SC#93383-9

No. 33202-1-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

MICHAEL BOISE, Petitioner
v.
EMPLOYMENT SECURITY DEPARTMENT
OF THE STATE OF WASHINGTON, Respondent.

PETTION FOR REVIEW BY THE SUPREME COURT

Mark L. Bunch
Attorney for Petitioner

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A. IDENTITY OF PETITIONER

Michael A. Boise, Petitioner, asks this court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Petitioner requests the Court to review the Court of Appeals Decision affirming the trial court's decision to affirm the Employment Security Department's Commissioner's decision to deny unemployment benefits to the petitioner. This Court of Appeals decision was filed June 14, 2016. A copy of the decision, as well as the Superior Court Decisions and underlying Commissioner Decisions are in the Appendix at pages A-1 through A-33.

C. ISSUE PRESENTED FOR REVIEW

Did the Commissioner conduct "further proceedings" as required by RCW 34.05.370(3)(f) prior to making additional findings of fact?

D. STATEMENT OF THE CASE

On May 6, 2013 Mike A. Boise petitioned the Commissioner of the Employment Security Department (Commissioner) to review an order by the Office of Administrative Hearings (OAH) issued April 16, 2013. CP 103-109. The Commissioner's order, dated May 31, 2013, upheld the OAH, which had denied

Mr. Boise unemployment benefits, primarily because the Commissioner held that Mr. Boise quit his job, and that the reason for his quitting did not meet one of the enumerated "good cause" exceptions listed under RCW 50.20.050(2). CP 111-113. On appeal to Benton County Superior Court, the Hon. Bruce Spanner issued an order on February 25, 2014 remanding the case back to the Commissioner for "further proceedings...and to issue a decision after employing a subjective analysis of whether a change in conditions of employment violated a sincerely held moral belief of the appellant." ("First Appeal") CP 129-131. The Employment Security Department moved for reconsideration, which was denied, making the February 24, 2014 order final. CP 125-129.

On remand, the Commissioner Review Judge (Review Judge) issued an order, dated April 11, 2014, and rather than employing the subjective analysis ordered by Judge Spanner, and rather than conducting further proceedings, simply took the existing record, made new findings of fact *based on the same record* in which it had already made factual findings, and found that the appellant's work conditions had not changed, and therefore no further analysis, or apparently, fact finding, was needed. CP 133-139. Mr. Boise appealed this second Commissioner's decision to the Benton County Superior Court. CP 1-3. ("Second Appeal") The matter was heard by the Hon. Alex Ekstrom, who affirmed the Commissioner's Decision. Mr. Boise timely appealed the Superior Court's Order to the Court of Appeals. On June 14, 2016, the Court of Appeals affirmed the Superior Court's decision.

E. ARGUMENT

This appeal concerns a matter of procedural due process as contemplated by both the Washington State Constitution Section 3 as well as the Administrative Procedures Act, RCW 34.05, which specifically governs the administrative decision at the heart of this appeal.

Contrary to the implicit conclusions of the Commissioner of the Employment Security Department and the second trial court judge and explicit holding of the Court of Appeals, the Appellant contends that in order for an administrative body performing its duties under the adjudicative section of the APA, RCW 34.05.... to make findings of fact, all interested parties are entitled to an opportunity to provide evidence for consideration. This position is supported by the Court's decision in *Suquamish Tribe v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 156 Wn. App. 743, 778 (2010).

While the Court of Appeals held differently, it's reliance on *Washington Public Employees Association v. Community College District 9,* 31 Wn.App. 203, 642, P.2d 1248 (1982), to do so is misplaced for at least three reasons: The first is that the court in that case specifically discussed how the APA *did not* apply to that decision. The second is that that decision specifically directed that a new hearing will not be held, which implies that without that direction, a new hearing *would* be

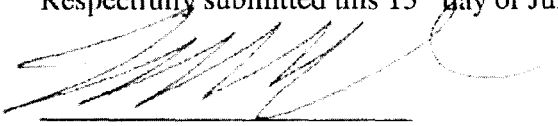
held. Thirdly, that case apparently did not result in the Higher Education Personnel Board making new findings of fact on remand.

Contrasted, then, with the present appeal, the APA does control this decision, there is no such language directing that a new hearing not be held, and on remand the Commissioner did make new findings of fact[1]. The facts and controlling law here are quite far afield from those in *Washington Public Employees Association,* and the Court of Appeals reliance on it further suggests that the application of the term "further proceedings" under the APA is a question of first impression for the Supreme Court to consider.

F. CONCLUSION

For these reasons, the Petitioner requests that the Supreme Court grant discretionary review, and upon such review, remand the matter to the trial court with direction that the administrative decision be returned to the Commissioner with direction to hold a further fact finding hearing to resolve the issues identified by the original trial court decision.

Respectfully submitted this 13th day of July,



Mark L. Bunch, WSBA# 37099
Attorney for Petitioner

[1] A finding of fact that was diametrically opposed to a finding of fact made in the prior decision, on the identical record, with the same legal standard applying.

APPENDIX

Renee S. Townsley
Clerk/Administrator

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The Court of Appeals
of the
State of Washington
Division III

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June 14, 2016

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CASE # 332021
Michael Boise v. Washington State Dept. of Employment Security
BENTON COUNTY SUPERIOR COURT No. 142011765

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file an original and two copies of the motion (unless filed electronically). If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S Townsley

Renee S. Townsley
Clerk/Administrator

RST:jab
Enc.

c: **E-mail**—Hon. Alexander C. Ekstrom

FILED
JUNE 14, 2016
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

MICHAEL A. BOISE, Appellant, v. EMPLOYMENT SECURITY DEPARTMENT OF THE STATE OF WASHINGTON, Respondent.	)	No. 33202-1-III UNPUBLISHED OPINION

SIDDOWAY, J. — One circumstance in which an employee who voluntarily quits a job may still receive unemployment benefits is where the employee's usual work is changed to work that violates the individual's religious convictions or sincere moral beliefs. RCW 50.20.050(2)(b)(x). Michael Boise resigned from a sales position shortly after being hired, ostensibly because of such a work change. Benefits were denied him by the state employment security department and, on appeal, by its commissioner.

