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September 22, 2014  
Court of Appeals  
Division III  
State of Washington

NO. 324109-III

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**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**

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JESSICA PEDERSON,

Appellant,

v.

STATE OF WASHINGTON EMPLOYMENT SECURITY  
DEPARTMENT,

Respondent.

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**RESPONDENT'S BRIEF**

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## **I. INTRODUCTION**

Under the Employment Security Act, an employee who voluntarily quits work without good cause is ineligible for unemployment benefits. RCW 50.20.050(2). Appellant Jessica Pederson accepted a three day job at Chukar Fruit Company but quit after one day of employment because she did not think the job was a good fit. This is not a good cause reason to quit, and the Commissioner of the Employment Security Department correctly concluded Pederson was ineligible for unemployment benefits.

Because substantial evidence supports the Commissioner's findings of fact, and the Commissioner made no errors of law, the Department respectfully requests that the Court affirm the Commissioner's decision.

## **II. COUNTERSTATEMENT OF THE ISSUES**

1. Pederson has failed to specifically assign error to any of the Commissioner's findings of fact. Are the Commissioner's findings of fact verities on appeal? Even if Pederson properly assigned error to the factual findings, does substantial evidence in the record support the Department's findings?
2. Did the Commissioner properly conclude that Pederson did not have good cause to quit due to a reduction in wages or hours where she accepted a three day position and had two remaining days of employment, with the possibility of continued employment?

### III. COUNTERSTATEMENT OF THE CASE<sup>1</sup>

Jessica Pederson was hired by Chukar Fruit Company (Chukar). AR 17-18, 47, 60 (Finding of Fact (FF) 2), 83 (Additional Finding of Fact (AFF) I).<sup>2</sup> While she thought she had been permanently hired as a shipping coordinator, when she arrived for her first day she learned she and others would be working for three days and the employer would then decide which of several candidates would fill the position. AR 18, 45, 83 (AFF I). Pederson began working and was paid for the day of work. AR 17-19, 83 (AFF I).

During that day of work, Pederson's co-workers saw her resume, commented on her qualifications, and suggested she was overqualified for the position and should look for other work. AR 20-22, 83 (AFF II). After the first day, Pederson informed the employer the job was not a good fit for her and quit. AR 21-22, 46, 84 (AFF III). If she had not quit, she could have continued working for at least two more days. AR 18, 84 (AFF IV).

Pederson applied for unemployment benefits, which the Employment Security Department denied. AR 34-40. After an

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<sup>1</sup> Pederson's statement of the case cites to the Clerk's Papers and administrative record regardless of whether the point in the record is reflected in a finding of fact. *See* Br. Appellant at 1-2. The Department provides this counterstatement of the case to present the facts as found by the Commissioner, which are the basis for this Court's review.

<sup>2</sup> The superior court transmitted the Administrative Record (AR) as a stand-alone document. *See* Index to Clerk's Paper's (CP). Because it is separate from the clerk's papers, this brief cites to the certified agency record as "AR."

administrative hearing, the Administrative Law Judge (ALJ) determined Pederson voluntarily quit her job for good cause and was eligible for benefits. AR 60-63. The employer then filed a petition for review with the Department's Commissioner, who rejected some of the ALJ's findings of fact conclusions of law, made additional findings and conclusions, and reversed the ALJ's order. AR 83-86. The Commissioner found that after Pederson discovered she would be working three days with other job candidates, Pederson began working. AR 83 (AFF I). The Commissioner further found she then quit at the end of the first day, telling her employer she did not think the job was a good fit. AR 84 (AFF III). The Commissioner concluded Pederson voluntarily quit her job without good cause. AR 84 (Additional Conclusion of Law II). Pederson appealed to Yakima County Superior Court, Clerk's Papers (CP) 1-14, and the judge affirmed the Commissioner's decision. CP 26-28. Pederson then filed this appeal.

#### **IV. STANDARD OF REVIEW**

Washington's Administrative Procedure Act (APA), chapter 34.05 RCW, governs judicial review of a final decision by the Department's Commissioner. RCW 34.05.510; RCW 50.32.120; *Rasmussen v. Dep't of Emp't Sec.*, 98 Wn.2d 846, 849, 658 P.2d 1240 (1983). The Court of Appeals sits in the same position as the superior court on review of the

agency action under the APA and applies the APA standards directly to the administrative record. *Smith v. Emp't Sec. Dep't*, 155 Wn. App. 24, 32, 226 P.2d 263 (2010).

