

90121-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

From Court of Appeals
No69736-6-1

MOHAMED ABDELKADIR
Plaintiff,

FILED

APR 14 2014

VS.

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON *CF*

STATE OF WASHINGTON DEPARTMENT
OF EMPLOMENT SECURITY

Defendant

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 APR 14 PM 3:12

PETITION FOR REVIEW

MOHAMED ABDELKADIR
PO Box 25794
Seattle, WA 98165
(206) 778-1983

Form 1. Notice of Appeal

(Trial Court Decision)

[Rule 5.3a]

Court of Appeals [King] COUNTY

Mohamed Abdelkadir)

Plaintiff,

) Case No. 69736-6-1

) Notice of Appeal to

v.

) Supreme Court

STATE OF WASHINGTON DEPARTMENTS OF)

EMPLOMENT SECURITY)

Defendant.)

Mohamed Abdelkadir], [plaintiff or defendant], seeks review by the designated appellate Supreme Court the [Describe the decision or part of decision which the party wants reviewed for example

Finding of fact, conclusions of law and order affirming the decision of the commissioner of the Employment Security Department of the State of Washington that plaintiff was

ineligibles to receive Training Benefits

I believe that the Superior court error in determining that the commission's finding of fact was supported by substantial evidence.

The commission's finding of fact were not supported by substantial evidence, because:

Review page 10, lines 18 through 27, respondent brief dated June 10, 2013 was incorrect AR AT 87 is not my testimony (Abdelkadir). It is denying a Statement from ESD.

AR AT 59 Abdelkadir 's testimony at the hearing indicated that I did not receive a claims booklet.

In 2009, the CSK Auto In challenged, I was deny my unemployment benefit by the ESD.

I am dislocated worker and my skill no longer in demand.

Exhausted Reasonable Measures, Please See JOB SEARCH LOGS, See page 213 of 251 of the transcript testimony for more information.

, Mohamed Abdelkadir learned on October 14, 2011, when I was denied by Unemployment Security Department for the training benefit dead line.

Mr. Abdelkadir Unemployment Benefit was ended or run out while waiting Court decision on February 13, 2010.

April 1, 2014

I am respectfully requesting from the ESD to provide a proof of my signature that showing received of the Training Benefit kit.

Judge (ALJ) Kathleen Love Joy statement during the hearing on January 27, 2012,

This claimant says he has not received it, (Judge Kathleen M. Lovejoy OAH Judge) and I am just surprised that document is not in this file. And what I mean (Judge Kathleen M. Lovejoy OAH Judge) by that, the document that would say we mailed out to claimant the monetary determination and his unemployment claims kit, See AR at 45 of 251, line 14-18 for more information, the respondents Attorneys (Robert W. Ferguson and April Benson Bishop bringing new issue, which was not in my file (Abdelkadir) during administrate hearing (OAH) over the phone on January 27, 2013.

Judge Verellen, Lau entered on March 3, 2014 the Court of Appeal Judge failed to absorb the above and the following statement provided by the Plaintiff.

On page 3, line 12-13, I, Abdelkadir disagree with respondent brief dated on June 10, 2013, I, Abdelkadir I learned about the training benefits in September 2011 Vol. 13 NO. 8 flyers this program offered by Shoreline Community collage, See AR at 159 of 251 for more information.

Abdelkadir under RCW 50.22.130 met the statutory definition of dislocated worker, Abdelkadir run out of income, the training benefits are available to dislocated worker payable after regular benefits run out. See AR at 85 of 251 for more information.

I, Abdelkadir would say direct to the court's "attentions" to RCW 50.22.130, the intent by the training benefits program, and it's first that training should be available for those unemployed, who skills are no longer in demand –See AR at 62-63, also see job search log (Abdelkadir) AR at 114-131 and AR at 208-237 of 251 for more information.

The above "job search logs," indicates Abdelkadir "skill driving" no more in demand.