His first petition for judicial review resulted in a superior court order remanding the administrative decision to the commissioner's review office "to issue a decision after employing a subjective analysis of whether a change in the conditions of employment violated a sincerely held moral belief of the petitioner." Clerk's Papers (CP) at 131. In isolation, the directive was ambiguous, because at least one fact essential to Mr. Boise's

entitlement—that there *had been* a change in his usual work—is an objective, not subjective, determination. On remand, the commissioner found that Mr. Boise's usual work had not changed, an order that the superior court then affirmed. Mr. Boise complains both decisions were contrary to an implicit finding by the superior court, initially, and that there had been a change in his usual work.

The superior court did not engage in fact finding. Its directive did not perfectly express its intent, but it is clear from its order as a whole that the court recognized that the commissioner would objectively analyze whether there had been a change in Mr. Boise's usual work and subjectively analyze only whether the change violated his sincere moral belief. For that reason, and because the commissioner's ultimate order making the required findings is supported by substantial evidence, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Cleary Building Corporation (Cleary) is in the business of selling and constructing manufactured buildings. It hired Michael Boise as a commissioned salesperson on February 1, 2013, at a standard base salary of $580 per week. He signed two documents on the date of hire: a six-page employment agreement and a six-page pay plan. Collectively, they disclosed he was expected to meet a $516,000 annual sales target on a regular basis and that his weekly salary could be reduced if, after 60 days, he failed to meet the target. They also disclosed that in cases where he arranged subcontract work to be performed in connection with a building sale, he must increase the actual cost of the

subcontract by a 12 percent minimum markup and, if he increased the actual cost by larger markups (up to 16 percent), he could earn additional "incentive" pay. CP at 86. Mr. Boise claims that although he signed the pay plan on the day he was hired, he did not read it and was provided with a copy of only the signature page. It was the pay plan that disclosed the detail about compensation and compensation reduction.

After being hired and signing the two documents, Mr. Boise was sent to Wisconsin for two weeks of training. He claims it was there that he first learned about the potential for salary reduction and the subcontractor markup practice. At the end of two weeks' training, Mr. Boise notified his branch manager that he was quitting because he could not afford a reduction in the base salary. When he returned the company car the following Monday, the branch manager asked him if he wanted to stay and work through the wage issues. Mr. Boise told his manager that it would not work, because he was not going to be able to add money to subcontracts. In his notice of termination, Mr. Boise marked that he was leaving for "family issues." CP at 75.

Mr. Boise then applied to the Washington State Department of Employment Security (department) for unemployment benefits. On the voluntary quit statement he was required to complete, he stated his main reason for quitting was, "Cleary did not disclose I would lose salary amount if I did not have over $48,000 in sales per month." CP at 61. He wrote that the reasons he gave his employer for quitting were "[p]ersonal-reasons, my concern I would lose salary." *Id.* Asked if he quit due to a "[r]eduction in

pay and/or fringe benefits," Mr. Boise marked "Yes." CP at 64.[1] Asked if he quit due to a "[c]hange in customary job duties which was against [his] religious or moral beliefs," Mr. Boise marked "No," and did not answer the question "[h]ow did the change violate your beliefs?" CP at 65. Asked about any work changes (in the event the employee's usual work had changed since the time of hire) Mr. Boise wrote "none." *Id.* Asked if other work factors made it necessary for him to quit, Mr. Boise wrote that Cleary had given him a filthy work car and would not reimburse him for having it cleaned. Nowhere on the form did Mr. Boise state he quit due to moral objections.

After the department denied Mr. Boise's claim for unemployment benefits, he contested the determination, requesting a hearing. At the hearing before an administrative law judge (ALJ), Mr. Boise testified he did not receive the first five pages of the pay plan until sometime during his training in Wisconsin, which began on February 4. He stated he was uncomfortable with marking up subcontractor bids without disclosing the markup to the customer, that Cleary's markup practice was not consistent with his previous experience in the industry, and that he found it morally objectionable. Cleary's witness disagreed with Mr. Boise's claim that its markup practice was atypical, testifying it "is a pretty standard business practice for a general contractor to mark up,

[1] Earlier in the proceedings, Mr. Boise contended he was eligible for unemployment benefits because his "usual compensation was reduced by twenty-five percent or more," as provided by RCW 50.20.050(2)(v). He has abandoned that argument.

um, the cost or the bids if [sic] their subcontractors." CP at 39. The ALJ affirmed the department's determination, finding that Mr. Boise quit because he was "unhappy with the pay plan." CP at 55, 99-100.

Mr. Boise petitioned for review. Review was delegated by the commissioner to review judge Susan Buckles. She affirmed the ALJ's decision. Addressing Mr. Boise's contention that he had moral objections to Cleary's markup practice, she stated, "we are persuaded that this is a normal practice in the industry, and that claimant's objections are misplaced." CP at 111.

Mr. Boise petitioned for judicial review. In findings of fact, conclusions of law, and an order, the superior court remanded the case to the commissioner's review office. It concluded that the commissioner's finding of fact that "Mr. Boise acknowledged" that the billing practice to which he objected was common was not supported by substantial evidence; that in discounting Mr. Boise's sincere moral belief because the markup practice was customary, the commissioner erroneously applied an objective standard; and that the commissioner "also erred in not making a finding of fact on whether or not there was a change in the usual work, as required by RCW 50.20.050." CP at 130-31. It concluded its remand order with the directive that the commissioner's review office was "to issue a decision after employing a *subjective analysis* of whether a change in the conditions of employment violated a sincerely held moral belief of the petitioner." CP at 131 (emphasis added).