In this appeal, the Commissioner's decision is prima facie correct, and it is Pederson's burden to establish its invalidity. RCW 34.05.570(1)(a); RCW 50.32.150; *Smith*, 155 Wn. App. at 32. Pederson must therefore show that the Commissioner's determination that she voluntarily quit her job without good cause was incorrect.

Findings of fact must be upheld if supported by substantial evidence. RCW 34.05.570(3)(e); *William Dickson Co. v. Puget Sound Air Pollution Control Agency*, 81 Wn. App. 403, 411, 914 P.2d 750 (1996). The reviewing court should "view the evidence and the reasonable inferences therefrom in the light most favorable to the party that prevailed" at the administrative proceeding below. *Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 407, 858 P.2d 494 (1993). Neither on appeal in the superior court, CP 15-18, nor before this Court, does Pederson challenge any of the Commissioner's findings of fact. Accordingly, they are verities on appeal. *Tapper*, 122 Wn.2d at 407.

Questions of law are reviewed under the error of law standard and are subject to de novo review. *Shaw v. Emp't Sec. Dep't*, 46 Wn. App. 610, 731 P.2d 1121 (1987); *Ciskie v. Dep't of Emp't Sec.*, 35 Wn. App. 72,

74, 664 P.2d 1318 (1983). While review is de novo, courts have consistently accorded a heightened degree of deference to the Commissioner's interpretation of employment security law in view of the Department's expertise in administering the law. *Markam Group, Inc. v. Dep't of Emp't Sec.*, 148 Wn. App. 555, 561, 200 P.2d 748 (2009); *William Dickson Co.*, 81 Wn. App. at 407.

Pederson's argument that the Commissioner erred in concluding she voluntarily quit raises a mixed question of law and fact because it involves the meaning of the terms "voluntary quit" as applied to the facts found in this case. The manner in which an individual's employment is terminated is a matter of fact. *In re Bauer*, Empl. Sec. Comm'r Dec.2d 220 (1976).<sup>3</sup> A determination that the facts show a quit or discharge is a question of law. *Safeco Ins. Co. v. Meyering*, 102 Wn.2d 385, 390, 687 P.2d 195 (1984). When reviewing mixed questions of law and fact, the court must (1) determine which factual findings are supported by substantial evidence; (2) make a de novo determination of the correct law; and (3) apply the law to the applicable facts. *Tapper*, 122 Wn.2d at 403. Accordingly, with respect to the question of whether Pederson voluntarily quit, the court reviews factual findings to assess whether they are

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<sup>3</sup> Under RCW 50.32.095, the Commissioner may designate certain Commissioners' decisions as precedent, which serve as persuasive authority for this Court. See *Martini v. Emp't Sec. Dep't*, 98 Wn. App. 791, 795, 990 P.2d 981 (2000).

supported by substantial evidence in the record and then applies the law de novo to the facts as found by the Commissioner.

## V. ARGUMENT

The Commissioner properly concluded Pederson quit her employment without good cause and was disqualified from receiving unemployment benefits. Pederson accepted the offer of three days of employment when she worked on the first day and was paid for it. She then quit at the end of the day for personal reasons despite the availability of at least two additional days of work. Pederson has not assigned error to any of these findings, so they are verities on appeal. Opening Br. 5-6. Given these facts, the Commissioner correctly concluded Pederson did not have good cause to quit. The Court should affirm.

### A. **The Unchallenged Findings Are Verities on Appeal, And In Any Event, They Are Supported By Substantial Evidence**

Pederson does not specifically assign error to any of the Commissioner's findings of fact, including the findings that Pederson was employed by Chukar for one day, that she quit, and that if Pederson had not quit, she could have continued working for at least two more days. AR 60 (FF 2), 83 (AFF III, IV); *see* RAP 10.3(g) and (h); *In re Disciplinary Proceeding Against Petersen*, \_\_ Wn.2d \_\_, 329 P.3d 853, 858 (July 3, 2014) (the burden is on the party challenging the findings of fact to properly assign error and to establish that specific challenged

findings are not supported by the record). Because these findings are unchallenged, they are verities on appeal. *Tapper*, 122 Wn.2d at 407.

