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NO. 65402-1

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

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MOHAMED ABDELKADIR,

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF EMPLOYMENT  
SECURITY,

Respondent.

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**BRIEF OF RESPONDENT**

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## I. INTRODUCTION

The Employment Security Act was enacted to provide compensation to individuals unemployed through no fault of their own. RCW 50.20.010. In keeping with this policy, a person may not receive unemployment benefits if he quit his job without good cause. Mr. Abdelkadir voluntarily quit his employment alleging that a co-worker harassed him and was using illegal drugs, and the employer had done nothing about it. The Department correctly determined that Mr. Abdelkadir was disqualified from receiving unemployment benefits because he did not meet the requirements to establish good cause for quitting and failed to exhaust reasonable alternatives to quitting prior to leaving his employment. Consequently, the Department respectfully requests that the Commissioner's decision denying Mr. Abdelkadir unemployment benefits be affirmed.

## II. RESPONSE TO ASSIGNMENT OF ERRORS

Mr. Abdelkadir has not assigned error to any of the findings or conclusions of the Employment Security Department's adjudication. This violates Rule of Appellate Procedure (RAP) 10.3(h) ("In addition to the assignments of error required by rule 10.3(a)(3) and 10.3(g), the brief of an appellant or respondent who is challenging an administrative adjudicative order under RCW 34.05...*shall* set forth a separate concise

statement of each error which a party contends was made by the agency issuing the order, together with the issues pertaining to each assignment of error.”) (emphasis added).

By failing to assign error to the findings, the findings of the Department are now verities on appeal. See RAP 10.3(g); *Contested Election of Schoessler*, 140 Wn.2d 368, 385, 998 P.2d 818 (2000); *Tapper v. Empl. Sec. Dep’t*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993). Mr. Abdelkadir’s argument, however, fairly reveals that he is challenging the Commissioner’s conclusion that he did not have good cause for quitting. Accordingly, the Department will proceed as if he had properly assigned error to that conclusion, going on to demonstrate that the Commissioner’s legal conclusions are free from error.

### **III. COUNTER STATEMENT OF THE ISSUES**

Whether the Commissioner properly concluded that Mr. Abdelkadir was disqualified from receiving unemployment benefits because he voluntarily quit without good cause

### **IV. COUNTER STATEMENT OF THE CASE**

The statement of facts by Mr. Abdelkadir fails to cite to the findings of fact entered by the Commissioner and seems to cite only the record and the parties’ superior court briefing. See Br. of Appellant at 20-22. In effect, he is asking this Court to retry the case from the evidence in

the record. The discussion of evidence (i.e. testimony, documents in the record) that is not included in a finding of fact is not a “fact” before this Court. Rather, it is one side’s evidence. The Department presents this counterstatement of the case in order to present the facts as found by the Commissioner, which are subject to this Court’s review.

Mr. Abdelkadir worked as a delivery man for CSK Auto, Inc. (“the employer”) prior to quitting work on October 5, 2008. Mr. Abdelkadir complained to his manager and a human resources officer that another employee, Greg Little, was harassing him and taking illegal drugs. Comm’r Rec. at 32, 79 (Finding of Fact (FF) 1), 100.<sup>1</sup> Mr. Abdelkadir’s allegations were based on his understanding that Mr. Little took medication for depression. Comm’r Rec. at 23, 100. Mr. Abdelkadir stated that Mr. Little would say things such as, “If you don’t like this job you can go home.” Comm’r Rec. at 18. Mr. Abdelkadir alleged that Mr. Little would urge him to fight, follow him, and give him trouble regarding his break time. Comm’r Rec. at 18–19.

The human resources officer investigated, interviewing Mr. Abdelkadir, Mr. Little, and two people with knowledge of the relationship between them. Comm’r Rec. at 33, 79 (FF 1). The human resources officer stated that Mr. Abdelkadir would not be specific about

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<sup>1</sup> The Commissioner’s Record is a Certified Appeal Board Record. This brief references pages in the Commissioner’s Record (Comm’r Rec.).

what Mr. Little did, just said that he was mean to him and told him what to do. Comm'r Rec. at 33. The human resources officer could not substantiate Mr. Abdelkadir's complaints of harassment or inappropriate or illegal drug use. Comm'r Rec. at 32-33, 100. As a result, the employer did not intervene. Mr. Abdelkadir apparently proposed that he be able to change shifts and wanted to ensure that he would not come into contact with Mr. Little. Comm'r Rec. at 22. The employer could not ensure that the two would never come into contact with one another due to travels between locations of their storefronts and delivery schedules. Comm'r Rec. at 35-36. Mr. Abdelkadir was not satisfied with the employer's response and quit.