The department filed a motion for reconsideration, challenging the superior court's requirement of a subjective analysis.[2] The superior court's letter response denied the motion, but stated:

> The application of RCW 50.20.050(2)(b) requires the examination of three matters: Does the employee have a sincere moral belief? Have work duties changed to where continued employment would offend the employee's sincere moral belief? Was the change in work duties [and] that employee's sincere moral belief the reason for termination of the employment relationship? *The Court agrees that the second and third questions must be analyzed objectively.* . . . The first question, however, must involve a subjective analysis.

CP at 127 (emphasis added).

On remand, review judge Annette Womac did not adopt all the findings of fact contained in the ALJ's initial order. She made some new findings. In a new conclusion of law, she affirmed the denial of benefits, reasoning that, as more fully set forth in her findings, neither Mr. Boise's duties nor conditions of work changed:

> The terms of the employer's subcontract incentive program were clearly set forth in the Payment Plan referenced in the Employment Agreement. Although the claimant chose not to read the Plan before signing the Agreement, he nonetheless was apprised of the employer's practice because he signed a document that explicitly referenced the markup of subcontract bids.

CP at 136-37. She also concluded that despite having read the payment plan on about the

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[2] The department represents in its appeal brief that it moved for reconsideration on the issue of whether a subjective standard should be used when determining whether a moral belief is sincerely held. Br. of Resp't at 6 n.1. The motion is not in our record.

second day of training, Mr. Boise did not quit until nearly two weeks thereafter, but instead continued to participate in a training program at his employer's expense, something she found "not consistent with an individual whose sincere moral beliefs, viewed subjectively, have been violated." CP at 137.

Mr. Boise again petitioned for judicial review. He argued that by referring only the subjective issue of his sincere moral belief to the commissioner's review office, the superior court implicitly found that a change in usual work *had* occurred, and that the review judge's conclusion to the contrary violated the remand order.

Judicial review was assigned to a different superior court department than had heard the first petition for review. It affirmed the commissioner's decision. Mr. Boise appeals.

ANALYSIS

The Washington Administrative Procedure Act (APA), chapter 34.05 RCW, governs judicial review of employment benefit decisions by the commissioner of the employment security department. *Verizon Nw., Inc., v. Emp't Sec. Dep't*, 164 Wn.2d 909, 915, 194 P.3d 255 (2008). "In reviewing administrative action, this court sits in the same position as the superior court, applying the standards of the [ ]APA directly to the record before the agency." *Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993). We review the decision of the commissioner, not the underlying decision of

the ALJ or the decision of the superior court. *Verizon*, 164 Wn.2d at 915; *Markam Group, Inc., P.S. v. Emp't Sec. Dep't*, 148 Wn. App. 555, 560, 200 P.3d 748 (2009).

A threshold problem with Mr. Boise's assignments of error is that they are couched in terms of trial court error. *See* Br. of Appellant at 1. Reframed as agency error—which is all that we review—they are, in substance, that (1) the commissioner improperly made new findings of fact exceeding the scope of the superior court's remand order; (2) the commissioner failed to undertake further fact finding into whether Mr. Boise subjectively held a sincere moral belief; and (3) the trial court erred in affirming the commissioner's decision. Elsewhere, Mr. Boise argues that four of the commissioner's findings are not supported by substantial evidence. *Id.* at 9-10.

We first address Mr. Boise's first and second assignments of error, which challenge the commissioner's interpretation or application of the law. We then turn to Mr. Boise's challenge to the sufficiency of evidence to support the four findings, including whether Mr. Boise has demonstrated substantial prejudice from any unsupported finding. Our resolution of those challenges will necessarily resolve Mr. Boise's third, catchall assignment of error.

I. Challenged procedure following remand

The APA authorizes courts to grant relief from an agency order in an adjudicative proceeding in nine enumerated instances, two of which are that the agency has "erroneously interpreted or applied the law," and that it "has not decided all issues

requiring resolution by the agency." RCW 34.05.570(3)(d), (f). Pursuant to this authority, the superior court initially remanded the commissioner's decision for additional agency decision making.

Mr. Boise challenges the commissioner's action following the remand, arguing it exceeded the scope of the remand order by finding that Mr. Boise's usual work had not changed, and it should have, but failed to engage in further fact finding as to Mr. Boise's sincere moral belief. He also suggests, without citation to authority, that "[b]ecause a remand is unlikely to remedy this error, based on the prior actions of the Commissioner," we should reverse and order the department to provide Mr. Boise with unemployment benefits. Br. of Appellant at 7.

We reject the premise that the commissioner exceeded the scope of the remand order. We have already recognized that the superior court's order was imperfectly phrased when it directed the commissioner to "employ a subjective analysis" of some matters that require objective analysis. But when the court's order is read as a whole, it is clear the court intended for the commissioner to address the overlooked factual issue of whether Mr. Boise's usual work had changed.

First, the court's third conclusion of law states that the department "also erred in not making a finding of fact on whether or not there was a change in the usual work, as required by RCW 50.20.050." CP at 131. Second, it directed the commissioner's review office to "issue a decision after employing a subjective analysis of whether *a* change in

the conditions of employment violated a sincerely held moral belief of the petitioner." *Id.* (emphasis added). If it had already been established that conditions of employment had changed, the superior court's order would have called for an analysis of whether "*the* change in the conditions of employment violated a sincerely held moral belief."[3] Any confusion should have been dispelled by the court's statement, in denying the department's motion for reconsideration, that whether "work duties changed to where continued employment would offend the employee's sincere moral belief" and whether that change and resulting offense was "the reason for termination of the employment relationship" must be analyzed objectively. CP at 127.

By making a finding of fact that Mr. Boise's work duties had not changed, then, the commissioner did not erroneously interpret or misapply the law.

