96188-3

NO. 35173-4-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON DEPARTMENT OF EMPLOYMENT SECURITY,

and

KASANDRA GERIMONTE,

Appellants,

vs.

VALLEY PINES RETIREMENT HOME,

Respondent.

PETITION FOR REVIEW TO SUPREME COURT

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DIVISION THREE

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	) NO: 35173-4-III
Appellant,	)
	)
and	) PETITION FOR REVIEW
	) TO SUPREME COURT
EMPLOYMENT SECURITY DEPARTMENT OF THE STATE OF WASHINGTON,	)
	)
Appellant,	)
	)
VALLEY PINES RETIREMENT HOME,	)
	)
Respondent.	)
	)

A. **IDENTITY OF PETITIONER**: The Petitioning Party is Respondent Valley Pines Retirement Home owned and operated by James Lowell.

B. **COURT OF APPEALS DECISION**: The Court of Appeals Reversed the Superior Court ruling that denied unemployment benefits to the Appellant Kasandra Gerimonte by Unpublished Opinion filed June 7, 2018, a copy of which is attached in the

Appendix at pages A through L, and subsequently denied Appellant's Motion to Publish Opinion filed July 12, 2018 a copy of which is attached in the Appendix page M.

C. **ISSUES PRESENTED FOR REVIEW:**

1. The Court of Appeals erred in holding that the Superior Court relied solely on evidence that was not presented to the Administrative hearing officer, when the Courts decision is equally based on the testimony of Appellant Gerimonte regarding her disqualifying criminal actions that occurred prior to her application for employment with Respondent Valley. In addition, to the fact of committing the criminal acts itself, should be considered misconduct.
2. This Petition involves a matter of substantial public interest that should be determined by the Supreme Court regarding the inadequate statutory and case law definition of misconduct in the general employment field vs. the need for a more stringent definition protecting vulnerable adults.
3. The State itself, which is the governor of all facets of long term care facilities created the background check forms that fail to protect the vulnerable adults in leaving an opening for criminal acts that constitute disqualifying actions that are committed but not yet charged.

D. **STATEMENT OF THE CASE:**

Respondent Valley by its owner/operator runs a long-term care facility for vulnerable citizens in Spokane, Washington. In April 2014 Appellant Kasandra Gerimonte applied for employment with Respondent and was required to fill out a background check. In filling it out she responded to

and, more importantly for the case at bar, that she had no "pending" charges. This is the crux of the problem. Mr. Lowell properly ran these background checks through the proper system and they came back negative. However undisclosed at the time is the fact that Appellant Gerimonte had participated in disqualifying crimes in January 2014, months before she filled in her background check. She however, had not yet been charged. She testified at the time of hearing she had been involved in what she claimed were "violations" and were not charged. Valley, and on the basis of the background check, hired her. She worked for Valley two years. While working for Valley, she was subsequently charged with three disqualifying felonies in October, 2014. She never told Valley about the filed charges, nor the fact that she went into a diversion program, and she continued to work with vulnerable adults. She then had to fill out another background check two years later and she then reported pending charges in which Valley then was mandated to terminate her employment or run the risk of losing its license. The State itself created the form that all long-term care facilities are required to use. The State strictly regulates all long-term care facilities and requires all operators and care providers to go through background checks and certifications. It is not disputed that Valley did everything they were supposed to do in order to protect these vulnerable citizens.

E. **ARGUMENT WHY REVIEW SHOULD BE ACCEPTED:**

1. The Court of Appeals held that the Superior Court reviewed new evidence and reweighed the evidence before the Employment Security Department and therefore reversed the Superior Court. Respondent asserts that the Appellant testified at the administrative hearing herself as to her knowledge of the impending criminal charges and withheld that information from her employer. The withholding of evidence critical to her suitability for the job and the welfare of the vulnerable residents is misconduct. Whether she performed her duties well is irrelevant as the very fact of her knowledge of disqualifying criminal activity, which she termed a "violation" of when the crime was actually committed whether or not it was yet to be charged certainly offered the Superior Court sufficient evidence to hold she committed misconduct in the application for her job. Had she been honest with Valley it would have been mandated to not hire her. Thus, there is sufficient evidence for the Superior Court to deny her unemployment benefits. In Johnson vs. Employment Security, 64 W.App 311, 824 P2d 505, (1992) the court held that the reviewing court can substitute its own judgment for that of the Administrative agency. That is all that the Superior Court did here. On this basis the Appellate Court should have affirmed the Superior Court ruling and deny Appellant her benefits. In Nelson vs. Employment Security 31 Wn. App., 621, 644 P.2d 145 (1982) the Court was

concerned with off duty/off premises misconduct in the form of shoplifting by the employee. The question was whether or not her shoplifting was connected with her work, and thus deny benefits. The court said that this misconduct must be viewed involving some standard of right or wrong. The Court held the criminal activity had a bearing on her work as a cashier because the employer terminated her as the employee had become untrustworthy in the eyes of the employer and other employees and made her position as a cashier untenable.

