized and documented fee petition for work performed on the appeal of the ALJ's decision. Although the Respondent has not opposed the petition, we review it for legal sufficiency.

The Secretary employs the lodestar method to calculate attorneys' fees, which requires multiplying the number of hours reasonably expended in bringing the litigation by a reasonable hourly rate. *Jenkins v. EPA*, No. 92-CAA-6, electronic slip op. at 2 (Sec'y Dec. 7, 1994), citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

The party seeking a fee award must submit evidence documenting the hours worked and the rates claimed. As we noted, when reviewing the ALJ's award of attorneys' fees below, "complainant's attorney fee petition must include 'adequate evidence concerning a reasonable hourly fee for the type of work the attorney performed and consistent [with] practice in the local geographic area,' as well as records identifying the date, time, and duration necessary to accomplish each specific activity, and all claimed costs." *Gutierrez v. Regents of the Univ. of Cal.*, ARB No. 99-116, ALJ No. 98-ERA-19, electronic slip op. at 11 (ARB Nov. 13, 2002). See also *Moder v. Village of Jackson, Wis.*, ARB Nos. 01-095, 02-039, ALJ No. 2000-WPC-5 (ARB Oct. 28, 2003); *Fabricius v. Town of Braintree/Park Dep't*, ARB No. 97-144, ALJ No. 1997-CAA-14 (ARB Feb. 9, 1999). If the documentation of hours is inadequate, the award may be reduced accordingly. *Hensley v. Eckerhart*, 461 U.S. at 433. We find the level of detail in the descriptions of the services provided contained in GAP's petition to be adequate.

² An electronic version of the Board's decision, in PDF format, is located at http://www.oalj.dol.gov/public/arb/decsn2/99_116a.erap.pdf.

GAP has claimed an hourly rate of \$200 to \$250 for its attorney, based upon the level of his or her experience. We find that an hourly rate of \$200 to be appropriate for Ms. Gold. We find an hourly rate of \$250 appropriate for Mr. Sheridan and Mr. Taylor based upon their years of practice and expertise. An hourly rate of \$50 for Ms. Sherman is appropriate.

Although the Complainant lost the award of compensatory damages, he still achieved significant remedies and remains the prevailing party. We decline to make a downward adjustment for work performed on the now-unsuccessful argument concerning compensatory damages. *See Hensley v. Eckerhart*, 461 U.S. at 435 (attorneys' fees should not be reduced simply because plaintiff failed to prevail on every contention raised, where plaintiff obtains otherwise an excellent result). *Cf. Pogue v. United States Dep't of the Navy*, No. 87-ERA-21, electronic slip op. at 14 (Sec'y Apr. 14, 1994) (Labor Secretary rejected respondent's challenge to an award of attorneys' fees award in case where, although no damages were awarded, the complainant was more than minimally successful because the Secretary found a violation of the CERCLA and because discriminatory disciplinary actions were ordered expunged and the complainant was awarded a retroactive within grade increase, transfer to a comparable job and training).

We thus **GRANT** the Complainant's unopposed petition for attorneys' fees and costs in the amount of \$19,294.55.

SO ORDERED.

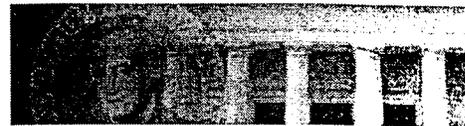
WAYNE C. BEYER
Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

F - *Starr v. Employment Security Department*, Docket Number 33003-2-II,
(Wash. Ct. App. Div. II Nov. 22, 2005), retrieved at
<http://www.courts.wa.gov/opinions/?fa=opinions.opindisp&docid=330032MAJ>



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Court of Appeals Division II
State of Washington

Opinion Information Sheet

Docket Number: 33003-2-II
Title of Case: Dennis A. Starr, Appellant v. Employment Security Dept., Respondent
File Date: 11/22/2005

SOURCE OF APPEAL

Appeal from Superior Court of Thurston County
Docket No: 04-2-01525-9
Judgment or order under review
Date filed: 02/11/2005
Judge signing: Hon. Gary R Tabor

JUDGES

Authored by J. Robin Hunt
Concurring: Marywave Van Deren
Elaine Houghton

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DENNIS A. STARR,

No. 33003-2-II

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF EMPLOYMENT SECURITY,

PUBLISHED OPINION

Respondent.