Mr. Boise argues the agency also committed error by failing to take additional evidence on the issue of the subjective sincerity of his moral belief. When a court grants relief from an agency order because the agency failed to decide all the issues requiring resolution, the relief may be in the form of a remand for further proceedings, RCW 34.05.570(f); RCW 34.05.574(1). Mr. Boise argues that *Suquamish Tribe v. Central Puget Sound Growth Management Hearings Board*, 156 Wn. App. 743, 778, 235 P.3d

[3] The authority of the superior court under the APA includes reviewing whether substantial evidence supports the agency's findings of fact, but does not include making its own findings of fact.

812 (2010) holds that "further proceedings" mean further fact finding proceedings.

In *Suquamish Tribe*, the court remanded for further factual proceedings because the record was not complete enough to conduct the proper analysis. 156 Wn. App. at 769, 777-78. The court never stated that further fact finding proceedings were always required where an agency failed to decide an issue, and common sense suggests the existing agency record might sometimes be sufficient. *Washington Public Employees Association v. Community College District 9*, 31 Wn. App. 203, 213, 642 P.2d 1248 (1982) illustrates as much. In that case, after finding that the administrative agency had applied the wrong legal standard, the court remanded the matter for "additional proceedings," stating: "A new hearing will not be required. The [Higher Education Personnel] Board need only evaluate the testimony and evidence received at the previous hearings in light of the legal standard we have set forth in this opinion." *Id.* at 213-14.

In this case no further fact finding was needed, because the record contained the written agreements identifying the objectionable terms of Mr. Boise's incentive compensation, which he had signed on the first day of his employment. In fact, Mr. Boise has never contended that Cleary's terms and policies changed, but only that he did not learn about them until the second week of employment.

Mr. Boise had also testified to his objections, moral belief, and the actions he took based on his objections and moral belief. "Issu[ing] a decision after employing a

subjective analysis," as ordered by the court, did not require taking further evidence. CP at 131.

II. Only one of the commissioner's challenged findings lacks substantial support in the record, and Mr. Boise fails to demonstrate any resulting prejudice

Mr. Boise argues that the four findings of fact by the commissioner were not supported by substantial evidence. A court shall grant relief from an agency order in an adjudicative proceeding if it determines the agency's order is not supported by evidence that is substantial when viewed in light of the whole record, but only if the person seeking judicial relief has been substantially prejudiced by the lack of evidentiary support. RCW 34.05.570(3)(e), (1)(d).

Substantial evidence supports three of the four findings challenged by Mr. Boise. But even if none of the four was supported by substantial evidence, the lack of evidentiary support would not be prejudicial because a critical fact remains: no change in Mr. Boise's usual work occurred. For his voluntary quit not to disqualify him from benefits, that is an essential element of the exemption on which he relies.

We nonetheless briefly address the sufficiency of the evidence to support three of the four findings that he challenges:[4] the findings that (1) Mr. Boise quit because of a disagreement with pay; (2) he continued working for Cleary for two weeks with

[4] The department concedes that evidence in the record does not support the challenged finding that Mr. Boise was reimbursed for cleaning his company car.

knowledge of the subcontract incentive plan; and (3) markups are common in the construction industry. Br. of Appellant at 9-11.

Review of the commissioner's findings of fact is for substantial evidence in light of the whole record. RCW 34.05.570(3)(e); *Smith v. Emp't Sec. Dep't*, 155 Wn. App. 24, 32, 226 P.3d 263 (2010). Evidence is substantial if it would "'persuade a fair-minded person of the truth or correctness of the order.'" *King County v. Cent. Puget Sound Growth Mgmt. Hrg's. Bd.*, 142 Wn.2d 543, 553, 14 P.3d 133 (2000) (quoting *Callecod v. Wash. State Patrol*, 84 Wn. App. 663, 673, 929 P.2d 510 (1997). Because the substantial evidence standard is deferential, the evidence is viewed "'in the light most favorable to the party that prevailed in the highest forum exercising fact-finding authority.'" *Affordable Cabs, Inc. v. Emp't Sec. Dep't*, 124 Wn. App. 361, 367, 101 P.3d 440 (2004) (quoting *Schofield v. Spokane County*, 96 Wn. App. 581, 586-87, 980 P.2d 277 (1999)). We will not substitute our judgment for the commissioner's with regard to witness credibility or the weight of evidence. *Id.*

Disagreement with pay. Mr. Boise testified at length that he quit because he was afraid of having his salary reduced if he failed to make $48,000 per month in sales. He told his branch manager he was quitting because he could not "afford to lose that [pay]." CP at 29. On his voluntary quit statement, he wrote that loss of salary, and "[r]eduction in pay and/or fringe benefits" were his reasons for quitting. CP at 64. The commissioner

also found he quit over dissatisfaction with Cleary's subcontract incentive program, but findings that he had more than one reason for quitting are not contradictory.

Continued work. The commissioner found that even if Mr. Boise did not read the payment plan when it was first presented to him, he "nonetheless was apprised of the employer's practice because he signed a document that explicitly referenced the markup." CP at 137. The exhibits support the finding. Mr. Boise testified in some instances to having seen the pay plan "the second week" of training and in other instances "the second day" of training. CP at 43, 45 ("second or third day"). Given his inconsistent statements, and viewing the evidence in the light most favorable to the department, substantial evidence supports the finding.

Industry markup practice. The commissioner found that it is "common in the construction industry" to mark up subcontractor bids. CP at 134-35. Cleary's witness, John Schinderle, testified to that effect, explaining the markup was part of the company's cost structure. While the commissioner acknowledged that Mr. Boise disputed Cleary's evidence of industry practice, she was not persuaded that Mr. Boise had refuted Cleary's evidence. We do not substitute our judgment for that of the agency fact finder on issues of credibility and weight of the evidence.

Substantial evidence supports three of the four challenged findings and Mr. Boise fails to demonstrate substantial prejudice from any shortfall in evidentiary support.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Siddoway, J.

WE CONCUR:

Korsmo, J.

Lawrence-Berrey, A.C.J.