On page 14, line **B** respondent brief incorrect. Dated on June 10, 2013

Dislocated worker is any individual who:

- (a) Has been terminated or received a notice of termination from employer.**
- (b) Is eligible for or has exhausted entitlement to unemployment compensation benefits; and**
- (c) Is unlikely to return to employment the individual's principle or previous industry because of a diminishing demand for their skills in that occupation industry.**

On page 15, line 5 –18 dated on June 10, 2013 the respondents brief incorrect because my skill driving no more in demand, Please See JOB SEARCH LOGS, See page 213 of 251, 114-131 and AR at 208-237 of 251 of the transcript testimony.

The transcriptionist, Jessica Sanford, wrote an incomplete record of the hearing

Cite AR AT 57, line 19 through 25.

Exhausted Reasonable Measures, Please See JOB SEARCH LOGS, See page 213 of 251 of the transcript testimony for more information.

I meet all the three items to be considered a dislocated worker

- (a) Has been terminated or received a notice of termination from employer.**
- (b) Is eligible for or has exhausted entitlement to unemployment compensation benefits; and**
- (c) Is unlikely to return to employment the individual's principle or previous industry because of a diminishing demand for their skills in that occupation industry.**

My claim for unemployment was initially denied in 2009 , after my former employer CSK Auto parts , challenged that hat claim.

I then spent over two years to establish the legitimacy of my claim

April 1, 2014

After reversed the commission decision on December 3, 2010, I had not received any booklet kit, also I did not received in 2009 booklet kit, when I open a claim.

See AR AT 59 Abdelkadir 's testimony at the hearing indicated that I did not receive a claims booklet. In 2009 for more information

The department should waive the deadlines established under this subsection for reasons deemed by the commission to be good cause. As the above statement Mohamed Abdelkadir has a right to receive Training Benefit.

Entered on March 3, 2014

A copy of the decision is attached to this notice.

[Date] On April 1, 2014

Signature



Mohamed Abdelkadir Plaintiff Pro Se

PO Box 25794

Seattle, WA 98165

(206) 778-1983

April 1, 2014

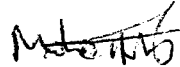
PROOF OF SERVICE

I, Mohamed Abdelkadir declare under the penalty of perjury under the
of state of Washington that on April 1, 2014 I served a true and correct
copy notice of appeal to the Supreme Court, documents and attached
documents served to Court of Appeal and was mailed via certify U.S
mail with proper postage attached to:

Richard D. Johnson, Court Administrator Clerk
Court of appeal Division One, 600-University St.
Seattle, WA 98101

April Susanne Benson Bishop, WA Attorney General Office
800-5th AVE Ste 2000, Seattle, WA 98104

Mohamed Abdelkadir
PO Box 25794, Seattle, WA 98165



April 1, 2014

Mohamed Abdelkadir

A copy of the decision attachment " A"
Case No. Case No. 69736-6-1

2014 MAR -3 AM 9:43

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

MOHAMED ABDELKADIR,)	No. 69736-6-I
)	
Appellant,)	
)	
v.)	
)	
WASHINGTON STATE DEPARTMENT)	UNPUBLISHED OPINION
OF EMPLOYMENT SECURITY,)	
)	
Respondent.)	FILED: March 3, 2014
_____)		

VERELLEN, J. — Mohamed Abdelkadir appeals from a superior court order affirming a Washington Employment Security Department (Department) commissioner’s decision denying his request for training benefits. The commissioner determined that Abdelkadir was ineligible to receive training benefits because he failed to file his application within the 60-day deadline and because he did not meet the statutory definition of a “dislocated worker.” Because the commissioner’s findings are supported by substantial evidence and the commissioner correctly applied the law, we affirm.

FACTS

On February 19, 2009, Abdelkadir filed a claim with the Department for unemployment benefits. Although the commissioner initially denied Abdelkadir’s

request, the Department later stipulated that he was eligible to receive unemployment benefits.¹

On October 11, 2011, Abdelkadir submitted his application for training benefits to the Department. Abdelkadir planned to enroll in an automotive service training program that was scheduled to begin in January 2012. In the application, Abdelkadir identified the occupation of “driver” as his “main job.”² His most recent work experience included approximately seven years as a driver for various employers.

