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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
BY                       
DEPUTY

No. 42631-5-II

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

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ROBERT CAMPBELL,

Respondent,

v.

DEPARTMENT OF EMPLOYMENT SECURITY,

Appellant.

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**RESPONDENT MR. CAMPBELL'S OPENING BRIEF**

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PM 12-13-11

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## **A. INTRODUCTION**

Mr. Campbell was a full-time Spanish teacher for University Place School in Renton beginning in August 2004. CP Comm. Rec. 52, Finding of Fact (“FF”) 1.<sup>1</sup> In April 2010 he asked for a leave of absence for spring 2011 so that he could accompany his wife and daughter to Finland where his wife would have a teaching and research job under the Fulbright Program beginning in February 2011. CP Comm. Rec. 53, FF 2 & 4. The employer denied this request. CP Comm. Rec. 53, FF 3.

Mr. Campbell then requested a leave of absence for the entire 2010-2011 school year. Comm. Rec. 53, FF 4. This request was also denied. *Id.*

The employer stated the leave requests were denied because finding a replacement for Mr. Campbell would be too great a hardship on the district. CP Comm. Rec. 49. Feeling he had no other ethical choice, Mr. Campbell resigned at the end of the 2010 school year, as an ALJ later found, so that he could follow his wife

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<sup>1</sup> Thurston County Superior Court has transmitted the Administrative Record, aka Certified Appeals Board Record, in this matter as a single, stand-alone document; that Record is separately paginated so references in this brief to that record will appear as “CP Comm. Rec.,” meaning “Clerk’s Papers Commissioner’s Record.” All other references to the Clerk’s Papers will be in standard citation format, “CP,” with reference to the page number as it appears on the Superior Court Clerk’s Papers Index.

and daughter to Finland “for his wife’s work under the Fulbright grant.” CP Comm. Rec. 53, FF 5. In July, finding himself unemployed, he applied for unemployment benefits. CP Comm. Rec. 40-45.

The Employment Security Department (ESD) denied benefits, holding he did not have good cause to quit. CP Comm. Rec. 36.

The Superior Court reversed, however, holding that Mr. Campbell did have good cause to quit to relocate for his spouse’s employment. CP 34-37.

## **B. ASSIGNMENTS OF ERROR**

### **Assignments of Error**

1. The Superior Court correctly reversed the Commissioner’s Order<sup>2</sup> because leaving employment to relocate for the employment of a spouse is good cause to quit and not merely a “personal reason.” CP Comm. Rec. 54, Conclusion of Law (“CL”) 4. (adopted by the Commissioner, CP Comm. Rec. 66).

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<sup>2</sup> While the final decision maker is actually a Review Judge, sometimes referred to as the “Commissioner’s Delegate,” who is appointed by the Commissioner’s Review Office of the Employment Security Department, for simplicity sake the Order under review will be referenced in this brief merely as the Commissioner’s Order.

2. The Superior Court correctly reversed the Commissioner's Order because the Commissioner incorrectly found the Fulbright Scholarship was not "employment." CP Comm. Rec. 67.
3. The Superior Court correctly reversed the Commissioner's Order because the Commissioner incorrectly found Mr. Campbell quit prematurely. CP Comm. Rec. 67.
4. The Superior Court correctly reversed the Commissioner's Order because the Commissioner, without any statutory basis, distinguished between "scholarship income" and "compensation for personal services" when considering whether Mr. Campbell quit to relocate for his spouse's employment. CP Comm. Rec. 67.
5. Mr. Campbell is entitled to attorney's fees and costs upon this court's affirming of the Superior Court's order, which reversed the ESD's Commissioner's Order.

#### **Issues Pertaining to Assignments of Error**

1. Under the Employment Security Act's "good cause" to quit provisions, should the Superior Court's Order be affirmed (and the Commissioner's order be reversed) when Mr.

Campbell quit to relocate for his spouse's employment?

(Issue Pertaining to Assignments of Error 1-3).

2. Did the Commissioner err by denying benefits on the basis that Mr. Campbell had failed to prove that his wife's scholarship to teach and research was "equated with employment"? (Issue Pertaining to Assignment of Error 4).
3. Should attorney fees and costs be awarded to counsel for Mr. Campbell for work on this case when the fees and costs are reasonable and when the Commissioner's denial of benefits to Mr. Campbell was correctly reversed by the Superior Court? (Issue Pertaining to Assignment of Error 5).

## **C. STATEMENT OF THE CASE**

### **1. JOB SEPARATION**

Mr. Campbell worked as a Spanish and History teacher for the employer beginning in August 2004. CP Comm. Rec. 52, Finding FF 1.

Mr. Campbell requested a leave of absence so that he could accompany his wife and three year old daughter to Finland where his wife would be teaching and researching under a Fulbright

Scholarship for four months, February to May 2011. CP Comm. Rec. 53, FF 2.