STATE OF WASHINGTON
BENTON COUNTY SUPERIOR COURT

MICHAEL A. BOISE, Petitioner, vs. EMLOYMENT SECURITY DEPARTMENT 0F THE STATE OF WASHINGTON, Respondent.	NO. 14-2-01176-5 FINDINGS, CONCLUSIONS, AND ORDER AFFIRMING ADMINISTRATIVE DECISION

This matter came on regularly for hearing on February 2, 2015, before the above entitled court pursuant to the Washington Administrative Procedure Act. The Commissioner of the Employment Security Department was represented by ROBERT W. FERGUSON, Attorney General, and PATTI JO FOSTER, Assistant Attorney General. Petitioner, MICHAEL A. BOISE was represented by attorney MARK L. BUNCH, Preszler & Bunch PLLC. This Court, having reviewed the Commissioner's Record, pleadings on file, and having heard arguments, and in all premises being fully advised, hereby makes the following:

FINDINGS OF FACT

I.

At the time of filing the petition, Petitioner, MICHAEL A. BOISE, was a resident of Benton County, State of Washington.

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Regional Services Division
8127 W. Klamath Court, Suite A
Kennewick, WA 99336-2607
(509) 734-7285

II.

The Commissioner's delegate found that the Petitioner was disqualified from unemployment benefits pursuant to RCW 50.20.050(2)(a) beginning February 17, 2013, for seven calendar weeks and until he obtained bona fide work in covered employment and earned wages in that employment equal to seven times his weekly benefit amount.

From the foregoing Findings of Fact, the court makes the following:

CONCLUSIONS OF LAW

I.

The court has jurisdiction over the parties and subject matter.

II.

The Commissioner's findings of fact are supported by substantial evidence.

III.

The Commissioner's conclusions of law do not constitute an error of law and are otherwise in accordance with the Washington Administrative Procedure Act.

From the foregoing Findings of Fact and Conclusions of Law, the court enters the following:

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ATTORNEY GENERAL OF WASHINGTON
Regional Services Division
8127 W. Klamath Court, Suite A
Kennewick, WA 99336-2607
(509) 734-7285

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the April 11, 2014, decision of the Commissioner of the Employment Security Department of the State of Washington made in the above-entitled matter is affirmed.

DATED this 18th day of February, 2015.

JUDGE

Presented by:

ROBERT W. FERGUSON
Attorney General

PATTI JO FOSTER, WSBA #32218
Assistant Attorney General
Attorneys for Respondent

Approved as to form:

Preszler & Bunch, PLLC

MARK L. BUNCH
Attorneys for Petitioner

ATTORNEY GENERAL OF WASHINGTON
Regional Services Division
8127 W. Klamath Court, Suite A
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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 April 11, 2014

K Williams

Representative, Commissioner's Review Office
Employment Security Department

UIO 790
BYE 10/12/2013

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

Review No 2013-1791

In re

MIKE A. BOISE
SSA No [redacted]5254

Docket No 04-2013-08181

DECISION OF COMMISSIONER

On May 6, 2013, MIKE A. BOISE petitioned the Commissioner for review of an Initial Order issued by the Office of Administrative Hearings on April 16, 2013 Pursuant to chapter 192-04 WAC this matter was delegated by the Commissioner to the Commissioner's Review Office On May 31, 2013, an order was issued by which the Commissioner affirmed the April 16, 2013, Initial Order On July 11, 2013, the claimant's petition for judicial review was filed. On February 25, 2014, Benton County Superior Court remanded this matter to the Commissioner " to issue a decision after employing a subjective analysis of whether a change in the conditions of employment violated a sincerely held moral belief of the petitioner" Having considered the entire record, we enter the following.

Finding of Fact No. 1 is adopted but is modified to state instead as follows The interested employer is in the business of selling and constructing manufactured buildings. The claimant was employed by the interested employer as a full-time building sales specialist from February 1, 2013 to February 18, 2013, when he quit. The claimant quit due to dissatisfaction/disagreement with wage-related terms of his employment.

Findings of Fact Nos 2 through 6 are not adopted We find instead as follows On February 1, 2013, during the interview process, the claimant was provided an Employment Agreement ("Agreement") to review Exhibits 26-30 On page two of the Agreement,

information regarding compensation was provided and explicitly stated employees were paid in accordance with the Cleary Sales Specialist Pay Plan ("Pay Plan") Exhibit 27 Page 5 of the Agreement concluded with the following statement. "The employee acknowledges and understands all of the terms of this Agreement and verifies that he/she has read all of the terms of this Agreement and will comply with all conditions of said Agreement" Exhibit 30 The claimant initialed each page of the Agreement, including page two (which apprised the claimant that the terms of his compensation were set forth in the Pay Plan) and page five (by which the claimant verified that he had read and understood all the terms of the Agreement) On February 1, 2013, the claimant also was provided and signed a document that explicitly referenced 11% markup on subcontracts Exhibit 37 Then, although he had not yet been provided and therefore had not yet read the Pay Plan, the claimant signed (and thus executed) the Agreement. Exhibit 31

The Cleary Sales Specialist Pay Plan is a six page document that addresses salary, bonuses, and incentive programs Exhibits 32-37 The Pay Plan states that standard base weekly salary of $580 will be paid for the first 60 days of employment; thereafter, failure to achieve the year-to-date sales budget in a given month results in proportionate reduction in weekly wage (but no less than minimum wage) the following month, if the year-to-date sales budget is subsequently achieved, the sales specialist will be paid the withheld wage Exhibit 32 Based on conversation during the interview process, the claimant correctly understood that his standard base weekly salary would be $580, but he was not immediately aware of the contingencies because he had not been provided nor had he requested a copy of the Payment Plan.