Even if Pederson's brief can be interpreted as assigning error to the factual findings, substantial evidence supports the findings, and they should be upheld. See RCW 34.05.570(3)(e). Substantial evidence is evidence "sufficient to persuade a rational, fair-minded person of the truth of the finding." *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). Evidence may be substantial enough to support a factual finding even if the evidence is conflicting and could lead to other reasonable interpretations. *Fred Hutchinson Cancer Research Ctr. v. Holman*, 107 Wn.2d 693, 713, 732 P.2d 974 (1987).

Pederson vaguely alleges she was not employed at all and that the voluntary quit statute, RCW 50.20.050, disqualifying her from benefits is inapplicable since she had no job to quit. Opening Br. at 5. She is incorrect. Here, substantial evidence supports the findings that Pederson was employed by Chukar. AR 60 (FF 2), 83 (AFF I). Although she believed she had been hired for a permanent position, when she learned the position was three days of work with the possibility of a full-time position, she accepted the job when she worked the first day and accepted payment for her work. AR 17-19.

Substantial evidence also supports the findings that Pederson quit, and that she did so for personal reasons. During her day of employment, coworkers commented on her qualifications, suggesting she was overqualified for the job and ought to look for different work. AR 17-20, 83 (AFF II). At the administrative hearing, Pederson testified that in part she quit because she didn't think her co-workers liked her and it had been "the worst day ever." AR 25. At the end of the first day, she told her employer she did not think the job was a good fit for her and there was too much Spanish required. AR 23-24, 46, 47. She did not return to work after that. AR 18, 47, 84 (AFF III).

Under the Employment Security Act, "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). "Employment" is defined as:

[P]ersonal services, of whatever nature unlimited by the relationship of master and servant as known to the common law or any other legal relationship . . . performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied.

RCW 50.04.010. "Wages" means "the remuneration paid by one employer during any calendar year to an individual in its employment under this title." RCW 50.04.320. Further, remuneration is, "all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium other than cash." RCW 50.04.320(4)(a).

Here, Pederson performed personal services by working the assembly line and this work was performed for Chukar's benefit. AR 18; *see Affordable Cabs v. Empl. Sec. Dep't*, 124 Wn. App. 361, 368, 101 P.3d 440 (2004) (the test to determine if the worker performed personal services is whether services performed were clearly for alleged employer or for its benefit). That she only worked for one day is of no consequence. *See In re Krimbel*, Empl. Sec. Comm'r Dec.2d 904 (2005) (benefit claim of employee who separated from employment after one day was adjudicated as a voluntary quit). Further, it is undisputed Pederson received wages from Chukar for the work she performed since she received a paycheck. AR 17-18. Therefore, she was in Chukar's employment, even if only for one day.<sup>4</sup>

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<sup>4</sup> Pederson notes the Commissioner's conclusion what she had was "essentially a working interview." Opening Br. at 5-6. This comment does not negate the Commissioner's findings Pederson was employed by Chukar, AR 60 (FF 2), 83-84 (AFF I, IV), nor the Commissioner's conclusion she voluntarily quit her job.

Because Pederson failed to properly assign error to the findings of fact, they are verities on appeal. But even if she had assigned error to the findings, adequate support exists in the record for the Department's findings and the Court should therefore uphold them.

**B. Pederson Failed To Establish Good Cause For Quitting**

To be eligible for unemployment benefits under RCW 50.20.050(2), a claimant who voluntarily quits her job has the burden of showing that she had "good cause" for quitting. RCW 34.05.570(1)(a); *Anderson v. Emp't Sec. Dep't*, 135 Wn. App. 887, 893, 146 P.3d 475 (2006). The Act "shall be liberally construed for the purpose of reducing *involuntary unemployment* and the suffering caused thereby to a minimum." RCW 50.01.010 (emphasis added). As such, the burden is on the claimant to establish her right to benefits under the Act, and this burden of proof never shifts during the course of proceedings. *Townsend v. Emp't Sec. Dep't*, 54 Wn.2d 532, 534, 341 P.2d 877 (1959); *In re Anderson*, 39 Wn.2d 356, 365, 235 P.2d 303 (1951). The Act requires that the Department analyze the facts of each case to determine what actually caused the employee's separation. *Safeco*, 102 Wn.2d at 390. Liberal construction of the Act does not require payment of benefits to a claimant who was responsible for her own separation from employment because she failed to return to work despite having work available to her.