The employer denied the request for a leave of absence for February through May 2011. CP Comm. Rec. 53, FF 3. The employer said it could not accommodate the leave of absence due to the difficult nature of finding a replacement, stating that the “time of year and his endorsed area of teaching would have created a major hardship on the district in trying to fill his role during such a limited absence.” CP Comm. Rec 49.

Mr. Campbell then requested a leave of absence for the full 2010-2011 school year, which was also denied. CP Comm. Rec. 53, FF 4. Understanding that it would be difficult for the employer to fill his position and wanting to be “ethical and professional,” Mr. Campbell quit at the end of the school year on or about June 15, 2010. CP Comm. Rec. 15 & 53. He quit so he could go to Finland for his wife’s work under the Fulbright Grant. CP Comm. Rec. 53, FF 5. Being unemployed, he applied for unemployment benefits.

## **2. PROCEDURAL HISTORY**

The Employment Security Department denied benefits. CP Comm. Rec. 36. An ALJ affirmed, despite finding as fact that Mr.

Campbell quit “for his wife’s work under the Fulbright grant.” CP Comm. Rec. 53, FF 5.

The Commissioner, adopting all of the ALJ’s findings of fact, modified the conclusions and held that Mr. Campbell’s “reason for quitting was strictly personal” and that the evidence did “not establish the Fulbright Scholarship equated with employment.” CP Comm. Rec. 67. The Commissioner held the evidence did “not establish whether the Fulbright grant was essentially scholarship income (paid primarily for the benefit of the claimant’s spouse) or compensation for personal services.” CP Comm. Rec. 67. Further, the Commissioner concluded that Mr. Campbell had “quit prematurely.” CP Comm. Rec. 67.

The Superior Court reversed, holding Mr. Campbell did have good cause to quit to follow his wife for her teaching and researching work in Finland. The State now appeals.<sup>3</sup> CP 34-37 & 38-43.

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<sup>3</sup> Per General Order 2010-1, the respondent files the opening brief in administrative review cases.

**D. ARGUMENT**

**1. THE SUPERIOR COURT ORDER WAS CORRECT: MR. CAMPBELL IS ENTITLED TO UNEMPLOYMENT BENEFITS BECAUSE UNDER THE PLAIN LANGUAGE OF THE STATUTE, HE QUIT FOR GOOD CAUSE TO FOLLOW HIS SPOUSE.**

Mr. Campbell quit his teaching job when he was denied a leave of absence to accompany his wife and daughter to Finland for his wife's employment as a teacher and researcher under the Fulbright program.

The Employment Security Act (ESA) allows a claimant unemployment benefits when the claimant quits a job to relocate for a spouse's employment. RCW 50.20.050(2)(b)(iii).

Because Mr. Campbell meets both prongs of the "quit to follow" statute, he is entitled to receive benefits. First he "left work to relocate for the spouse's employment." RCW 50.20.050(2)(b)(iii)(A). Second, he "remained employed as long as was reasonable prior to the move." RCW 50.20.050(2)(b)(iii)(B). The Commissioner's Order denying benefits should be reversed and the Superior Court's Order should be affirmed.

a) **Mr. Campbell Satisfies The First Prong of the Quit to Follow Test Because He Quit To Relocate For His Spouse's Employment.**

The first prong of the quit to follow provision requires that a claimant left work to relocate for a spouse's employment. RCW 50.20.050(2)(b)(iii)(A).

The Commissioner here adopted the ALJ's Finding of Fact 5: "On or about June 15, 2010 [the] claimant quit his job so that he could travel with his wife and family to Finland for his wife's work under the Fulbright grant." CP Comm. Rec. 66 & 53, FF 5. Thus, Mr. Campbell clearly met the first prong of the quit to follow test. However, contrary to the plain language of the statute, the ALJ and the Commissioner found that Mr. Campbell did not quit for good cause.

The exhibits and testimony presented at the September 28<sup>th</sup>, 2010, administrative hearing support the finding that Mr. Campbell quit to relocate for his wife's work as a Fulbright Scholar. Mr. Campbell testified that his wife would be researching and teaching in Finland. CP Comm. Rec. 13. Under her Fulbright contract, Mr. Campbell's wife was to be paid \$17,000. CP Comm. Rec. 16. The employer's response to Mr. Campbell's letter of resignation acknowledges that Mr. Campbell quit to accompany his wife while

she worked under the Fulbright Scholarship. CP Comm. Rec. 49.

There is no disputing that Mr. Campbell quit his teaching job to relocate for his wife's employment. Therefore, Mr. Campbell satisfies the first prong of the quit to follow test.

b) **Mr. Campbell Satisfies The Second Prong Of The Quit to Follow Test Because He Remained Employed As Long As Was Reasonable Prior To Quitting.**

The second prong of the quit to follow statute requires a claimant remain employed as long as **reasonable**. RCW 50.20.050(2)(b)(iii)(B) (*emphasis added*). The language of the statute does not require a claimant to remain as long as **possible**. It requires a claimant to stay as long as was **reasonable**.