Having signed the Employment Agreement on February 1, 2013, the claimant was sent to Verona, Wisconsin for two weeks of training, which began February 4, 2013 On the second or third day of training, the Payment Plan was reviewed When the claimant realized that, after 60 days of employment, his weekly wage could be reduced if he failed to achieve the employer's sales budget, he was concerned he might not earn enough to satisfy his financial responsibilities In addition, the employer's subcontract incentive program was not acceptable to the claimant because incentive pay was premised on the percentage markup (added to the contractor's net price/bid for the job) the claimant could negotiate. It was not consistent with the claimant's prior employment experience to mark up subcontractor bids, and he disputed the morality of doing so However, the practice is common in the construction industry and is standard practice of the

employer/contractor, who hires, schedules, and is accountable to the client for overseeing the work of the subcontractors (It is understood the claimant's individual experience and personal opinion differed from the employer's practice, but we are not persuaded that testimony of the employer's witness regarding customary standards in the construction industry was refuted)
The client always has the option of negotiating a lower bid or seeking competitive bids from other contractors.

Findings of Fact Nos 7 through 9 are not adopted We find instead as follows· On or about Friday, February 15, having completed two weeks of training, the claimant contacted the branch manager and reported he had "some issues" with the employer's pay structure The branch manager acknowledged the link between sales budget and weekly wage had not been discussed during the interview process but also informed the claimant that he (the manager) believed the claimant would generate sufficient sales. The claimant was not convinced Although the claimant had not yet been given a sales budget and had a guaranteed weekly salary for several more weeks, he was concerned that his wage would ultimately be contingent on sales he was not certain he could make Given his additional dissatisfaction with the employer's subcontract incentive program, the claimant decided to quit and, on Monday, February 18, 2013, the claimant so informed the branch manager The branch manager encouraged the claimant to stay and work through his issues, but the claimant was unwilling to do so The claimant informed the employer he had to quit "for family issues" and was "unable to put in time to fulfill his contract" Exhibit 25

The claimant also had complaints regarding the company car he had been provided to drive The car had not been sufficiently cleaned Without the employer's knowledge, the claimant had the car cleaned and then submitted the bill to the employer for reimbursement Although the claimant was reimbursed, the claimant was not satisfied with the employer's response because there was a delay, while the employer considered and processed the claimant's request The incident occurred prior to the beginning of the claimant's training, and is not a determinative factor here

Finding of Fact No 10 is adopted

Conclusions of Law Nos 1 through 6 are adopted 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). Good cause

is defined by statute and is limited to eleven specified circumstances RCW 50 20.050(2)(b)

Conclusion of Law No 7 is adopted but is modified to state instead as follows. Here, the above referenced circumstances are not evident

Regarding weekly wage Good cause to quit is provided when an individual's *usual compensation* is reduced by 25% or more RCW 50 20.050(2)(v). (Emphasis added.) "Usual" includes amounts actually paid to you by your employer or, if payment has not yet been made, the compensation agreed upon by you and your employer as part of your hiring agreement. WAC 192-150-115 In this case, the claimant's usual compensation – actual and/or set forth in terms of hire – did not change nor does evidence establish he was misled. On the contrary, the claimant initialed each page of the Agreement, which included the page that informed the claimant he would be paid according to the terms of a specified Payment Plan. It is understood the claimant was not provided a copy of the Payment Plan during the interview, but he could/should have requested a copy to read before he signed the Agreement It was the claimant's right but also was his responsibility to do so Instead, the claimant chose to sign the Agreement before he read all the terms of his employment His subsequent dissatisfaction cannot be attributed to a change in compensation; rather, he was dissatisfied when he finally read the terms of compensation that had been in effect since the outset of the employment relationship Regardless, anticipated reduction does not equate with actual reduction. At the time of the job separation, the claimant was guaranteed a fixed weekly salary for several more weeks and had not yet been given a sales budget Concern notwithstanding, he quit prematurely

Regarding the claimant's contention that the employer's subcontract incentive program violated his moral beliefs Good cause to quit is provided when an individual's *usual work was changed* to work that violates the individual's religious convictions or sincere moral beliefs RCW 50.20.050(2)(x) (Emphasis added) "Usual work" means job duties or conditions originally agreed upon by the claimant and the employer in the hiring agreement, or conditions customary for workers in the claimant's job classification; or duties the claimant consistently performed during his base period, or conditions mutually agreed to by the claimant and the employer prior to the employer initiated change in job duties WAC 192-150-140(1). Again, the claimant's circumstances do not suffice First, as discussed above, neither duties nor conditions changed The terms of the employer's subcontract incentive program were clearly set forth in the Payment Plan referenced in the Employment Agreement Although the claimant chose not to

read the Plan before signing the Agreement, he nonetheless was apprised of the employer's practice because he signed a document that explicitly referenced the markup of subcontract bids. Exhibit 37. Regardless, having read the Payment Plan on or about the second day of training, the claimant did not quit until nearly two weeks thereafter During the interim, the claimant continued to participate in the employer's training program at the employer's expense, which is not consistent with an individual whose sincere moral beliefs, viewed subjectively, have been violated

In sum, the claimant's dissatisfaction with the terms of his employment is not discounted, and his decision to seek work elsewhere is not questioned, but for purposes of unemployment benefit eligibility, he quit without good cause.

Conclusion of Law No 8 is adopted.

Now, therefore,

IT IS HEREBY ORDERED that the April 16, 2013, Initial Order of the Office of Administrative Hearings is **AFFIRMED** on the issue of the job separation Claimant is disqualified pursuant to RCW 50 20.050(2)(a) beginning February 17, 2013 for seven calendar weeks and until he has obtained bona fide work in covered employment and earned wages in that employment equal to seven times his weekly benefit amount The Initial Order is **AFFIRMED** on the issue of availability. Claimant is not ineligible pursuant to RCW 50.20 010(1)(c) during the weeks at issue *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, April 11, 2014.*

Annette Womac

Review Judge
Commissioner's Review Office

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

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON AND FRANKLIN COUNTIES

BOISE, MICHAEL A, Plaintiff, vs STATE OF WASHINGTON EMPLOYMENT, Defendant.	CAUSE NO: 13-2-01698-0 ORDER ON MOTION FOR RECONSIDERATION

The Court, having considered the Motion for Reconsideration filed by the Defendant on the 7 day of March, 2014, and deeming itself fully advised in the premises:

DOES NOW THEREFORE, enter its Order on Reconsideration, as follows:

☒ Motion for Reconsideration is hereby:

Granted _____ Denied X Modified _____ (See Comments)

DETAILS: See letter of even date.