Mr. Abdelkadir applied for unemployment benefits, which were initially granted based solely on his statements, as the employer did not provide a response to the Department's initial inquiries. Comm'r Rec. at 51-54. The employer then appealed the Department's decision and the Office of Administrative Hearings convened a hearing. Comm'r Rec. at 55-57, 76. Following the hearing, the administrative law judge set aside the Department's decision, holding that Mr. Abdelkadir had failed to exhaust reasonable alternatives prior to quitting. Comm'r Rec. at 80 (Conclusion of Law 3). Mr. Abdelkadir petitioned for review. Comm'r Rec. at 89, 91-93. The Commissioner adopted the findings and conclusions of the

administrative law judge, clarifying the findings and setting forth additional reasoning for the conclusions of law. Comm'r Rec. at 100-102. Mr. Abdelkadir then filed a petition for judicial review, and the superior court affirmed the decision of the Commissioner.

## V. STANDARD OF REVIEW

Mr. Abdelkadir seeks judicial review of the administrative decision of the Commissioner of the Employment Security Department. Judicial review of such decisions is governed by Washington's Administrative Procedure Act (APA), RCW 34.05; RCW 50.32.120; *W. Ports Transp., Inc. v. Empl. Sec. Dep't*, 110 Wn. App. 440, 449, 41 P.3d 510 (2002). The court's review is generally confined to the agency record. RCW 34.05.558; RCW 34.05.562. While Mr. Abdelkadir frames his argument as though this Court is reviewing the superior court's order, in fact the Court of Appeals "sits in the same position as the superior court" on review of the agency action under the APA and applies the APA standards directly to the administrative record. *Tapper*, 122 Wn.2d at 402. The appellate court applies its review directly to the decision of the Commissioner, rather than the underlying initial order by the ALJ. *Smith v. Empl. Sec. Dep't*, 155 Wn. App. 24, 32, 226 P.3d 263 (2010).

The Commissioner's decision is considered *prima facie* correct and the burden of demonstrating the invalidity of the agency action is on the

party challenging the validity of the action. RCW 34.05.570(1)(a); *Smith*, 155 Wn. App. at 32. Since the Commissioner exercises the same power as if he presided over the hearing, a reviewing court must affirm the Commissioner's decision if supported by substantial evidence and in accord with the law. RCW 34.05.464(4), RCW 34.05.570(3)(d), (e); *Tapper*, 122 Wn.2d at 403–404. The court should only grant relief if “it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.” RCW 34.05.570(1)(d).

**A. Findings of Fact: Substantial Evidence Standard**

Though it does not appear that Mr. Abdelkadir has specifically challenged any of the Commissioner's findings of fact, he implicitly challenges findings through his contention that the Commissioner erred in failing to grant his claim for benefits. It is thus noteworthy that an agency's findings of fact must be upheld if they are supported by substantial evidence. RCW 34.05.570(3)(3); *William Dickson Co. v. Puget Sound Air Pollution Control Agency*, 81 Wn. App. 403, 411, 914 P.2d 750 (1996). Substantial evidence is evidence that is “sufficient to persuade a rational, fair-minded person of the truth of the finding.” *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004) (citation omitted). This Court should not reweigh evidence or assess the credibility of

witnesses. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). A Commissioner's finding, even if it is based upon facts which are subject to contrary inferences, must be upheld if it has reasonable support in the record as a whole. *Fred Hutchinson Cancer Research Ctr. v. Holman*, 107 Wn.2d 693, 713 P.2d 974 (1987).

Judicial review of disputed issues of fact must be limited to the agency record. RCW 34.05.558, RCW 34.05.562. When findings of fact are unchallenged, they will be treated as verities on appeal. RAP 10.3(g); *Lawter v. Empl. Sec. Dep't*, 73 Wn. App. 327, 869 P.2d 102 (1994). Here, Mr. Abdelkadir has not clearly contested any of the findings of fact. Thus, all findings should be treated as verities on appeal.