The Commissioner found that Mr. Campbell quit prematurely. CP Comm. Rec. 67. Although he was not statutorily required to do so to be eligible for benefits, Mr. Campbell attempted to stay employed as long as possible. He requested a leave of absence for the second semester of the 2010-2011 school year, the time when he would be accompanying his wife in Finland. CP Comm. Rec. 53, FF 2. This request was denied and Mr. Campbell asked for a full year leave of absence. CP Comm. Rec. 53, FF 3&4. This request was also denied. CP Comm. Rec. 53, FF 4.

Mr. Campbell was told that his leave requests were denied because finding a replacement for him would cause too great a hardship. CP Comm. Rec. 49. Mr. Campbell considered the best interest of his employer and left his position the final day of the 2010 school year. In his words, he wanted to be “ethical and professional.” CP Comm. Rec. 15.

Rather than wait until the beginning of a new school year or until immediately before his wife was scheduled to depart in the middle of a new school year, Mr. Campbell chose to quit at the end of the 2010 school year, allowing his employer as much notice and time to find a replacement as possible. Not only was the decision to quit at this time **reasonable**, it was commendable.

Any reasonable employee faced with a necessary job separation would consider the needs of his or her employer, particularly if the employee hoped to either return to that specific employer or the same general field. Mr. Campbell wanted to return to his position following the time in Finland. CP Comm. Rec. 15. He planned to seek full-time contracted employment when he returned. CP Comm. Rec. 74.

After the leave request that would have allowed Mr. Campbell to work as long as **possible** was denied, Mr. Campbell

worked as long as was **reasonable** in order to preserve future employment opportunities with the school district. Having been told that finding a replacement in the middle of the school year would cause too great a hardship on the district, Mr. Campbell resigned at the end of the 2010 school year in order to give his employer enough time to find an adequate replacement. Because he worked as long as was reasonable, Mr. Campbell meets the second prong of the quit to follow test.

As Mr. Campbell satisfied both prongs of the quit to follow test, he quit for good cause and is entitled to unemployment benefits. The Commissioner's Order should be reversed and the Superior Court's order that reversed it should be affirmed.

**2. THE COMMISSIONER ERRED BY ARBITRARILY IMPOSING ADDITIONAL REQUIREMENTS TO SHOW GOOD CAUSE TO QUIT BEYOND THOSE DEFINED BY THE EMPLOYMENT SECURITY ACT.**

The courts will uphold an agency's interpretation of a regulation only if "it reflects a plausible construction of the language of the statute and is not contrary to the legislative intent." *Seatoma Convalescent Ctr. v. Dep't of Soc. & Health Servs.*, 82 Wn. App. 495, 518, 919 P.2d 602 (1996). "In determining legislative intent, we interpret the language at issue within the context of the entire

statute.” *In re Sehome Park Care Ctr, Inc.*, 127 Wn.2d 774, 778, 903 P.2d 443 (1995) as cited in *Safeway, Inc. v. Dep't of Revenue*, 96 Wn. App. 156, 160, 978 P.2d 559 (1999). If the agency's interpretation of the law conflicts with an applicable statute, the statute controls. *Id.*

To achieve its purpose, the Employment Security Act must be liberally construed in favor of the unemployed worker. RCW 50.01.010. When the legislature mandates liberal construction in favor of the worker, courts should not narrowly interpret provisions to the worker's disadvantage when the statutory language does not suggest that such a narrow interpretation was intended. *Delagrave v. ESD*, 127 Wn. App. 596, 609 (2005).

As discussed above, the “quit to follow” provisions of the statute say nothing about the moving spouse’s work having to be full-time, part-time, or permanent, nor does it say anything about how the “income” should be allocated for the moving spouse’s work to qualify the quitting spouse for benefits. These are requirements and considerations the Commissioner’s invented out of whole cloth. The ESD, through its Commissioner’s Review Office, is not free to legislate additional burdens on a claimant’s right to benefits. Nor can it promulgate regulations without following rule-making

procedures. No regulations elaborate on the “quit to follow” statute. But this does not permit the Commissioner to create *ad hoc* regulatory requirements.

All the statute requires is that a claimant “(A) Left work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area; and (B) remained employed as long as was reasonable prior to the move; . . . .” RCW 50.20.050(2)(b)(iii). The Commissioner concluded here that the evidence did “not establish the Fulbright Scholarship equated with employment.” CP Comm. Rec. 67. The Commissioner thought he evidence did “not establish whether the Fulbright grant was essentially scholarship income (paid primarily for the benefit of the claimant’s spouse) or compensation for personal services.” CP Comm. Rec. 67.