Hunt, J. Dennis Starr appeals denial of his claim for unemployment compensation benefits after he voluntarily quit his job and traveled to Alaska to care for his daughters and grandchildren in dire circumstances. He argues that (1) RCW 50.20.050(2)(b)(i)-(x)'s list of non-disqualifying reasons for voluntarily leaving employment is not exclusive; and (2) 'good cause' for voluntarily quitting under RCW 50.20.050(2)(a) includes compelling personal reasons, such as his daughters' and grandchildren's circumstances.

Holding that RCW 50.20.050(2)(b) provides an exclusive list of 'good cause' reasons for voluntarily quitting employment without being disqualified from receiving unemployment benefits, we affirm dismissal of Starr's claim.

FACTS

I. Starr's Unemployment

Beginning February 24, 2003, Dennis Starr worked five months as a full-time fuel salesman. On July 26, 2003, he left his employer a telephone message that he was going to Alaska to assist his daughters: One daughter had been arrested and incarcerated for murder; the other had been in a serious car accident and was also incarcerated. Starr did not indicate when or whether he might return to his job. Starr's employer paid him through July 31 and recorded him as a 'voluntary quit.'

Starr and his wife stayed in Alaska to take custody of their daughter's children while their daughter was incarcerated and to assist with her legal problems. Starr did not return to work for his Washington employer.

II. Procedure

In February 2004, while still in Alaska, Starr applied for unemployment compensation with the Washington State Employment Security Department (Department). On February 25, the Department denied Starr's claim because he 'did not have good cause to quit work.' Commissioner's Record (CR) at 35 (emphasis added).

After an administrative hearing, the administrative law judge (ALJ) concluded that (1) 'good cause' for voluntarily leaving employment is limited to the enumerated provisions of RCW 50.20.050(2)(b); and (2) 'even though {Starr} had very compelling reasons to quit his job, these reasons were personal in nature, not work related and did not otherwise fall under any qualifying 'good cause' category.' CR at 60. Starr petitioned for review.

On review, the Department's Commissioner affirmed the ALJ's decision, and adopted the ALJ's findings of fact and conclusions of law, with one exception: The Commissioner modified the ALJ's conclusion of law five 'to show that the revisions to RCW 50.20.050 . . . do not require that a claimant's voluntary separation from employment be work-related to constitute good cause pursuant to RCW 50.20.050(2)(a). See, for example, RCW 50.20.050(2)(b)(i), (ii), (iii), and (iv).' CR at 71-72. Starr sought judicial review in superior court.

Sitting in its appellate capacity, the superior court affirmed the Commissioner's decision denying Starr unemployment benefits.

Starr appeals.

ANALYSIS

This appeal presents a single issue of first impression: Under RCW 50.20.050(2)(a), can non-enumerated compelling personal reasons constitute good cause for voluntarily quitting a job or is good cause limited to the factors enumerated in RCW 50.20.050(2)(b)(i)-(x)? We hold that good cause is limited to the factors enumerated in RCW 50.20.050(2)(b)(i)-(x).

I. Standard of Review

In reviewing an administrative action, we apply the standards of the Administrative Procedure Act (APA) directly to the record before the agency.³ *Tapper v. Employment Sec.*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993). We presume the commissioner's decision to be 'prima facie correct.' *Employees of Intalco Aluminum Corp. v. Employment Sec. Dep't*, 128 Wn. App. 121, 126, 114 P.3d 675 (2005).

We grant relief from an agency order in an adjudicative proceeding if the agency erroneously interpreted or applied the law, RCW 34.05.570(3)(d), and the person seeking judicial relief has been substantially prejudiced. RCW 34.05.070(1)(d). The burden is on the party challenging the Commissioner's ruling to satisfy these two prerequisites. *Employees of Intalco Aluminum Corp.*, 128 Wn. App. at 126.

Construction of a statute is a question of law, which we review de novo under the error of law standard. *Pasco v. Public Employees Relations Comm'n*, 119 Wn.2d 504, 507, 833 P.2d 381 (1992). When the statute falls within an agency's area of expertise, we give substantial weight to that agency's construction of statutory language and legislative intent. *Hensel v. Dep't of Fisheries*, 82 Wn. App. 521, 525-26, 919 P.2d 102 (1996).

Nonetheless, the courts retain the ultimate authority to interpret a statute. *Franklin County Sheriff's Office v. Sellers*, 97 Wn.2d 317, 325-26, 646 P.2d 113 (1982), cert. denied, 459 U.S. 1106 (1983). A reviewing court's obligation is to give effect to the Legislature's intent. *Lacey Nursing Ctr., Inc. v. Dep't of Revenue*, 128 Wn.2d 40, 53, 905 P.2d 338 (1995). Our review begins with the statute's plain language. *Lacey Nursing Ctr.*, 128 Wn.2d at 53. When, as here, a statute is unambiguous, we determine legislative intent from the statutory language alone. *Waste Mgmt. of Seattle v. Util. & Transp. Comm.*, 123 Wn.2d 621, 629, 869 P.2d 1034 (1994).