**B. Review of Questions of Law**

A court reviews questions of law de novo. *Tapper*, 122 Wn.2d at 403. Courts, however, have consistently accorded a "heightened degree of deference" to the Commissioner's interpretation of employment security law in view of the Department's expertise in administering the law. *W. Ports*, 110 Wn. App. at 449-50; *Safeco Ins. Cos. v. Meyering*, 102 Wn.2d 385, 391, 687 P.2d 195 (1984).

**C. Review of Mixed Questions of Law and Fact**

Whether a claimant has good cause to quit his job is a mixed question of law and fact. *Tapper*, 122 Wn.2d at 402; *Terry v. Empl. Sec.*

*Dep't*, 82 Wn. App. 745, 748, 919 P.2d 111 (1996). When reviewing mixed questions of law and fact, the court must (1) determine which factual findings are supported by substantial evidence; (2) make a de novo determination of the correct law; and (3) apply the law to the applicable facts. *Tapper*, 122 Wn.2d at 403. Factual findings should be upheld if they are supported by substantial evidence. RCW 34.05.570(3)(e). After establishing the relevant facts, the reviewing court is to exercise appropriate deference to the agency with expertise in the matter when making its determination of the correct law. The court then applies the law to the facts found by the agency, as supported by substantial evidence. In addition, the court is not free to substitute its judgment of the facts for that of the agency. *Tapper*, 122 Wn.2d at 403.

**D. Review of Order as Arbitrary and Capricious**

Mr. Abdelkadir may also be challenging the Commissioner's Decision as arbitrary and capricious. Washington law states that a "court shall grant relief from an agency order in an adjudicative proceeding if it determines that ... the order is arbitrary and capricious." RCW 34.05.570(3)(i). "When an order is alleged to be arbitrary or capricious, the scope of review is narrow, and the challenger carries a heavy burden." *Brown v. Dep't of Health, Dental Dentistry Bd.*, 94 Wn. App. 7, 16, 972 P.2d 101 (1999) (quoting *Keene v. Bd. of Accountancy*, 77 Wn. App. 849,

859, 894 P.2d 582, review denied, 127 Wn.2d 1020 (1995)). An arbitrary and capricious action is a “willful and unreasoning action, without consideration and in disregard of facts and circumstances.” *Heinmiller v. Dep’t of Health*, 127 Wn.2d 595, 609, 903 P.2d 433 (1995). In order to find that an order is arbitrary and capricious, it is not enough for the court to simply conclude that a Commissioner’s decision is erroneous. Rather, the court must find that the Commissioner’s decision was made in willful disregard of the facts and circumstances of the case. *Id.*

## VI. ARGUMENT

Neither the terms of the Employment Security Act (Act), nor the policy supporting it provide for payment of benefits to a claimant in Mr. Abdelkadir’s position. The issue before the Court is whether Mr. Abdelkadir had good cause to quit his job under RCW 50.20.050. The Court should affirm the Department’s holding that Mr. Abdelkadir did not have good cause to quit his job because he meets neither the requirements to establish good cause for quitting due to illegal activities in the workplace under RCW 50.20.050(2)(b)(ix) and WAC 192-150-135 nor the requirements for quitting due to deterioration in worksite safety under RCW 50.20.050(2)(b)(viii) and WAC 192-150-130. Additionally, although his reason for quitting was work related, it was not an unreasonable hardship or sufficiently compelling to cause a reasonable

prudent person to quit, and Mr. Abdelkadir did not exhaust all reasonable alternatives before quitting, as WAC 192-150-170(2)(i)(C) requires.

**A. A history of the good cause requirement**

A claimant who voluntarily quits work may only receive unemployment benefits if he leaves his employment for good cause. RCW 50.20.050. The good cause standard has evolved through the years, and an understanding of its history is essential to applying the standard today.