The Department denied Abdelkadir’s request for training benefits. It determined that he was ineligible because his primary occupation as a driver was considered “in demand,” according to the Workforce Development Council.³ The Department also determined that he was ineligible because he failed to submit his training application within the 60-day statutory period.

Abdelkadir appealed the Department’s decision to the Office of Administrative Hearings. Following an administrative hearing, the administrative law judge (ALJ) affirmed the Department’s decision.

Abdelkadir then petitioned the commissioner to review the ALJ’s order. The commissioner adopted the ALJ’s findings of facts and conclusions of law and affirmed the ALJ’s order. Abdelkadir appealed to King County Superior Court, which affirmed the commissioner’s decision.

¹ After the superior court affirmed the commissioner’s decision denying Abdelkadir’s request for unemployment benefits, Abdelkadir filed a notice of appeal with this court. Following settlement negotiations, the parties moved to withdraw the appeal pursuant to RAP 18.2 and stipulated to the reversal of the commissioner’s decision.

² Certified Appeal Board Record (CABR) at 103, 105.

³ CABR at 86.

Abdelkadir appeals.

STANDARD OF REVIEW

The Washington Administrative Procedure Act (WAPA), chapter 34.05 RCW, governs judicial review of a final administrative decision of the commissioner of the Department.⁴ In reviewing such a decision, we sit in the same position as the superior court and apply the standards of the WAPA directly to the administrative record that was before the agency.⁵ Thus, we review the commissioner's decision, not the ALJ's decision or the superior court's ruling.⁶

A commissioner's decision is considered "prima facie correct."⁷ The party asserting invalidity of an agency action—in this case, Abdelkadir— carries the burden of proving the invalidity.⁸ Relief from an agency decision will be granted if the reviewing court determines that the commissioner has erroneously interpreted or applied the law, the order is not supported by substantial evidence, or the order is arbitrary or capricious.⁹

We review findings of fact for substantial evidence.¹⁰ Substantial evidence is evidence that would persuade a fair-minded person of the truth or correctness of the

⁴ Tapper v. Emp't Sec. Dep't, 122 Wn.2d 397, 402, 858 P.2d 494 (1993).

⁵ Id.; Daniels v. Emp't Sec. Dep't, 168 Wn. App. 721, 727, 281 P.3d 310, review denied, 175 Wn.2d 1028 (2012).

⁶ Verizon Nw., Inc. v. Wash. Emp't Sec. Dep't, 164 Wn.2d 909, 915, 194 P.3d 255 (2008).

⁷ Anderson v. Emp't Sec. Dep't, 135 Wn. App. 887, 893, 146 P.3d 475 (2006).

⁸ RCW 34.05.570(1)(a); RCW 50.32.150.

⁹ RCW 34.05.570(3)(d),(e),(i); Tapper, 122 Wn.2d at 402.

¹⁰ Smith v. Emp't Sec. Dep't, 155 Wn. App. 24, 32, 226 P.3d 263 (2010).

matter.¹¹ We review an agency's interpretation or application of the law de novo, giving substantial weight to the agency's interpretation of the statutes it administers.¹²

DISCUSSION

As an initial matter, we note that Abdelkadir, representing himself, fails to comply with our rules on appeal. His brief does not contain assignments of error and issues pertaining to the assignments of error.¹³ And he does not support his assertions with citations to applicable legal authority.¹⁴ But even ignoring these deficiencies, his arguments are not persuasive.

Abdelkadir first contends that the commissioner erred in denying his request for training benefits because, he asserts, the commissioner improperly concluded that he failed to satisfy the timing requirement prescribed in RCW 50.22.150(2)(d). We disagree.

Chapter 50.22 of the Employment Security Act establishes a training benefits program to "provide unemployment insurance benefits to unemployed individuals who participate in training programs necessary for their reemployment."¹⁵ RCW 50.22.150— applicable to individuals like Abdelkadir with claims effective before April 5, 2009¹⁶—

¹¹ King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 142 Wn.2d 543, 553, 14 P.3d 133 (2000).