First, the Commissioner adopted the ALJ’s Finding of Fact 5 which says Mr. Campbell quit “for his wife’s work.” So the Commissioner’s conclusion is both an error of law and not based on substantial evidence. Further, the evidence showed that his wife received a “contract” and that she would receive “pay” of \$17,000. CP Comm. Rec. 13, 16. To find this was not “work” was intentional blindness.

Second, whether the “income” is “paid primarily for the benefit of the claimant’s spouse” or as “compensation for personal services” is a *non sequitur*. Third, there is nothing in the statute that allows a Commissioner to disallow benefits in a quit to follow case based on how the “moving spouse” is paid – or even not paid. In brief, the Commissioner is not empowered to make up the rules of the game as it goes along.

In this case, the agency’s promulgation at the Commissioner’s Review Office of rules or regulations that limit good cause for “quit to follow” cases to those situations in which the Commissioner approves of the moving spouse’s job arrangements was outside the agency’s statutory authority and such *ex nihilo* promulgation must be invalidated. If it were a “rule,” it would be invalidated under the APA, RCW 34.05.570(2) & (2)(c), but since its creation is purely from the Commissioner’s head, the Commissioner’s Order should be reversed under several subsections of the Administrative Procedure Act; under RCW 34.05.570(3)(b), because it is outside the agency’s statutory authority, under 3(d) because it misinterprets and misapplies the law, under 3(e) because it is not based on substantial evidence, and under 3(i) because it is arbitrary and capricious.

3. **ATTORNEY FEES AND COSTS IN THIS CASE ARE MANDATED BY STATUTE WHEN THE COURT REVERSES A DENIAL OF UNEMPLOYMENT BENEFITS.**

A claimant who succeeds in convincing a court to reverse a denial of benefits 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 Rules of Appellate Procedure require that a party entitled to attorney fees make a

request for those fees and provide argument for those fees in its opening brief. RAP 18.1. Alternatively, fees and costs should be awarded under RCW 4.84.350 that allows fees and costs be awarded to a prevailing party if the party “obtained relief on a significant issue that achieves some benefit” for the party.

The law with regard to 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 Western Washington and going back some fifteen 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 on judicial review.

- a) **An Hourly Rate Of \$350 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 \$350.00 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 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](http://www.oalj.dol.gov/public/arb/decsn2/99_116b.erap.pdf)), 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 Ms. 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. 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 sixteen years ago the Washington Court of Appeals upheld an award of attorney fees at an hourly rate of \$250 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 similar fees 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, 26 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*, from 2004, 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 several decision makers. Finally, the work done in this case by counsel is sufficient for this 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 \$350 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.**

The time expended on the briefs in this case was reasonable, and the best evidence is the final product. It can be anticipated that opposing counsel 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: writing well 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 5 (1988). 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) **Counsel Is Entitled To Attorney Fees For Establishing Entitlement To And The Amount Of Attorney Fees In This Case Because Case Law Allows It.**

Counsel has invested 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 Decision and affirming the Superior Court's Order in this case, that attorney fees and costs be awarded under RAP 18.1 pursuant to either RCW 50.32.160 or RCW 4.84.350 in an amount to be determined by subsequent filing of an affidavit of fees and expenses as required under RAP 18.1(d).

#### **E. CONCLUSION**

Mr. Campbell respectfully requests that this court affirm the Superior Court's Order in this case and thereby reverse the Commissioner's Order that denied Mr. Campbell benefits. The Superior Court's Order correctly found that both prongs of the quit to follow provision of the Employment Security Act were met and that good cause to quit was established. Counsel also requests reasonable attorney fees and costs for the time spent in bringing about an award of benefits to Mr. Campbell.

Dated this 12th day of December 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'ML', is written above a horizontal line.

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

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ROBERT CAMPBELL,

Respondent,

v.

DEPARTMENT OF EMPLOYMENT SECURITY,

Appellant.

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**Attachments**

**Attachment A: ALJ's Order**

**Attachment B: Decision of Commissioner**

**Attachment C: Superior Court Order Allowing Benefits**

**Attachment A**

Initial Order of ALJ Juliana K. Burnett

STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE EMPLOYMENT SECURITY DEPARTMENT

IN THE MATTER OF:

Robert Campbell

Claimant

DOCKET NO: 04-2010-30017

INITIAL ORDER

ID: :

BYE: 07/09/2011

UIO: 770

**Hearing:** This matter came before Administrative Law Judge Juliana K. Burnett on September 28, 2010 at Spokane, Washington after due and proper notice to all interested parties. Exhibits 1 through 6 were admitted at hearing.

**Persons Present:** the claimant-appellant, Robert Campbell; the claimant representative John Turpek, and the employer representative from the Unemployment Pool, Sharie Marado.

