

71991-2

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NO. 71991-2

**COURT OF APPEALS FOR DIVISION 1
STATE OF WASHINGTON**

DONALD BAKER,

Appellant,

V.

STATE OF WASHINGTON
EMPLOYMENT SECURITY
DEPARTMENT

Respondent,

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2015 MAR 20 AM 11:15

APPELLANT'S RESPONSE

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I. INTRODUCTION

I, Donald Baker, was discharged from my job with Maintech Acquisitions, LLC for being absent. I did provide my employer with a phone notification to through my co-worker due to non-response of my supervisor and no upper level management information. The commissioner's decision was based on false information provided by the employer and inadvertently omission of evidence from myself. Due to the passage of time, recollection of events were incorrect and I trusted that the employer would give truthful testimony. The superior court failed to accept new material evidence on appeal that was not available during the initial hearing. The superior court also failed to provide reconsideration by stating I filed my petition in thirteen days instead of ten. The rule does not specify if a petition for review should be filed in business or calendar days. **RCW 34.05.470(1)** The Court should not affirm the Commissioner's decision because evidence disputes testimony given by Maintech. The superior court should have accepted the new evidence per RCW 34.05.452(1)

II. COUNTERSTATEMENT

- 1) The Commissioner's factual findings were drawn from false information given by Maintech, therefore making the fact finder incorrect. Maintech does have an attendance policy that states emergencies can prevent the three day no-call/no-show rule due to hospitalization etc.. Also the supervisor admitted I called in and the message was received. This could only be done on the first day of the arrest. The omitted evidence of my arrest clearly disputes their testimony. This evidence was not available during the ALJ proceedings.
- 2) The Employment and Security Departments misconduct rule that willful and wanton disregard of the employers rights, titles and interest is not valid in this case. The arrest was beyond my control and dismissed.
- 3) The new evidence was not available during the initial hearing. RCW 34.05.554(1)(a)(d)(ii)(2) Limitations on new issues not raised before the agency may not be raised on appeal, except to the extent that (a) the person did not know and was under no duty to discover or could not have reasonably discovered facts giving rise to the issue (d) the interest of justice would be served by a resolution of an issue arising from(ii) agency action occurring after the person exhausted the last feasible opportunity for seeking relief from the agency. (2) The court shall remand to the

agency for the determination any issue that is properly raised pursuant to subsection (1) of this section.

III. ARGUMENT

The Commissioner incorrectly determined that I was disqualified due to false testimony of the employer and inadvertently omitted evidence from myself. The employer failed to properly document events that happened, thus eight months later causing the denial of my benefits. The evidence shows the dates that I requested the information which began on 10/22/2012 after the initial hearing. Then again on 1/07/2013, the information was requested. I would also argue that the initial review challenging my truthfulness was unfounded based on the newly acquired evidence and Maintech's testimony which is completely false and at the time could not be disputed due to the lack of proof. I am not asking to retry my case. The evidence properly shows the discrepancies in Maintech's testimony for the dates absent, call -in, and lack of a chain of command to contact in the absence of a supervisor. The employer did not provide any proof as to point of contacts for us to consult in the absence of the supervisor.

IV. CONCLUSION

I feel that the commissioner incorrectly concluded that I was discharged for misconduct. The issue was beyond my control and I was exonerated. Our country states you are innocent until proven guilty. I have been truthful through this whole ordeal. My former employer rushed to judgment against me by terminating me with no cause to do so. Please make me whole again and grant a decision I my favor.

RESPECTFULLY SUBMITTED this 17th day of March, 2015.



Donald Baker

PROOF OF SERVICE

I, Donald Baker, certify that I served a copy of the Response to Departments Reply on all parties or their counsel of record on the date below as follows:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 17th day of March 2015 at Bothell, WA


Donald Baker, pro se