¹² Smith, 155 Wn. App. at 32; Honesty in Environmental Analysis & Legislation v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 96 Wn. App. 522, 526, 979 P.2d 864 (1999).

¹³ RAP 10.3(a)(4).

¹⁴ RAP 10.3(a)(6).

¹⁵ RCW 50.22.130.

¹⁶ The "effective date" of an unemployment claim is the Sunday of the calendar week in which the application for benefits is filed. WAC 192-100-035. Abdelkadir submitted his application for unemployment benefits on February 19, 2009.

sets forth the criteria under which an individual is eligible to receive training benefits. According to the statute, a claimant is eligible if, among other things, he or she submits an individual training program to the commissioner "within sixty days after the individual is notified by the employment security department of the requirements of this section."¹⁷

Here, the commissioner found that "[w]hen the claimant opened his claim for benefits in 2009, [t]he department sent him an *Unemployment Claims Kit* on February 20, 2009. The pamphlet contained information about [t]raining [b]enefits."¹⁸

This finding is supported by substantial evidence in the record. At the administrative hearing, the ALJ asked Abdelkadir, "When you opened your claim for unemployment benefits, did they send you anything in the mail about how to file your claim?"¹⁹ Abdelkadir responded, "They send me how to—no. They send to me how to file, but—how to file for benefits, yeah, they send to me."²⁰ Moreover, among the exhibits presented to the ALJ was a document entitled "Date Calculator."²¹ This document indicates that the pamphlet was mailed on February 20, 2009. Accordingly, the commissioner did not err in finding that the Department mailed Abdelkadir the *Unemployment Claims Kit* on February 20, 2009.

Abdelkadir argues that no evidence shows that he actually received a pamphlet notifying him of the 60-day deadline. Although the commissioner found that the

Accordingly, the effective date is February 15, 2009. Because this effective date precedes April 5, 2009, RCW 50.22.150 applies.

¹⁷ RCW 50.22.150(2)(d).

¹⁸ Clerk's Papers at 63.

¹⁹ CABR at 58.

²⁰ CABR at 58.

²¹ CABR at 136.

Department mailed the kit including the pamphlet to Abdelkadir, he did not expressly find that Abdelkadir received it. Nevertheless, Abdelkadir's testimony that he received information about how to file claims is entirely consistent with his receipt of the kit including the pamphlet on training benefits.²²

RECEIVED BY CLAIMANT
NO MORE FOR CASE BUT NO
RECEIVED FOR TRAINING BENEFIT

Abdelkadir did not submit his application for training benefits until October 11, 2011, more than two years beyond the 60-day deadline set forth in RCW 50.22.150(2)(d). Therefore, the commissioner properly concluded that Abdelkadir did not satisfy the timing requirement necessary to establish eligibility for training benefits.

But even if Abdelkadir satisfied the timing requirement, he failed to establish his eligibility as a dislocated worker. RCW 50.22.150(2)(a) requires that the claimant be "a dislocated worker as defined in RCW 50.04.075." Pursuant to RCW 50.04.075(1), a "dislocated worker" is a person who:

- (a) Has been terminated or received a notice of termination from employment;
- (b) Is eligible for or has exhausted entitlement to unemployment compensation benefits; and
- (c) Is unlikely to return to employment in the individual's principal occupation or previous industry *because of a diminishing demand for their skills in that occupation or industry.*^[23]

²² See WAC 192-120-010(3) ("Each person who is *mailed* a copy of the information booklet will be responsible for filing claims in accordance with its instructions." (emphasis added)); WAC 192-270-035(1) ("Information about training benefits will be included in the claimant information booklet mailed to you at the time you file your application for unemployment benefits (see WAC 192-120-010). . . . [T]he claimant information booklet is considered your notification of the eligibility requirements for the training benefits program."); see also WAC 192-120-010(1), (2), (5), (7). Abdelkadir provides no authority that the Department is required to use certified or return receipt requested mail.