II. 'Good Cause' Under RCW 50.20.050

Starr argues that RCW 50.20.050(2)(b) does not establish an exclusive list of non-disqualifying circumstances. He argues instead that the Legislature intended to include other more general 'compelling personal reasons' such that leaving his employment to care for his grandchildren in Alaska would not disqualify him from receiving unemployment compensation. We disagree.

RCW 50.20.050 is titled 'Disqualification for leaving work voluntarily without good cause.' By its plain language, subsection (1) applies to 'claims that have an effective date before January 4, 2004.' RCW 50.20.050(1). By its parallel plain language, subsection (2) applies to 'claims that have an effective date on or after January 4, 2004.' RCW 50.20.050(2). Because Starr filed for unemployment benefits after January 4, 2004, subsection (2) applies to his unemployment benefits claim. Holding that the language of RCW 50.20.050 is unambiguous, we look to other portions of the statute's plain language to determine its scope and the Legislature's intent for unemployment benefits coverage when a worker voluntarily leaves employment.

A. Plain Language

quit work: (i) accepting another bona fide job offer; (ii) illness or disability of the claimant or a family member; (iii) the claimant's spouse was transferred by the military; (iv) domestic violence; and (v) conflict between the claimant's religious or moral beliefs and the work place. Nothing in this subsection or anywhere else in RCW 50.20.050 even hints that there could be other non-disqualifying circumstances.

B. Exclusive List

Nonetheless, Starr argues that RCW 50.20.050(2)(b) does not establish an exclusive list of non-disqualifying circumstances.⁴ He argues instead that the Legislature intended to include other undefined 'compelling personal reasons.'⁵ We disagree.

Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim *expressio unius est exclusio alterius* specific inclusions exclude implication.

Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1, 77 Wn.2d 94, 98, 459 P.2d 633 (1969). Thus, because 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 circumstances⁶ that will not defeat a claim for unemployment compensation when a worker voluntarily quits employment.

C. Starr's Related Arguments

Relying extensively on *In re Bale*, 63 Wn.2d 83, 385 P.2d 545 (1963), Starr compares the RCW 50.20.050 version in effect at the time *Bale* was decided to the version in effect when he filed his claim. In *Bale*, our Supreme Court noted that our Legislature removed from former RCW 50.20.050 the language that limited 'good cause' (for quitting employment) to 'reasons related to the work in question'; the Court held that, in so doing, the Legislature intended to remove the work connected limitation and instead to allow 'good cause' to include 'compelling personal reasons.' 63 Wn.2d at 89-90. Contrary to Starr's argument, however, it does not follow that the Legislature intended the same result under the subsequently amended statutory scheme in section (2)(b), applicable here.

Rather, an alternative reasonable explanation for claims filed after January 4, 2004, under section (2)(a), is that the Legislature replaced section 1(c)'s 'work connected' restriction with section (2)(b)'s exhaustive list of 'good cause' circumstances, not all of which are work connected and some of which describe compelling personal reasons.

The Commissioner apparently relied on this interpretation of the statute when he revised the ALJ's conclusion of law number five to state that 'the revisions to RCW 50.20.050 . . . do not require that a claimant's voluntary separation from employment be work-related to constitute good cause pursuant to RCW 50.20.050(2)(a).' CR at 72. In so revising the ALJ's conclusion, the Commissioner cited RCW 50.20.050(2)(b)(i)-(iv), which provides several circumstances that are personal in nature, unrelated to work conditions.

Not only is it appropriate for us to defer to the Commissioner's reasonable interpretation of the statute,⁷ *Hensel*, 82 Wn. App. at 525-26, but also, as we point out earlier in this opinion, the statute's plain language supports this interpretation. Therefore, 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.

III. Conclusion

While Starr's situation and his personal sacrifices for his family are compelling, inclusion of this type of personal circumstance as a

nondisqualifying circumstance, for purposes of unemployment compensation benefits, is a decision for the Legislature, not the courts. At this time, however, the Legislature has expressly chosen to include only the ten nondisqualifying circumstances in RCW 50.20.050(2)(b)'s exclusive list. And, no matter how compelling, Starr's personal circumstances do not fit within any of these ten 'good cause' reasons for voluntarily quitting employment without being disqualified from receiving unemployment compensation. Thus, we affirm the Commissioner's denial of Starr's claim, and we deny Starr's request for attorney fees.