**1. Good cause before January 2004**

Before January 4, 2004, courts applied the good cause standard set forth in RCW 50.20.050(1) (2008), which provides for benefits when a claimant voluntarily quits his job with good cause.<sup>2</sup> Under that statute, a claimant had to meet the requirements set forth in WAC 192-16-009 (2004) to demonstrate good cause.<sup>3</sup> He had to show that he left work primarily for work-related factors, that those factors were sufficiently compelling to cause a reasonably prudent person to leave his employment, and that he exhausted all reasonable alternatives before quitting. WAC 192-16-009(1)(a)-(c). Under this regulation, a claimant also quit for good cause if he established that his employment caused an unreasonable hardship, “a result, not due to the individual’s voluntary action, that would

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<sup>2</sup> A copy of RCW 50.20.050(1) (2008) is attached to this brief as Attachment A.

<sup>3</sup> A copy of WAC 192-16-009 (2004) is attached to this brief as Attachment B.

cause a reasonable person to leave the employment.” WAC 192-16-009(3)(f).

**2. Good cause from January 4, 2004, until June 19, 2008**

On January 4, 2004, RCW 50.20.050(2) came into effect setting forth ten factors that established “good cause” for voluntarily quitting. RCW 50.20.050(2)(b) (2008). The Court of Appeals subsequently held that the ten factors were exclusive and that an individual could not establish good cause for quitting if he did not satisfy one of the ten factors. *Starr v. Empl. Sec. Dep’t*, 130 Wn. App. 541, 543, 123 P.3d 513 (2005), *review denied*, 157 Wn.2d 1019 (2006).

**3. Good cause after 2008**

On June 19, 2008, *Spain v. Empl. Sec. Dep’t*, 164 Wn.2d 252, 260, 185 P.3d 1188 (2008), was decided, which reversed *Starr* and held that the factors listed in RCW 50.20.050(2) were not the only factors that could constitute a good cause quit. *Spain* substantially altered the prevailing interpretation of RCW 50.20.050(2). The court provided:

We must decide whether the statutory list of reasons that *do not* disqualify an individual from benefits is also an exhaustive list of good cause reasons *to* voluntarily leave a job without losing benefit eligibility. We conclude it is not.

*Spain*, 164 Wn.2d at 254. The court explained that RCW 50.20.050(2)(a) allows for good cause in situations other than the eleven enumerated in

RCW 50.20.050(2)(b). Furthermore, the Court directed the Department to “determine, based upon the individual facts of the case . . . whether employees had good cause to leave their jobs.” *Id.* The Commissioner of the Department responded to *Spain* by promulgating WAC 192-150-170 in order to give adjudicators guidance in considering the individual facts of each case.<sup>4</sup> That regulation defines good cause for those situations not laid out in RCW 50.20.050(2)(b). If an individual’s situation does not fall within one of the specifically enumerated, or *per se* factors, in RCW 50.20.050(2)(b), the Department considers whether the employee nevertheless had good cause to quit under WAC 192-150-170. Because the definition of good cause set forth in WAC 192-150-170 returns in some respects to the pre-January 4, 2004, definition, case law prior to January 4, 2004, helps in applying this emergency regulation.

**B. Mr. Abdelkadir quit voluntarily without good cause**

Because Mr. Abdelkadir voluntarily quit his employment, he has the burden to prove by a preponderance of the evidence that he did so for good cause. *See* RCW 50.32.150; *Wallace v. Empl. Sec. Dep’t*, 51 Wn. App. 787, 790, 755 P.2d 815 (1988). A claimant may establish good

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<sup>4</sup> A copy of WAC 192-150-170 is attached to this brief as Attachment C. The 2009 Legislature eliminated general good cause and specified that only the statutory reasons, listed in RCW 50.20.050(2)(b), are now sufficient. Accordingly, the emergency rule adopted by the Department in response to the decision in *Spain*, WAC 192-150-170, expired on July 7, 2009, and was not renewed.

cause by satisfying one of the eleven enumerated examples in RCW 50.20.050(2)(b). In addition, under WAC 192-150-170(2)(i), the Department may find an employee quit for good cause if continuing employment would work an unreasonable hardship on the claimant because of work-connected circumstances, if the claimant also establishes that: (1) he left work primarily for reasons connected with employment; (2) the work-connected reasons were so compelling that they would have caused a reasonably prudent person to leave work; and (3) he first exhausted all reasonable alternatives, unless it would be futile. WAC 192-150-170(2)(i), (3). Within this inquiry, the circumstances must be based on facts, not conjecture, and the claimant must present significant reasons for leaving employment. WAC 192-150-170(3). Furthermore, a claimant may establish good cause for quitting if the claimant can demonstrate that his work substantially and involuntarily deteriorated. WAC 192-150-170(2)(ii).