²³ (Emphasis added.)

7/18/11 JLD

Here, the commissioner found that “Truck Drivers, Light or Delivery Services . . . is a demand occupation in the Seattle King County Workforce Development Area and in the Snohomish Workforce Development [sic] areas.”²⁴ Alluding to RCW 50.04.075(c), the commissioner concluded that Abdelkadir “has training in a ‘demand’ occupation,” and “is not eligible for training benefits because he is not a dislocated worker as he has work experience in a demand occupation.”²⁵

The commissioner’s finding—that the occupation of truck driver constitutes a demand occupation—is supported by substantial evidence. Exhibits in the record reflect that the occupation of “Truck Drivers, Light or Delivery,” qualified as a “demand” occupation in the Seattle King County and Snohomish County workforce development areas.²⁶

Abdelkadir contends that his occupation as a driver was not in demand because he was unable to find a job as a driver. He points to his “Job Search Log,” an exhibit demonstrating that he applied to numerous driver positions between December 2010 and October 2011.²⁷ But a commissioner’s assessment of whether a job or skill is in demand may also include, as it did here, consideration of local labor market and economic data.²⁸ The commissioner was entitled to weigh such evidence in the

²⁴ Clerk’s Papers at 64.

²⁵ Clerk’s Papers at 67.

²⁶ CABR at 109-10.

²⁷ CABR at 114-31.

²⁸ See RCW 50.22.150(2)(c), (11).

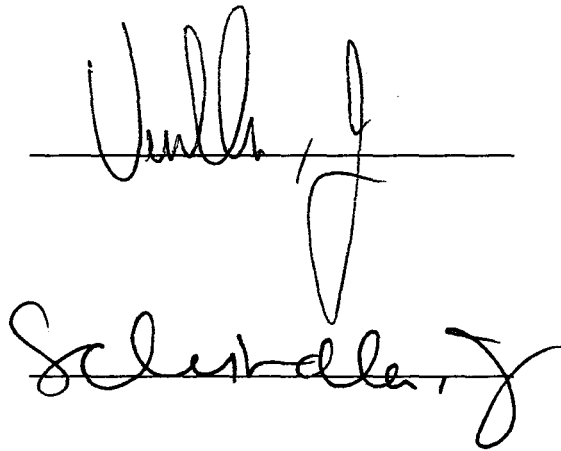
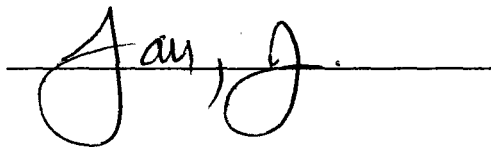
Department's favor. We will not substitute our judgment for that of the agency regarding the weight of the evidence.²⁹

In light of these findings, the commissioner did not commit legal error by concluding that Abdelkadir was not a dislocated worker. Based upon the finding that his occupation was deemed to be in demand, the commissioner correctly concluded that Abdelkadir did not meet the definition of a dislocated worker.

Abdelkadir contends, finally, that he was entitled to default judgment against the Department because his employer's representative did not appear at the administrative hearing. But Abdelkadir is mistaken. "If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding, . . . the presiding officer *may* serve upon all parties a default or other dispositive order."³⁰ Thus, the ALJ was authorized—but not required—to find the Department in default. She also had the discretion to reach the merits of the matter. The ALJ properly exercised her discretion by choosing not to enter a default order.

Affirmed.

WE CONCUR:



²⁹ Smith, 155 Wn. App. at 35.

³⁰ RCW 34.05.440(2) (emphasis added).

RCW 50.32. 110
Fees for administrative hearing rules,
Attachment “ B”
Case No. Case No. 69736-6-1



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[50.32.100](#) << [50.32.110](#) >> [50.32.120](#)

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 or her 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.

[2010 c 8 § 13038; 1945 c 35 § 127; Rem. Supp. 1945 § 9998-265.]

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