

67703-9

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NO. 67703-9 - I

COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON

GEORGE O. TAMBLYN, IV,
Appellant,

v.

STATE OF WASHINGTON
EMPLOYMENT SECURITY
DEPARTMENT,
Respondent.

APPELLANT'S REPLY
BRIEF

DATED this 30th day of January, 2012

SUBMITTED BY:

GEORGE O. TAMBLYN (III)
WSBA 15429
Attorney for Appellant
8043 West Mercer Way
Mercer Island, WA 98040
(206) 236-2769
GTamblyn@advocateslg.com

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COURT OF APPEALS DIV I
STATE OF WASHINGTON
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I. INTRODUCTION

Tamblyn agrees with the principal proposition before the court is the question of “whether the Commissioner’s dismissal of Tamblyn’s untimely appeal was proper,” but asserts that there is more involved for this Court to decide than mere accept that Tamblyn’s admission that he did not review the determination letter “thoroughly” is exclusively determinative.

II. THE ISSUES

The issues are:

- 1) Did Tamblyn present facts in his statements to the Commissioner (that were undisputed) that presented a reasonable basis for excusing the delay?
- 2) Was the 8 page “Determination Letter” (CABR 27 – 34, Appendix 3, Appellant’s Brief) so drafted as to be inadequate notice and thus a denial of Tamblyn’s right to Due Process?
- 3) Did the ALG properly apply the “Wells” case to the instant case?

III. ARGUMENT

In *Wells v. Employment Sec. Dep't*, 61 Wn. App. 306, 809 P.2d 1386, (Div. I, 1991), this Court, in a well-reasoned opinion set forth the policy Tamblyn urges in this appeal, the Court held.

“In light of this mandate to liberally construe the statute in favor of unemployed workers, we are unwilling to conclude that the Legislature intended to deprive the unsophisticated applicant of the opportunity to have his benefits claim heard on the merits based on a 1-day delay which occasioned no prejudice. As the United States Supreme Court has said, “technicalities are particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process.” *Love v. Pullman Co.*, 404 U.S. 522, 527, 92 S.Ct. 616, 619, 30 L.Ed.2d 679 (1972). Therefore, we hold that the Department erred in interpreting the legal standard for “good cause” determinations, and that Wells has shown good cause to excuse his untimely appeal.”

We urge the Court to reaffirm the *Wells* approach and recognize that the Determination Letter is confusing to the layperson and that Tamblyn, reading it, could have reasonably concluded that only his

prospective benefits were being terminated. To give proper notice, the letter should have had, in its beginning, in bold, a succinct, and clear summary of the effect of the determination letter and the requirements for appeal. It did not. It even contained a statement that the benefits were being terminated as of the date of the letter. Tamblyn respectfully urges the Court to read the determination letter attached as Exhibit 3 to Tamblyn's appeal brief and determine, itself, if this meets the fairness doctrine adopted by this Court in *Wells*.

The legislature has often dealt with the need for legal notice to be clear and not confusing. The statutory form of summons is but one example. Where the legislature has not taken this duty it is clearly the province of the courts to protect the lay public from such confusing notice requirements.

The results below are particularly unjust since the Department collected payroll deductions for Tamblyn's coverage for several years and then denied him even a hearing to argue the merits of his case.

IV. CONCLUSION

For the reasons stated above, this Court is urged to reverse and remand, and award reasonable attorneys fees as provided by law.

DATED this 30th day of January, 2012

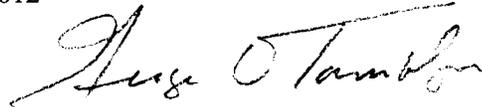
SUBMITTED BY:



GEORGE O. TAMBLYN (III)
WSBA 15429
Attorney for Appellant
8043 West Mercer Way
Mercer Island, WA 98040
(206) 236-2769
GTamblyn@advocateslg.com

I hereby certify on the date below, pursuant to a stipulation for email service, I emailed a true copy of APPELLANT'S ANSWER TO MOTION to: Jennifer S. Steele, AAG at JenniferS3@ATG.WA.GOV

DATED this 30th day of January, 2012



GEORGE O. TAMBLYN (III)
WSBA 15429