In Anderson vs. Employment Security 135 Wn. App. 887, 146 P.3d 475 (2006) the Court denied benefits to the claimant and for his failure to properly disclose a conflict of interest contrary to the interests of the employer. He failed to inform the employer of the true nature of his conflict of interest and actually sought to obfuscate it. Thus, the Court held Anderson's actions were misconduct with intentional disregard for the employer's interests. So true in this case is the nature of Appellant's misconduct in her intentional failure to inform and actually for two years hide the disqualifying criminal activity.

2. This case involves substantial public interest that the Supreme Court should clarify between misconduct in a normal unemployment case and one to protect vulnerable adults. This class of persons requires extra protection. Valley did everything

that as a prospective employer should do. It presented the background check formulated by the State. It processed it normally and discovered no disqualifying issues and hired Appellant. The statutes and case law defining misconduct and the statutes that the cases are interpreting are insufficient to protect these vulnerable citizens. When Valley discovered that Appellant had disqualifying crimes she was charged with he was mandated to terminate her employment. WAC 388-76-101631. According to this code provision he either must not hire her (if he knew) or let her go once he discovered the charges. Appellant Gerimonte withheld the information of her "violation" contrary to her argument that she did not know of it until later when she was actually charged. She is the only participant in this scenario who knew of the criminal activity in January, 2014 before applying and skated by because the mandatory form developed by the State allowed her a window of opportunity to say she had not "yet' been charged. This deficiency in the form put these vulnerable residents at risk as well as Valley and any other long-term care facility that relies on that form. The definition of "pending charges" should be expanded to include any activity that could result in charges. In Macey vs. Employment Security 110 Wn.2d 308, 752 P.2d 372 (1988) one of this courts leading cases regarding misconduct, this court held when discussing mixed questions of law and fact on page 313 "By

mixed questions of law and fact we are really referring not the facts themselves, nor the law governing the situation, but to the law as applied to those facts". In this case and others like it one has to look at the effect of Appellants withholding of information. On page 319, the Macey court, supra, said "The key question is whether the false answer was sufficiently connected with appellant's work to meet the intent of the statute. This inquiry leads to a consideration of the legitimate interests and expectations of the employer in expecting a truthful answer. "And on page 321 it stated: "... a false answer was harmful to the employer who hired the claimant in reliance on the specific information given in the application form. The false statements "had clearly gone to the basic consideration of his hiring; and his continued employment, under those circumstances, had constituted repeated acts of misconduct." Citations omitted. Here the withholding of her nefarious actions went the heart of her hiring and mandated her firing. The withholding of her charges once filed constitutes repeated acts of misconduct. The problem herein is that we are dealing with vulnerable citizens whose care and protection go beyond the normal employment situation. The court needs to define a separate category for this protected class. In Cuesta vs. Employment Security Department 200 W App. 560, 402 P.3d 898 (2017), when discussing false verification on an employer safety

check list, the court stated "The Employment Security Act, Title 50 RCW, exists to provide compensation to individuals who are involuntarily unemployed "through no fault of their own.... The operative principle behind the disqualification for misconduct is the fault of he employee." Here the withholding of information critical to the hiring process was voluntary and intentional on Appellants part and partly supported by the failure of the form she filled out authored by the State. The irony is that the only one protected herein is the perpetrator by these laws.