**STATEMENT OF THE CASE:**

The claimant filed an appeal on August 06, 2010 from a Decision of the Employment Security Department dated July 29, 2010.

At issue in the appeal is whether the claimant voluntarily quit without good cause pursuant to RCW 50.20.050(2)(a), or was discharged for misconduct pursuant to RCW 50.20.066.

Also at issue is whether the claimant was able to, available for, and actively seeking work during the weeks at issue.

**Having fully considered the entire record, the undersigned Administrative Law Judge enters the following Findings of Fact, Conclusions of Law and Initial Order:**

**FINDINGS OF FACT:**

1. Claimant began employment with the interested employer in August, 2004 and was last employed on June 15, 2010 when he quit. At the time the job ended claimant worked full-time as a Spanish Teacher and earned \$52,000 annual salary. Claimant understood the terms and conditions of his job and he was qualified to perform the work. This was a union position.

2. Sometime in April, 2010, claimant told employer that his wife had been accepted to the Fulbright Program. Claimant asked his employer at that time for a leave of absence so that he could travel with his wife and family to Finland in February, 2011. Claimant's wife will be teaching and researching under the Fulbright grant from four months, February to May, 2011.
3. Employer denied claimant's request for a leave of absence from February through May, 2011.
4. Claimant then requested a leave of absence for the full 2010-2011 school year. Employer again denied claimant's leave request.
5. On or about June 15, 2010 claimant quit his job so that he could travel with his wife and family to Finland for his wife's work under the Fulbright grant.
6. During the weeks at issue the claimant was willing and able to accept any offer of suitable work and sought work as directed by the Department.

#### CONCLUSIONS OF LAW:

1. The provisions of RCW 50.20.050(2), WAC 192-150-085, WAC 192-320-070, and WAC 192-320-075 are applicable.
2. The Employment Security Act was enacted to award unemployment benefits to individuals who are unemployed through no fault of their own. RCW 50.01.010. An individual is disqualified from receiving unemployment benefits for leaving work voluntarily without good cause. RCW 50.20.050(2)(a).
3. The burden of establishing good cause for a voluntary quit is on the claimant. Good cause must be established by a preponderance of the evidence. A preponderance of the evidence is that evidence which produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition to it. *Yamamoto v. Puget Sound Lumber Co.*, 84 Wash. 411, 146 P. 861 (1915).

RCW 50.20.050(2)(a) provides that a claimant is disqualified from receiving unemployment benefits for leaving work voluntarily without good cause. RCW 50.20.050(2)(b) identifies eleven specific non-disqualifying reasons to quit work:

- i. to accept a bona fide offer of new work;
- ii. due to illness or disability;
- iii. to relocate for employment of spouse or domestic partner;
- iv. to protect self or family from domestic violence or stalking;
- v. reduction in pay by twenty-five percent or more;
- vi. reduction in hours by twenty-five percent or more;

- vii. worksite change that increases commute distance or difficulty;
- viii. unsafe worksite conditions;
- ix. illegal activities in the worksite;
- x. change in work duties that violates religious convictions or sincere moral beliefs;
- xi. to enter apprenticeship program.

4. Applying the foregoing to the facts of the case the undersigned concludes that the claimant has failed to establish that he quit his job with good cause within the meaning of the Employment Security Act. RCW 50.20.050(2)(b)(iii) allows an employee to quit his job to relocate for employment of his spouse. However, the spouse employment that is contemplated by this non-disqualifying reason is not temporary work pursuant to a grant program, but instead full-time employment. Certainly the law did not anticipate an individual quitting his or her permanent, full-time position to relocate for a spouse's temporary, 4-month position and then to be eligible to collect unemployment benefits for that choice. The statutory good cause reasons to quit employment and collect unemployment compensation benefits are quite limited. Claimant certainly had good personal reasons for quitting his job as wanting to keep his family together is a very important reason. However, under the current facts a person who quits their job for this personal reason, is not eligible for unemployment compensation benefits under the current statute. RCW 50.20.050(2). Claimant is not eligible to receive benefits pursuant to RCW 50.20.050(2).

5. RCW 50.20.010(1)(c) requires each claimant to be able to, available for, and actively seeking work. The claimant was able to, available for, and actively seeking work during the weeks at issue and is therefore not subject to denial under the above-cited statute and related laws and regulations.

**Now therefore it is ORDERED:**

The Decision of the Employment Security Department under appeal is **AFFIRMED**.

The claimant has not established good cause for quitting. Benefits are denied pursuant to RCW 50.20.050(2)(a) for the period beginning June 20, 2010 and thereafter for seven calendar weeks and until the claimant has obtained bona fide work in covered employment and earned wages in that employment equal to seven times his or her weekly benefit amount. ("Covered employment" means work that an employer is required to report to the Employment Security Department and which could be used to establish a claim for unemployment benefits.)