A claimant can establish good cause only if she quit for one of the 11 exclusive reasons enumerated in RCW 50.20.050(2)(b). RCW 50.20.050(2)(a); *Campbell v. Emp't Sec. Dep't*, 180 Wn.2d 566, 572, 326 P.3d 713 (2014). Assuming she was employed, Pederson now asserts she had good cause to quit under RCW 50.20.050(2)(b)(v) and (vii) because her usual compensation or usual hours were reduced by 25 percent or more.<sup>5</sup> She is incorrect. She accepted an offer of three days of work. The employer did not reduce this to one day; Pederson did.

“Usual compensation” is the wages actually paid to the employee, or if payment has not yet been made, the compensation agreed upon between the employee and employer as part of the hiring agreement. WAC 192-150-115(1), (2). For a reduction in wages to constitute good cause, employer action must have caused the reduction in compensation. WAC 192-150-115(3). The percentage of reduction is based on the employee’s most recent pay grade, salary, or other benefit she received or has accepted on a permanent basis. WAC 192-150-115(5).

“Usual hours” is based on the hours of work agreed on by the employer and employee as part of the individual hiring agreement. WAC 192-150-120(1)(a). Furthermore, to establish good cause for

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<sup>5</sup> This assertion of reduced pay or hours is inconsistent with Pederson’s prior response to the Department on her Voluntary Quit Statement where she indicated she was not quitting due a reduction in pay or hours. AR 50.

quitting due to a reduction in hours, the reduction must have been caused by the employer's action. WAC 192-150-120(2).

Here, Pederson did not establish she had good cause to quit under the cause factors listed above. Although she originally believed she had been hired for a full-time position, she subsequently learned it was only three days of work. AR 14. Pederson accepted this three-day job when she worked the first day and accepted payment for it. When she quit because the position was not a good fit for her, she was scheduled to work two more days. AR 18, 22, 46. It was Pederson's choice, not the employer's, to forgo working all the days for which she was scheduled. Thus, the Commissioner correctly determined that Pederson did not quit due to a reduction in her wages or hours. AR 84 (CL II).

**C. The Superior Court's Discussion Of Contract Principles Is Irrelevant As It Is The Commissioner's Decision Under Review**

Pederson asserts that superior court erred in discussing contract principles in its oral decision. Opening Br. at 6. However, the superior court's discussion of contract principle is irrelevant to this Court's analysis since it is the Commissioner's decision, not the superior court's decision, which is under review. *Tapper*, 122 Wn.2d at 402 (under the APA, the Court of Appeals sits in the same position of the superior court and reviews the Commissioner's decision); *see also Waste Mgmt. of Seattle*,

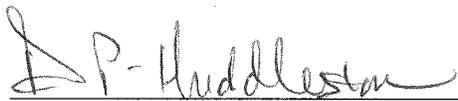
*Inc. v. Utils. & Transp. Comm'n*, 123 Wn.2d 621, 633, 869 P.2d 1034 (1994) (“Assignment of error to the superior court findings and conclusions are not necessary in review of an administrative action.”). This Court therefore need to consider the superior court’s rationale for affirming the Commissioner’s decision.

**VI. CONCLUSION**

The Commissioner correctly concluded that Pederson voluntarily quit without good cause. The Department asks the Court to affirm the Commissioner’s decision denying Pederson unemployment benefits.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of September, 2014.

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**PROOF OF SERVICE**

I, Judy St. John, declare as follows:

1. That I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, and not a party to the above-entitled action.
2. That on the 22<sup>ND</sup> day of September, 2014, I caused to be served a copy of **Respondent's Response Brief** on the Appellant's attorney of record on the below date as follows:

Via United States Postal Service, postage pre-paid and e-mail:

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Original e-filed with  
COURT OF APPEALS, Division III

I DECLARE UNDER PENALTY OF PERJURY UNDER  
THE LAWS OF THE STATE OF WASHINGTON that the  
foregoing is true and correct.

Dated this 22<sup>ND</sup> day of September 2014 in Seattle,  
Washington

  
\_\_\_\_\_  
Judy St. John, Legal Assistant