A-25

IT IS FURTHER ORDERED that the Court Administrator's Office shall forthwith send copies of this Order to the parties, or attorneys if represented, at their respective addresses of record.

DONE THIS ~~07th~~ 10th day of March , 2014

SUPERIOR COURT JUDGE/COMMISSIONER

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR BENTON AND FRANKLIN COUNTIES

7122 W. Okanogan Place, Building A, Kennewick, WA 99336

SUPERIOR COURT JUDGE
BRUCE A. SPANNER

BENTON COUNTY JUSTICE CENTER
FRANKLIN COUNTY COURTHOUSE
TELEPHONE (509) 736-3071
FAX (509) 736-3057

March 10, 2014

Mr. Bryan Ovens
Office of Attorney General
8127 W. Klamath Court
Kennewick, WA 99336

Mr. Michael Boise
2327 N. Rhode Island Street
Kennewick, WA 99336

Re: Boise v Department of Employment Security
Benton County Cause No. 13-2-01698-0

Gentlemen:

Please accept this as my decision on the State's Motion for Reconsideration in the above-referenced matter. The application of RCW 50.20.050(2)(b) requires the examination of three matters: Does the employee have a sincere moral belief? Have work duties changed to where continued employment would offend the employee's sincere moral belief? Was the change in work duties that employee's sincere moral belief the reason for termination of the employment relationship? The Court agrees that the second and third questions must be analyzed objectively. The factors in WAC 192-150-140(2) properly address those questions. The first question, however, must involve a subjective analysis.

In her decision, the Administrative Law Judge found that "claimant acknowledged the employer's practice of adding "mark up" is a common practice in the industry[1]. He simply objected to the practice of such." Finding of Fact No. 9, Initial Order at p. 2. She goes on to conclude that "while the undersigned does not question claimant's moral objection to his employer's business practices, there is no evidence such billing practices are illegal or immoral."[2] Conclusion of Law No. 7, Initial Order at p. 4. Clearly, the Administrative Judge does question his moral belief. She clearly decided that some sincerely held moral beliefs merit protection, while others do not. Such a position ignores the profoundly personal nature of moral beliefs.

1 There is no factual basis for this finding in the record.
2 The reference to illegality is inappropriate because illegal conduct on a worksite is addressed in RCW 50.20.050(2)(b)(ix).

We must not forget the context. People generally spend about one-half of their waking hours at work. RCW 50.20.050(2)(b)(x) speaks in terms of changes in work duties. Would it not be intolerable for a worker to be happily employed one day, only to find out the next that work duties had changed, and those changes offended the worker's sincerely held moral beliefs? Yet, under the state's analysis, the worker has to tough it out just unless and until his sincerely held moral belief is shown to be the majority position on the subject. That cannot be the intent of the Legislature. If it were, the Legislature would not have mentioned "religious convictions" in the same section. It would not have used the phrase "sincere moral beliefs". The legislature could have used another term that can be examined objectively. It could have used "commonly held beliefs", "socially accepted behavior", "majority opinion" or "illegal". The analysis of whether or not a worker has a "sincere moral belief" must be subjective.

Enclosed for each of you are copies of my Order on Motion for Reconsideration. The originals of this letter and that order have been filed with the Clerk

Very Truly Yours,

Benton-Franklin Counties Superior Court

Bruce A. Spanner
Superior Court Judge

BAS:bas

STATE OF WASHINGTON
BENTON COUNTY SUPERIOR COURT

MICHAEL BOISE, Petitioner, v. EMPLOYMENT SECURITY DEPARTMENT, STATE OF WASHINGTON, Respondents.	NO. 13-2-01698-0 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter came on regularly for hearing on January 13, 2014 before the above-entitled court pursuant to the Washington Administrative Procedure Act; the Commissioner of the Employment Security Department was represented by ROBERT FERGUSON, Attorney General, and BRYAN OVENS, Assistant Attorney General; Petitioner, MICHAEL BOISE, represented himself. The Court, having reviewed the Commissioner's Record, pleadings on file, and having heard arguments, and in all premises being fully advised, hereby makes the following:

FINDINGS OF FACT

I.

At the time of filing the petition, Petitioner, Michael Boise, was a resident of Benton County, State of Washington.

II.

The Commissioner's delegate found that the Petitioner was ineligible to receive unemployment benefits.

From the foregoing Findings of Fact, the court makes the following:

CONCLUSIONS OF LAW

I.

The court has jurisdiction over the parties and subject matter.

II.

The Commissioner's findings of fact are not all supported by substantial evidence. Finding of Fact number 9, specifically that portion that finds Mr. Boise acknowledged that the employer's billing practices he objected to are common in the building industry is not supported by substantial evidence.

III.

The Commissioner's conclusions of law constitute an error of law. The Department employed an objective standard as to what is and is not a sincere moral conviction in the context of a change that occurs in the conditions of employment. An objective standard is not consistent with the language of RCW 50.20.050. Where there is a change of conditions of employment, there must be a subjective evaluation as to whether or not there are sincere moral objections to the change based on the claimant's behavior as it relates to those beliefs. Whether the employer's billing practices are customary in the industry are irrelevant in determining whether those practices violate the petitioner's sincerely held religious beliefs. There is no evidence in the record of any behavior by the claimant contrary to his asserted moral beliefs.

///

The Department also erred in not making a finding of fact on whether or not there was a change in the usual work, as required by RCW 50.20.050.