3. There is no denial that Valley was required to fire Appellant once her acts were disclosed. The most undisputed fact of this case is the successful concealment of Appellant's criminal charges. There is no dispute that Valley followed the letter of the law in the hiring and ultimate firing of Appellant. There is no industry in this State where the State acts more in the capacity of "manager" than it does in the long-term care industry. Department of Social and Health Services maintains more day to day control over providers than virtually any other industry. The State determines what a provider gets paid (WAC 388-105-0005), how a provider's residents are treated (WAC 388-76-10510 et seq.), who is allowed to run an Adult Family Home (WAC 388-76-10005 et seq.), how to build your house (WAC 388-76-10685 et seq.). They can inspect unannounced at any time to insure compliance (WAC 388-76-

10910 et seq.); heavily restricts who can be hired (WAC 388-76-10129 et seq.), and in this case mandate who must be fired (WAC 388-76-101631). The State can and will revoke the license of a Long-Term Care provider who fails to follow their requirements. This is presumably all to protect these vulnerable citizens. Under RCW 41.56.029 it provides for collective bargaining purposes it lists the Governor or its designee as the public employer of adult family home providers and the providers are listed as public employees. Virtually every aspect of the employment of Appellant was defined by the State, and Valley acted as her supervisor, while the State acted in the capacity of "manager". In all other industries the "manager" bears the responsibility when he mandates that he/she discharge an employee. Because of its extensive control of Adult Family Homes, the State has a history of being held liable for the actions of providers, and as a result it requires the providers to carry liability insurance insulating the State from such lawsuits. (WAC 388-76-10191). This is to protect the State itself from the actions of the providers. Because the State has set the parameters for the discharge of Appellant, the Employment Security Department taxes should fall on the entity that ordered Appellants discharge and not on the party that was required to carry out those orders.

4. **CONCLUSION**: Based on the foregoing argument the Respondent respectfully requests that the Supreme Court further define the definition of "misconduct" as it applies to this protected class of citizens and hold that Appellant should be denied unemployment compensation due to her misconduct for her failure to disclose her criminal activity in the application process. Further the court should close this loophole by modifying the background check to include any criminal activity that a reasonable person could conclude would result in criminal charges being filed in the future

DATED this 9TH day of August, 2018.

Respectfully submitted:

Timothy J. Harkins #7924
Attorney for Respondent

APPENDIX

FILED
JUNE 7, 2018
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

In re the Matter of: KASANDRA GERIMONTE, Appellant, and EMPLOYMENT SECURITY DEPARTMENT OF THE STATE OF WASHINGTON, Appellant, v. VALLEY PINES RETIREMENT HOME, Respondent.	No. 35173-4-III (consolidated with No. 35224-2-III) UNPUBLISHED OPINION

FEARING, J. — Kasandra Gerimonte and the Washington State Employment Security Department (ESD) appeal a superior court order reversing the ESD Commissioner's (Commissioner) granting of unemployment compensation benefits to Gerimonte. Because the superior court reviewed new evidence and reweighed the evidence before the ESD, we reverse and reinstate the award of benefits.

A

FACTS

The Valley Pines Retirement Home (Valley Pines) employed Kasandra Gerimonte, a certified nursing assistant, as a caregiver from March 2014 until April 26, 2016. The Washington State Administrative Code binds Valley Pines. One provision of the code reads that enumerated criminal convictions or pending criminal charges will disqualify an individual from unsupervised access to adults receiving geriatric services. A state statute mandates all retirement home caregivers undergo a background check before employment and every two years while working with vulnerable senior citizens.

Valley Pines does not have an employee handbook, nor does it maintain a set of written employee policies. The retirement home provides training and certification processes that allow caregivers to maintain licensing and employment.

Valley Pines first initiated a background check on Kasandra Gerimonte on April 8, 2014. Gerimonte indicated on her form authorizing the background investigation that she had no criminal convictions or pending charges against her. Valley Pines' background check did not reveal any disqualifying crimes, pending charges, or reports of theft. Valley Pines hired Gerimonte shortly thereafter.

In April 2016, Valley Pines conducted a second background check of Kasandra Gerimonte. The check found that the State of Washington filed charges against Gerimote on January 3, 2014. In completing the employment form authorizing the background check in April 2016, Gerimonte disclosed that she had pending theft charges. Gerimonte

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allegedly deposited forged checks at a Numerica Credit Union branch in January 2014, before the first background check. Although the purported crimes occurred on January 3, 2014, according to Gerimonte, the State filed no charges until after the 2014 background check.

Kasandra Gerimonte entered a court authorized diversion program after the State brought theft charges in late 2014. The State would dismiss the charges if Gerimonte successfully completed the diversion program. Gerimonte did not notify Valley Pines of the pending charges until the 2016 background check. She asserts that no Valley Pines' rule or policy required her to voluntarily report her participation in the diversion program. Gerimonte never pled guilty to any charge.

When Valley Pines learned, in April 2016, of the pending theft charges against Kasandra Gerimonte, the retirement home discharged her from employment. Gerimonte applied for unemployment benefits, which the ESD initially denied. Kasandra Gerimonte appealed ESD's initial determination.