Here, Mr. Abdelkadir has not established good cause for quitting under either analysis. Thus, the Court should affirm the Commissioner's Decision denying his application for benefits.

- 1. Mr. Abdelkadir failed to prove that he quit for good cause for illegal activities at the workplace**

To establish *per se* good cause to quit under the voluntary quit provisions of RCW 50.20.050(2)(b), Mr. Abdelkadir must demonstrate that his reason for quitting fell under of the eleven specifically enumerated factual scenarios. RCW 50.20.050(2)(b)(ix) provides that a claimant establishes good cause for quitting if: “The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time.” WAC 192-150-135 further defines illegal activities at the worksite. Here, Mr. Abdelkadir failed to establish any of the three elements set forth in the statute. The Commissioner thus properly held that he was ineligible for benefits.

Mr. Abdelkadir alleges that he was subject to harassment and thus the employer was engaged in illegal activities. Because the burden is on the claimant to demonstrate good cause for quitting, the claimant carries the burden of proving that the employer engaged in illegal activities if the claimant relies on those activities as grounds for good cause. *See Townsend v. Empl. Sec. Dep't*, 54 Wn.2d 532, 534, 341 P.2d 877 (1959). It is noteworthy that the statute does not clearly describe if the Department may make a determination of whether an activity is illegal. However, an administrative agency is limited to those powers expressly conferred by the

legislature. *WA Water Power Co. v. WA State Human Rights Comm'n*, 91 Wn.2d 62, 65, 586 P.2d 1149 (1978).

Mr. Abdelkadir did not establish allegations of harassment, and therefore fails to meet the first element of the test: that he left work due to illegal activities. As the Commissioner found, Mr. Abdelkadir's relationship with his coworker, Mr. Little, was evidently not ideal. However, the conflict described does not amount to harassment. Comm'r Rec. at 101. When Mr. Abdelkadir was asked for an example of the harassment, he stated Mr. Little would say things such as, "If you don't like this job you can go home." Comm'r Rec. at 18. Mr. Abdelkadir alleged that Mr. Little would urge him to fight, follow him, and give him trouble regarding his break time. Comm'r Rec. at 18-19. Mr. Abdelkadir has provided no definition of harassment that would be satisfied by his allegations. Indeed, none exists. Thus, while Mr. Abdelkadir reported the activities to the employer, he did not show that the activities were illegal as required by RCW 50.20.050(2)(b)(ix). While it is understandable that a person would be dissatisfied with a workplace relationship like the one between Mr. Abdelkadir and Mr. Little, it does not reasonably leave no alternative to quitting, as required by WAC 192-150-135.

The ALJ and Commissioner found that the employer investigated Mr. Abdelkadir's complaint but could not substantiate his allegations of

harassment. Comm'r Rec. at 79 (FF 1). Instead, as part of the investigation, the employer came to believe that Mr. Abdelkadir had actually provoked his coworker. In addition, the ALJ and Commissioner found that Mr. Abdelkadir could have filed another complaint. Therefore, it was not reasonable for Mr. Abdelkadir to quit.

**2. Mr. Abdelkadir failed to demonstrate that his worksite safety deteriorated**

In order to establish *per se* good cause for quitting due to a deterioration in worksite safety, a claimant must prove that his worksite safety deteriorated, he reported the safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time. RCW 50.20.050(2)(b)(viii); WAC 192-150-130. Mr. Abdelkadir fails to meet this test. Thus, the Commissioner properly determined that he failed to establish good cause.

Mr. Abdelkadir argues that his worksite safety deteriorated. *See* Br. of Appellant at 19. It does not appear that he made this argument at the administrative hearing, and therefore, he cannot raise the issue for the first time on appeal. *See* RCW 34.05.554. However, if the Court considers the issue, Mr. Abdelkadir cannot qualify for benefits under this provision because he failed to establish that his worksite safety deteriorated. Comm'r Rec. at 19. The employer representatives testified

at the hearing that they investigated Mr. Abdelkadir's complaints and, similar to the allegations of illegal activity, were unable to confirm that Mr. Little threatened Mr. Abdelkadir's safety. Comm'r Rec. at 33.