The claimant was able to, available for and actively seeking work during the weeks at issue as required by RCW 50.20.010(1)(c).

**Employer:** If you pay taxes on your payroll and are a base year employer for this claimant, or become one in the future, your experience rating account will not be charged for any benefits paid on this claim or future claims based on wages you paid to this individual, unless this decision is set aside on appeal. See RCW 50.29.021.

**Dated and Mailed** on September 29, 2010 at Spokane, Washington.



Juliana K. Burnett  
Administrative Law Judge  
Office of Administrative Hearings  
221 N. Wall Street, Suite 540  
Spokane, WA 99201-0826

### Certificate of Service

I certify that I mailed a copy of this order to the within-named interested parties at their respective addresses postage prepaid on the date stated herein.

### PETITION FOR REVIEW RIGHTS

This Order is final unless a written Petition for Review is addressed and mailed to:

**Agency Records Center  
Employment Security Department  
PO Box 9046  
Olympia, Washington 98507-9046**

and postmarked on or before **October 29, 2010**. All argument in support of the Petition for Review must be attached to and submitted with the Petition for Review. The Petition for Review, including attachments, may not exceed five (5) pages. Any pages in excess of five (5) pages will not be considered and will be returned to the petitioner. *The docket number from the Initial Order of the Office of Administrative Hearings must be included on the Petition for Review.* Do not file your Petition for Review by Facsimile (FAX). Do not mail your Petition to any location other than the Agency Records Center.

JKB:jb

**Mailed to the following:**

Robert Campbell  
2415 Columbia St SW  
Olympia, WA 98501-2845

Claimant-Appellant

Unemployment Law Project  
1904 3rd Ave Ste 604  
Seattle, WA 98101

Claimant Representative

University Place School  
c/oUnemployment Pool  
800 Oakdale Ave SW  
Renton, WA 98057-5221

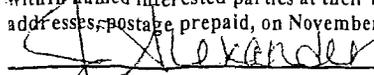
Employer Representative

## **Attachment B**

Decision of Commissioner

CERTIFICATE OF SERVICE

I certify that I mailed a copy of this decision to the within named interested parties at their respective addresses, postage prepaid, on November 24, 2010.

  
Representative, Commissioner's Review Office,  
Employment Security Department

UIO: 770  
BYE: 07/09/2011

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

Review No. 2010-5501

In re:

ROBERT CAMPBELL  
SSA No. 535-02-6267

Docket No. 04-2010-30017

DECISION OF COMMISSIONER

On October 27, 2010, ROBERT CAMPBELL, by and through the Unemployment Law Project, John Tirpak, Attorney at Law, petitioned the Commissioner for review of an Initial Order issued by the Office of Administrative Hearings on September 29, 2010. Pursuant to chapter 192-04 WAC this matter has been delegated by the Commissioner to the Commissioner's Review Office. Having reviewed the entire record and having given due regard to the findings of the administrative law judge pursuant to RCW 34.05.464(4), the undersigned adopts the Office of Administrative Hearings' findings of fact.

Evidence of record establishes as follows: The claimant was employed as a teacher for the interested employer's school district from August 2004 to on or about June 15, 2010, when he quit his job. In April 2010, the claimant's wife was granted a Fulbright Scholarship to conduct research and teach in Finland from February 2011 to May 2011. At the time of the job separation (indeed, as of the September 28, 2010 hearing), the claimant's wife had not yet been informed where she would teach, nor had the allocation of time spent teaching versus research been specified. The claimant requested a four month leave of absence (from February 2011 through May 2011) so that he could travel with his wife and 3 year old daughter to Finland. When his request was denied, the claimant requested a leave of absence for the 2010-2011 academic year. When that request was denied, the claimant quit his job.

The undersigned adopts the Office of Administrative Hearings' conclusions of law Nos. 1 through 3. Under the Employment Security Act, an indefinite period of disqualification is imposed during which unemployment benefits are denied when a claimant voluntarily quit without good cause. RCW 50.20.050(2)(a). For job separations that occurred on or after September 6, 2009, good cause is defined by statute and is limited to eleven specified circumstances. See RCW 50.20.050(2)(b). Good cause to quit is established when a claimant relocated for the employment of his spouse outside the existing labor market area. RCW 50.20.050(2)(b)(iii).

Conclusion No. 4 is adopted but is modified to state instead as follows: Here, the above-reference circumstances are not evident. The claimant's reason for quitting was strictly personal. Having been granted a Fulbright Scholarship, the claimant's wife was going to spend four months in Finland, and the claimant wanted to accompany her with their 3 year old child. The claimant's decision is understood, but evidence does not establish the Fulbright Scholarship equated with employment. The claimant admittedly did not know (because his spouse had not yet been informed) where his spouse would teach or how much time she would spend doing so. In short, evidence does not establish whether the Fulbright grant was essentially scholarship income (paid primarily for the benefit of the claimant's spouse) or compensation for personal services. The burden of proof was the claimant's and was not satisfied. Regardless, the claimant quit several months before his spouse's four month trip to Finland, and thus quit prematurely. For purposes of unemployment benefit eligibility, he quit without good cause.