PROCEDURE

An ESD administrative law judge conducted an evidentiary administrative hearing. James Lowell, Valley Pines manager, testified that the State charged Kasandra Gerimonte, in January 2014, before Gerimonte began employment with the retirement home. Gerimonte clarified that she committed the criminal act on January 3, 2014, but first learned of the criminal investigation or charges after she commenced work.

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Gerimonte averred that the State filed no charges until January 2015. Gerimonte's mother, Kristine Labelle, affirmed that the State did not file charges until seven or eight months after January 2014. Labelle testified law enforcement conducted a lengthy investigation, and Gerimonte did not know the State would file charges until it did so.

James Lowell testified that Valley Pines informs each employee, before employment, of a policy about background authorizations adopted to comply with State of Washington Department of Social and Health Services requirements. Kasandra Gerimonte declared that Valley Pines never reviewed any handbook or policy regarding criminal charges with her. Valley Pines provided no paperwork confirming any mention of policies to Gerimonte. Gerimonte insisted she lacked knowledge of any obligation to disclose possible future criminal charges.

The administrative law judge resolved, in favor of Kasandra Gerimonte, the factual disputes as to the timing of the theft charges and the review of Valley Pines' policies with Gerimonte. The judge found:

> Here, claimant answered all questions truthfully on both the 2014 and 2016 background check authorizations. Claimant was unaware that she was being investigated about a theft charge and there were no pending charges when she filled out the 2014 background authorization. Following the 2014 background check but before the second background check, claimant learned of the incident and eventually entered a diversion program before the second background check was authorized.
>
> . . . Employer's assertions aside, the claimant was unaware of any employer policy or rule requiring her to divulge her participation in a diversion program. Indeed, the employer provides no oral or written policies . . . to its new employees. It only requires that a W-4 and

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> background check authorization be filed [sic] out. Claimant's actions do not equate to a willful or wanton disregard of the rights, title, and interests of the employer.

Commissioner's Record at 116-17. The administrative law judge reversed ESD's initial finding and granted Gerimonte unemployment benefits.

Valley Pines petitioned the ESD Commissioner for reconsideration of the administrative law judge's decision. Valley Pines attached the cover of a police report to the petition, which report read that the State filed felony charges on October 22, 2014. Valley Pines never submitted this police report cover to the administrative law judge or Kasandra Gerimonte during the evidentiary hearing.

The ESD Commissioner declined to consider the police report because Valley Pines failed to submit the document during the administrative hearing. The Commissioner adopted the administrative law judge's findings of fact and conclusions of law and affirmed the administrative law judge's order.

Valley Pines appealed the ESD Commissioner's order to the superior court. The superior court reversed the Commissioner's decision. The superior court determined that substantial evidence did not support the Commissioner's finding that Kasandra Gerimonte lacked knowledge of being investigated for theft in April 2014. The superior court entered findings of fact, one of which reads:

> At the time she signed her background check, she knew she had been investigated by Numerica Credit Union for alleged forgery for passing bad checks on January 3, 2014, and was later interviewed by Spokane Police

E

> Department. She knew at said time that the police were recommending filing charges against her, and charges were ultimately filed against her.

Clerk's Papers at 41. The superior court also found that Gerimonte had documentation of a pending criminal investigation on or before January 16, 2014. In so finding, the superior court relied on the police cover sheet submitted by Valley Pines in its ESD petition for reconsideration.

LAW AND ANALYSIS

Merits of Appeal

Kasandra Gerimonte and ESD appeal and assign error to the superior court's findings. The two appealing parties primarily contend that the trial court erred when entering new findings of fact and when reweighing the evidence by concluding that Kasandra Gerimonte committed work-connected misconduct. We agree.

Washington's Administrative Procedure Act (APA), chapter 34.05 RCW, governs judicial review of employment benefits. *Smith v. Employment Security Department*, 155 Wn. App. 24, 32, 226 P.3d 263 (2010). This appeals court sits in the same position as the superior court and applies APA standards to the administrative record. *Smith v. Employment Security Department*, 155 Wn. App. at 32. We deem the ESD Commissioner's decision prima facie correct. *Smith v. Employment Security Department*, 155 Wn. App. at 32. The challenger to the ESD Commissioner's decision holds the burden to demonstrate the decision's invalidity. *Smith v. Employment Security*

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Department, 155 Wn. App. at 32; RCW 34.05.570(1)(a). This court reviews the Commissioner's ruling rather than the underlying administrative law judge's decision, but of course, if the Commissioner adopts the administrative law judge's findings of fact, we in essence review the administrative judge's findings. *Tapper v. Employment Security Department*, 122 Wn.2d 397, 405-06, 858 P.2d 494 (1993).