The court therefore enters the following:

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the decision of the Commissioner of the Employment Security Department of the State of Washington made in the above-entitled matter is remanded to the Commissioner's Review Office to issue a decision after employing a subjective analysis of whether a change in the conditions of employment violated a sincerely held moral belief of the petitioner.

DATED this _____ day of February, 2014.

BRUCE A. SPANNER
JUDGE

Presented by:
ROBERT FERGUSON
Attorney General

BRYAN OWENS
Assistant Attorney General
WSBA No. 32901
Attorney for Respondent

Approved as to form:

ELECTRONICALLY APPROVED

MICHAEL BOISE
Petitioner

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 May 31, 2013

Representative, Commissioner's Review Office, Employment Security Department

UIO 790
BYE 10/12/2013

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

Review No 2013-1791

In re

MIKE A BOISE
SSA No [redacted]5254

Docket No 04-2013-08181

DECISION OF COMMISSIONER

On May 6, 2013, MIKE A BOISE petitioned the Commissioner for review of an Initial Order issued by the Office of Administrative Hearings on April 16, 2013 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), we adopt the Office of Administrative Hearings' findings of fact and conclusions of law

The record supports the decision of the Office of Administrative Hearings While claimant had objections to the employer's pay plan, the main problem was an anticipated "loss in pay" if he were not to meet quota Claimant never gave himself a chance to see whether he could meet quota, so he did not know if there would be such a loss In regard to claimant's moral objection to the markup of subcontractor costs by the employer, we are persuaded that this is a normal practice in the industry, and that claimant's objections are misplaced Thus, while we do not question claimant's sincerity in making his decision to quit, we cannot conclude that claimant left his job for any of the good cause reasons laid out in RCW 50 20 050(2)(b) Statutory good cause for quitting has not been proven, and benefits must accordingly be denied

Now, therefore,

IT IS HEREBY ORDERED that the April 16, 2013, Initial Order of the Office of Administrative Hearings is AFFIRMED on the issue of the job separation Claimant is disqualified pursuant to RCW 50 20 050(2)(a) beginning February 17, 2013 for seven calendar weeks and until he has obtained bona fide work in employment covered by Title 50 RCW and earned wages in that employment equal to seven times his weekly benefit amount The Initial

Order is AFFIRMED on the issue of availability Claimant is not ineligible for benefits pursuant to RCW 50 20 010(1)(c) during the weeks at issue *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, May 31, 2013 *

Susan I. Buckles

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

PRESZLER AND ASSOCIATES, PLLC

July 12, 2016 - 4:22 PM

Transmittal Letter

Document Uploaded: 332021-Petition for Review by Supreme Court.pdf

Case Name: Michael Boise v. Washington State Dept. of Employment Security

Court of Appeals Case Number: 33202-1

Party Respresented: Petitioner

Is This a Personal Restraint Petition? ☐ Yes ☑ No

Trial Court County: Benton - Superior Court # 14-2-01176-5

Type of Document being Filed:

☐ Designation of Clerk's Papers / ☐ Statement of Arrangements

☐ Motion for Discretionary Review

☐ Motion: ____

☐ Response/Reply to Motion: ____

☐ Brief

☐ Statement of Additional Authorities

☐ Affidavit of Attorney Fees

☐ Cost Bill / ☐ Objection to Cost Bill

☐ Affidavit

☐ Letter

☐ Electronic Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

☐ Personal Restraint Petition (PRP)

☐ Response to Personal Restraint Petition / ☐ Reply to Response to Personal Restraint Petition

☑ Petition for Review (PRV)

☐ Other: _____

Comments:

No Comments were entered.

Sender Name: Teresa M Pfaffle - Email: mark@preszlerandbunch.com

Mark Bunch

From: mark@preszlerandbunch.com
Sent: Tuesday, July 12, 2016 4:23 PM
To: RJulyS@atg.wa.gov; leahH1@atg.wa.gov
Cc: mark@preszlerandbunch.com
Subject: Document Electronically Filed with Court of Appeals, Division III
Attachments: 332021-20160712-042251.pdf; 332021-Petition for Review by Supreme Court.pdf

Case Number: 33202-1
From: Mark Bunch
Organization: Preszler and Associates, PLLC

Attached is a copy of the Transmittal Letter and document(s) named 332021-Petition for Review by Supreme Court.pdf that Mark Bunch from Preszler and Associates, PLLC electronically filed with the Court of Appeals, Division Three in case number 33202-1.

The Court of Appeals, Division III will treat the attached transmittal letter as proof of service on you.

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, July 20, 2016 11:30 AM
To: 'mark@preszlerandbunch.com'
Subject: RE: Attn: Jocelyn FW: Document Electronically Filed with Court of Appeals, Division III

Received 7/20/16.

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

Questions about the Supreme Court Clerk's Office? Check out our website:
http://www.courts.wa.gov/appellate_trial_courts/supreme/clerks/

Looking for the Rules of Appellate Procedure? Here's a link to them:
http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=app&set=RAP

Searching for information about a case? Case search options can be found here:
http://dw.courts.wa.gov/

From: Mark Bunch [mailto:mark@preszlerandbunch.com]
Sent: Wednesday, July 20, 2016 11:21 AM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: Attn: Jocelyn FW: Document Electronically Filed with Court of Appeals, Division III

Attn: Jocelyn

I've also attached a PDF of the original e-mail.

Mark

Mark L. Bunch
Preszler & Bunch, PLLC
8797 W Gage Blvd, Ste B
Kennewick, WA 99336
Direct Ph: (509) 591-9265
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From: mark@preszlerandbunch.com [mailto:mark@preszlerandbunch.com]
Sent: Tuesday, July 12, 2016 4:23 PM
To: RJulyS@atg.wa.gov; leahH1@atg.wa.gov
Cc: mark@preszlerandbunch.com
Subject: Document Electronically Filed with Court of Appeals, Division III

Case Number: 33202-1
From: Mark Bunch
Organization: Preszler and Associates, PLLC

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