Conclusion No. 5 is adopted.

Now, therefore,

**IT IS HEREBY ORDERED** that the Initial Order of the Office of Administrative Hearings issued on September 29, 2010, is **AFFIRMED**. Claimant is disqualified pursuant to RCW 50.20.050(2)(a) beginning June 20, 2010, 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 claimant was able to, available for and actively seeking work during the weeks at issue as required by RCW 50.20.010(1)(c). *Employer*: If you pay taxes on your payroll and are a base year employer for this claimant, or become one in the future, your experience rating account will not be charged for any benefits paid on this claim or future claims based on wages you paid to this individual, unless this decision is set aside on appeal. See RCW 50.29.021.

DATED at Olympia, Washington, November 24, 2010.\*

*Annette Womac*

---

Review Judge  
Commissioner's Review Office

\*Copies of this decision were mailed to all interested parties on this date.

#### RECONSIDERATION

Pursuant to RCW 34.05.470 and WAC 192-04-190 you have ten (10) days from the mailing and/or delivery date of this decision/order, whichever is earlier, to file a petition for reconsideration. No matter will be reconsidered unless it clearly appears from the face of the petition for reconsideration and the arguments in support thereof that (a) there is obvious material, clerical error in the decision/order or (b) the petitioner, through no fault of his or her

own, has been denied a reasonable opportunity to present argument or respond to argument pursuant WAC 192-04-170. Any request for reconsideration shall be deemed to be denied if the Commissioner's Review Office takes no action within twenty days from the date the petition for reconsideration is filed. A petition for reconsideration together with any argument in support thereof should be filed by mailing or delivering it directly to the Commissioner's Review Office, Employment Security Department, 212 Maple Park Drive, Post Office Box 9555, Olympia, Washington 98507-9555, and to all other parties of record and their representatives. The filing of a petition for reconsideration is not a prerequisite for filing a judicial appeal.

### JUDICIAL APPEAL

If you are a party aggrieved by the attached Commissioner's decision/order, your attention is directed to RCW 34.05.510 through RCW 34.05.598, which provide that further appeal may be taken to the superior court within thirty (30) days from the date of mailing as shown on the attached decision/order. If no such judicial appeal is filed, the attached decision/order will become final.

If you choose to file a judicial appeal, you must both:

- a. Timely file your judicial appeal directly with the superior court of the county of your residence or Thurston County. If you are not a Washington state resident, you must file your judicial appeal with the superior court of Thurston County. See RCW 34.05.514. (The Department does not furnish judicial appeal forms.) AND
- b. Serve a copy of your judicial appeal by mail or personal service within the 30-day judicial appeal period on the Commissioner of the Employment Security Department, the Office of the Attorney General and all parties of record.

The copy of your judicial appeal you serve on the Commissioner of the Employment Security Department should be served on or mailed to: Commissioner, Employment Security Department, Attention: Agency Records Center Manager, 212 Maple Park, Post Office Box 9555, Olympia, WA 98507-9555. To properly serve by mail, the copy of your judicial appeal must be received by the Employment Security Department on or before the 30th day of the appeal period. See RCW 34.05.542(4) and WAC 192-04-210. The copy of your judicial appeal you serve on the Office of the Attorney General should be served on or mailed to the Office of the Attorney General, Licensing and Administrative Law Division, 1125 Washington Street SE, Post Office Box 40110, Olympia, WA 98504-0110.

**Attachment C**

Superior Court Order

EXPEDITE (if filing within 5 court days of hearing)  
**XX** Hearing is set:  
Date: August 30, 2011  
Time: 11:00 a.m.  
Judge/Calendar: Criminal Presiding/RALJ Calendar

**FILED ORIGINAL**  
AUG 30 2011  
SUPERIOR COURT  
BETTY J. GOULD  
THURSTON COUNTY CLERK

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

ROBERT CAMPBELL, )  
 )  
Petitioner, )  
 )  
and )  
 )  
STATE OF WASHINGTON, )  
EMPLOYMENT SECURITY )  
DEPARTMENT, )  
 )  
Respondent. )

Case No.: 10-2-01547-4  
**ORDER**  
**Administrative Appeal**

**I. HEARING**

This review of an administrative decision in a contested case was heard on August 30, 2011. Katie Hilien, Rule 9 intern and supervised by attorney Marc Lampson argued for the petitioner, ROBERT CAMPBELL. *Jody Lee Campbell* Dionne Padilla-Huddleston, assistant

1 attorney general, argued for respondent, the Washington State Employment Security  
2 Department.