Findings of fact will be upheld when supported by substantial evidence. RCW 34.05.570(3)(e). Substantial evidence persuades a rational, fair-minded person of the truth of the finding. *Miller v. City of Tacoma*, 138 Wn.2d 318, 323, 979 P.2d 429 (1999). The reviewing court may not reweigh evidence or substitute its judgment on the credibility of witnesses. *Tapper v. Employment Security Department*, 122 Wn.2d at 403.

We review the ESD Commissioner's legal conclusions for errors of law. *Griffith v. Department of Employment Security*, 163 Wn. App. 1, 6, 259 P.3d 1111 (2011). The reviewing court may substitute its view of the law for the Commissioner's ruling, but we must give "substantial weight" to the Commissioner's interpretation due to the agency's special expertise. *Verizon Northwest, Inc. v. Employment Security Department*, 164 Wn.2d 909, 915, 194 P.3d 255 (2008).

The existence of misconduct is a mixed issue of fact and law. *Markam Group, Inc. v. Department of Employment Security*, 148 Wn. App. 555, 561, 200 P.3d 748 (2009). Whereas, we accord the factual findings of the agency deference, we subject the

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process of applying the law to the facts to de novo review. *Tapper v. Employment Security Department*, 122 Wn.2d at 403.

Unemployed workers are eligible for benefits absent a statutory disqualification. *Safeco Insurance Companies v. Meyering*, 102 Wn.2d 385, 388-89, 687 P.2d 195 (1984). Employees who are terminated for "misconduct" are not eligible to receive unemployment benefits. RCW 50.20.060. Based on facts supported by substantial evidence, the ESD Commissioner properly concluded that Kasandra Gerimonte did not engage in misconduct.

Substantial evidence supports the Commissioner's finding that Kasandra Gerimonte lacked knowledge of any criminal investigation until 2015. Gerimonte testified the State charged her a year after the incident, or in 2015. Gerimonte's mother, Kristine Labelle, testified Gerimonte did not know of the charges until seven or eight months after January 2014, and, in the interim, questioned whether the State would ever charge her. The 2016 background check shows Gerimonte committed violations on January 3, 2014, but does not indicate when the State filed charges.

Kasandra Gerimonte responded honestly to both background check authorization questions. On April 8, 2014, Gerimonte answered that she had no pending criminal charges. Gerimonte and her mother both testified the State charged Gerimonte in late in 2014. In April 2016, after the State filed theft charges, Gerimonte responded honestly on her background authorization forms that she had a pending charge.

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The ESD Commissioner, through the administrative law judge, did not abuse discretion when resolving factual questions in favor of Kassandra Gerimonte. Gerimonte lacked knowledge of any Valley Pines policy requiring her to report her participation in a diversion program to her employer. James Lowell did not provide Valley Pines employees with any employee handbook. Gerimonte testified repeatedly that Lowell never represented, orally or in writing, a requirement to report all pending charges. Lowell admitted Valley Pines does not maintain any written policy regarding reporting pending charges.

Valley Pines manager James Lowell asserted during the hearing that the retirement home's policy regarding pending charges was covered in the required trainings to become a certified nursing assistant. Lowell was unable to provide any evidence that Kasandra's Gerimonte's training covered that policy, however.

Kasandra Gerimonte reasonably decided to not share her participation in a diversion program with Valley Pines. Gerimonte did not know how a diversion program might affect pending charges in relation to her occupation, and Gerimonte could not discover such information because James Lowell never provided her with a copy or summary of corporate rules. Substantial evidence supported the ESD Commissioner's conclusion that Gerimonte lacked notice of any policy that required her to report to her employer involvement in a diversion program.

I

In turn, the ESD Commissioner correctly determined that Kasandra Gerimonte did not commit misconduct. "Misconduct" includes, in relevant part, "[w]illful or wanton disregard of the rights, title, and interests of the employer or a fellow employee." RCW 50.04.294(1)(a). "'Misconduct' does not include: . . . Good faith errors in judgment or discretion." RCW 50.04.294(3)(c).