Hunt, J.

We concur:

Houghton, J.

Van Deren, A.C.J.

1 Police accused Starr's daughter, Denni, of murdering the father of her two children.

2 The Commissioner adopted the ALJ's findings, to which Starr does not assign error. Thus, these findings are verities on appeal. *Davis v. Dep't of Labor & Indus.*, 94 Wn.2d 119, 123, 615 P.2d 1279 (1980).

3 'The appellate court reviews the findings and decision of the commissioner, not the superior court decision or the underlying ALJ order.' *Employees of Intalco Aluminum Corp. v. Employment Sec. Dep't*, 128 Wn. App. 121, 126, 114 P.3d 675 (2005).

4 We note Starr does not argue that he qualifies under RCW 50.20.050(2)(b) subsections (ii), disability of a family member, or (iv), domestic violence.

5 Starr compares subsection (2) with subsection (1) of RCW 50.20.050. He points to RCW 50.20.050(1)(c), which provides, in pertinent part: 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.

(Emphasis added.) Starr then argues that, because the Legislature omitted this 'work-connected' limitation when it added section (2) to RCW 50.20.050, 'good cause' for voluntarily quitting work is no longer limited to work connected factors, and good cause now also includes 'compelling personal reasons.' We disagree.

As we explain above, RCW 50.20.050 is unambiguous; thus, there is no need to look to legislative history to determine legislative intent.

6 This inference is further supported by language in other sections of the statute that, in contrast, explicitly provide nonexclusive lists. See, for example, RCW 50.04.294(1) 'Misconduct' includes, but is not limited to, the following conduct by a claimant.' (Emphasis added).

7 The Department also points to legislative history as evidence that the Legislature intended RCW 50.20.050(2)(b)(i)-(x) to be an exhaustive list of circumstances that would not disqualify a voluntarily quitting employee from receiving unemployment benefits. In light of our holding based on the statute's plain language, we need not consult legislative history. Nonetheless, because both parties rely heavily on legislative history, we note that it supports our holding.

The House Bill Report states: (1) 'The reasons specified in the Act as good cause for leaving work voluntarily are limited'; and (2) 'the Commissioner's discretion to determine that other work-related factors are good cause for leaving work is eliminated.'

http://www.leg.wa.gov/pub/billinfo/2003-04/Senate/6075-6099/6097_hbr.pdf at 6 (last visited November 21, 2005) (emphasis added). The House Bill Report supports the Commissioner's determination that the Legislature intended to create an exhaustive list of circumstances constituting good cause for voluntarily quitting work.

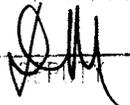
Similarly, the Senate and Final Bill Report both state: 'Effective January 4, 2004, an individual may receive benefits if he or she leaves work for the following reasons' (followed by nine enumerated circumstances). http://www.leg.wa.gov/pub/billinfo/2003-04/Senate/6075-6099/6097_sbr.pdf at 3 (last visited November 21, 2005); 2003 Final Legislative Report, 58th Leg., 2nd Spec. Sess. at 293 (emphasis added). This language similarly supports the Commissioner's ruling that the Legislature intended to provide unemployment benefits only if an individual left work for certain specified reasons.

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STATE OF WASHINGTON

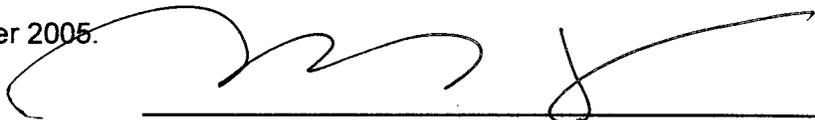
BY 

IN THE COURT OF APPEALS COURT FOR THE STATE OF WASHINGTON
DIVISION II

7	STATE OF WASHINGTON, EMPLOYMENT)	
	SECURITY DEPARTMENT,)	
8	Appellant,)	
)	
9	and)	Case No. 33705-3-II
)	CERTIFICATE OF SERVICE
10	SARA D. SPAIN,)	Administrative Appeal
	Respondent.)	
11)	
)	
12)	

I certify that on December 12, 2005, I placed into the U.S. mail, postage prepaid, the original and one copy of the respondent's opening brief in this matter addressed to the Court of Appeals Division II and placed into the U.S. mail a copy of the respondent's opening brief addressed to Jamie Jones, Attorney for Respondent, at the Attorney General's Office, Licensing & Administrative Law Division, 1125 Washington St. S.E., P.O. Box 40110, Olympia, WA 98504-0110.

Dated this 12th day of December 2005.



Marc Lampson
Attorney for Appellant
WSBA # 14998