## 3 II. NO ISSES OF FACT

4 The review was conducted on the record of the administrative proceeding. No  
5 new evidence was offered or received, and the court has decided no issues of fact.  
6

## 7 III. CONCLUSIONS OF LAW

8 **3.1 Jurisdiction.** This court has jurisdiction for this review under RCW 50.32.120 and  
9 34.05.514.

10 **3.2 Law governing review.** Review is governed by RCW 34.05.570.

11 **3.3 Scope of Review.** The scope of review by this court is specified by RCW  
12 34.05.574 which reads in part as follows:

- 13 1) In a review under RCW 34.05.570, the court may (a) affirm the agency action  
14 or (b) order an agency to take action required by law, order an agency to  
15 exercise discretion required by law, set aside agency action, enjoin or stay  
16 the agency action, remand the matter for further proceedings, or enter a  
17 declaratory judgment order. The court shall set out in its findings and  
18 conclusions, as appropriate, each violation or error by the agency under the  
19 standards for review set out in this chapter on which the court bases its  
20 decision and order. In reviewing matters within agency discretion, the court  
shall limit its function to assuring that the agency has exercised its discretion  
in accordance with law, and shall not itself undertake to exercise the  
discretion that the legislature has placed in the agency. The court shall  
remand to the agency for modification of agency action, unless remand is  
impracticable or would cause unnecessary delay.

21 **3.4 Basis for reversal: The order misinterpreted and misapplied the law.** In finding  
22 that ROBERT CAMPBELL was ineligible for benefits because he did not have good  
23 cause to quit his job, the Commissioner misinterpreted and misapplied the law with  
24

1 regard to good cause quits under the Employment Security Act; therefore, the  
2 Commissioner's Order is reversed under RCW 34.05.570(3)(d). *Both*

3 *prongs of quit to follow were met.*  
4 IV. JUDGMENT *RCW 50.20.050*  
5 *(2)(b)(iii)(A)*

*may  
ghc  
W*

4 4.1 The court **REVERSES** the appealed decision of the Employment Security  
5 Department, in Docket No. 04-2010-30017 dated November 24, 2010.

6 4.2 The court **ORDERS** that the Employment Security Department pay Mr. Campbell  
7 the benefits to which he was entitled in accordance with this decision.

8 4.3 The court **AWARDS** reasonable attorney fees under authority of RCW 50.32.160  
9 that mandates attorney fees and costs be awarded upon reversal or modification  
10 of a Commissioner's Order, in an amount to be determined by agreement of  
11 counsel or by the filing of a cost bill within 10 days of the date of this decision.

12  
13 DONE IN OPEN COURT THIS 30 day of August 2011.

14   
15 \_\_\_\_\_  
16 THE HONORABLE LISA SUTTON

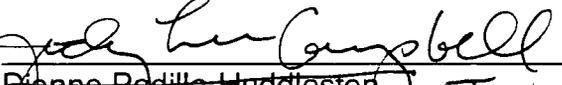
1 Presented by:

2  
3 

4 Marc Lampson  
5 WSBA # 14998  
6 Attorney for Petitioner  
7 Unemployment Law Project  
8 1904 Third Ave., Suite 604  
9 Seattle, WA 98101  
10 206.441.9178

11 Approved as to form by:

12  
13 ROB McKENNA  
14 Attorney General

15   
16 ~~Dionne Padilla-Huddleston~~ JODI CAMPBELL  
17 WSBA #~~38356~~ 32233  
18 Asst. Attorney General  
19 Attorney General's Office  
20 1125 Washington St. S.E., P.O. Box 40110  
21 Olympia, WA 98504-0110

FILED  
COURT OF APPEALS  
DIVISION II

11 DEC 13 PM 12:31

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

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

ROBERT CAMPBELL,  
Respondent,  
and  
DEPARTMENT OF EMPLOYMENT  
SECURITY,  
Appellant.

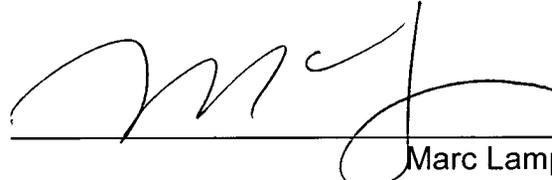
No. 42631-5-II

**CERTIFICATE OF SERVICE BY MAIL**

**CERTIFICATE**

I certify that I emailed an electronic and mailed a paper copy of the Respondent's Opening Brief in this matter on December 12, 2011, to the Respondent ESD's attorney, Matthew Tilghman-Havens, Office of the Attorney General, 800 Fifth Ave, Suite 2000, Seattle, WA 98104-3188.

Dated this December 12, 2011.

  
\_\_\_\_\_  
Marc Lampson  
WSBA # 14998  
Attorney for Respondent