Courts have concluded that "'willful misconduct'" means more than negligence. *Hamel v. Employment Security Department*, 93 Wn. App. 140, 146, 966 P.2d 1282 (1998). Willful misconduct contemplates an intentional act with knowledge that the act will likely result in serious injuries, or with reckless disregard of its probable consequences. *Hamel v. Employment Security Department*, 93 Wn. App. at 146. Actions or failures to act that are simply negligent, and not in defiance of a specific policy, do not constitute misconduct in the absence of a history of repetition after warnings. *Wilson v. Employment Security Department*, 87 Wn. App. 197, 199-200, 940 P.2d 269 (1997).

Kasandra Gerimonte's actions do not amount to misconduct. James Lowell failed to communicate to Gerimonte the required reporting of pending charges or participation in a diversion program. While Gerimonte's pending charge potentially endangered Valley Pines' business license, she cannot be faulted for failing to adhere to an unknown policy. At most, Gerimonte acted negligently in failing to report any pending charges.

The superior court may only review the findings of fact entered by the Commissioner and determine whether substantial evidence supports the findings. RCW

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34.05.570(3)(e). RCW 34.05.562 allows the superior court to entertain new evidence in limited circumstances, but no such circumstances existed here.

The superior court erroneously relied on evidence not admitted into the Commissioner's record. The superior court found that Kasandra Gerimonte knew she had been investigated by Numerica Credit Union for alleged forgery for passing bad checks on January 3, 2014, that the police recommend the filing of charges against her, and that the State ultimately filed charges. This finding arises from the police report attached to Valley Pines' petition for reconsideration, not from evidence submitted during the administrative law judge hearing.

In addition to the police report cover arriving late, the cover was unsworn and not amenable to examination by the administrative law judge or Kasandra Gerimonte. The Commissioner properly refused to consider the police report cover for this additional reason.

Attorney Fees

Kasandra Gerimonte seeks recovery of reasonable attorney fees pursuant to RCW 50.32.160. Under this statute, an attorney representing an Employment Security Act claimant may be awarded a reasonable fee "if the decision of the commissioner shall be reversed or modified." RCW 50.32.160. Gerimonte seeks to have the Commissioner's decision affirmed, not modified or reversed. Unfortunately, the statute does not afford Gerimonte an award of fees. *Markam Group, Inc. v. Department of Employment*

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Security, 148 Wn. App. 555 (2009).

CONCLUSION

We reverse the superior court's ruling and reinstate the ESD Commissioner's ruling granting Kasandra Gerimonte unemployment benefits. We deny Gerimonte an award of reasonable attorney fees on appeal.

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.

Fearing, J.

WE CONCUR:

Lawrence-Berrey, C.J.

Pennell, J.

FILED
JULY 12, 2018
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

In re the Matter of: KASANDRA GERIMONTE, Appellant, and EMPLOYMENT SECURITY DEPARTMENT OF THE STATE OF WASHINGTON, Appellant, v. VALLEY PINES RETIREMENT HOME, Respondent.	No. 35173-4-III (consolidated with No. 35224-2-III) ORDER DENYING APPELLANT'S MOTION TO PUBLISH OPINION

THE COURT has considered the appellant's motion to publish the court's opinion of June 7, 2018, and the record and file herein, and is of the opinion the motion to publish should be denied. Therefore,

IT IS ORDERED, the motion to publish is denied.

PANEL: Judges Lawrence-Berrey, Fearing, Pennell

FOR THE COURT:

Lawrence-Berrey, C.J.
ROBERT LAWRENCE-BERREY
Chief Judge

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COURT OF APPEALS FOR DIVISION III
STATE OF WASHINGTON

STATE OF WASHINGTON DEPARTMENT OF EMPLOYMENT SECURITY, and KASANDRA GERIMONTE, Appellants, vs. VALLEY PINES RETIREMENT HOME, Respondent.	NO. 35173-4-III CERTIFICATE OF MAILING PETITION FOR REVIEW

I, TIMOTHY J. HARKINS, certify that I served a copy of the PETITION FOR REVIEW TO SUPREME COURT on Monica A. Holland, Unemployment Law Project, 35 W. Main Ave. Ste 370, Spokane, WA 99201; John Tirpak, Unemployment Law Project, 1904 3rd Ave., Ste. 604, Seattle, WA 98101; and to Catherine Kardong, Attorney General of Washington, 1116 W. Riverside Ave., Ste. 100, Spokane, WA 99201 by placing in the United States Mail, proper postage and addressed to the above addresses.

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

DATED this 9th day of August, 2018.

TIMOTHY J. HARKINS, # 7924