Next, Mr. Abdelkadir failed to establish he communicated to his supervisors that he felt his safety was threatened, and thus he fails to meet the second element of RCW 50.20.050(2)(b)(viii). Moreover, the Commissioner found Mr. Abdelkadir experienced conflict in the workplace, but that is not necessarily uncommon, and this conflict did not rise to the level of harassment. Comm'r Rec. at 101. If it did not rise to the level of harassment, neither could the conflict have been intimidating enough to amount to deterioration in worksite safety. As a result, Mr. Abdelkadir does not establish good cause under RCW 50.20.050(2)(b)(viii).

**3. Mr. Abdelkadir does not satisfy the definition of good cause to quit under WAC 192-150-170**

Furthermore, Mr. Abdelkadir does not qualify for benefits under the general good cause analysis of RCW 50.20.050(a). Pursuant to this statute, the Commissioner promulgated WAC 192-150-170 establishing factors for consideration when determining general good cause. This WAC establishes that other work-connected circumstances may constitute good cause if a claimant can show that continuing in his employment

would work an unreasonable hardship on him. WAC 192-150-170(3). Further, a claimant must show (1) the separation arose primarily for reasons connected with his employment, (2) those work-connected reasons were of such a compelling nature that they would have caused a reasonably prudent person to leave work, and (3) he first exhausted all reasonable alternatives prior to quitting, unless exhaustion would prove futile. WAC 192-150-170(2).

Mr. Abdlekadir has made no showing that the conflict he experienced in the workplace amounted to an unreasonable hardship. WAC 192-150-170(3). Although he may have quit for reasons primarily connected with employment, a reasonably prudent person in his situation would not have been compelled to quit. WAC 192-150-170(2)(i)(B). Moreover, Mr. Abdelkadir did not establish that his work substantially and involuntarily deteriorated. WAC 192-150-170(2)(ii). Therefore he does not meet the burden of demonstrating that he had good cause to quit his job.

**a. Mr. Abdelkadir did not face an unreasonable hardship that was sufficiently compelling to cause a reasonably prudent person to quit**

In order to qualify for benefits when none of the eleven good cause factors in RCW 50.20.050(2)(b) are implicated, the claimant must demonstrate that he faced compelling circumstances that “would have

caused a reasonably prudent person to leave work.” WAC 192-150-170(2)(i)(B). An unreasonable hardship caused primarily by work-related circumstances meets the compelling circumstances standard. WAC 192-150-170(3). “‘Unreasonable hardship’ means a result not due to [the claimant’s] voluntary inaction that would cause a reasonable person to leave that employment.” WAC 192-150-170(3)<sup>5</sup>; see *Grier v. Empl. Sec. Dep’t*, 43 Wn. App. 92, 715 P.2d 534 (1986).<sup>6</sup> A “reasonably prudent person” is an individual who uses good judgment or common sense in handling practical matters. WAC 192-100-010. A court looks to the facts of the case to determine if a reasonably prudent person would leave work under the circumstances. *Murphy v. Empl. Sec. Dep’t*, 47 Wn. App. 252, 257, 734 P.2d 924 (1987). Real facts must support the good cause quit, and the reasons for leaving must be significant. *Terry*, 82 Wn. App. at 751; see WAC 192-150-170(3).

Prior to 2004, courts found that a claimant faced an unreasonable hardship that amounted to a compelling reason to terminate her

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<sup>5</sup> “Examples of work-connected unreasonable hardship circumstances that may constitute good cause include, but are not limited to, those where: (A) Repeated behavior by your employer or co-worker(s) creates an abusive working environment. (B) You show that your health or physical condition or the requirements of the job have changed and the work is no longer suitable under RCW 50.20.100 because your health would be adversely affected by continuing in that employment.” WAC192-150-170(3)

<sup>6</sup> Although the legislature has modified RCW 50.20.050 and the regulations since the Court decided *Grier*, it is good law because it is consistent with the language of the emergency rule. To the extent reasonable interpretation of a new law is consistent with past decisions, courts should look to those decisions. *Green Mountain Sch. Dist. No. 103 v. Durkee*, 56 Wn.2d 154, 161, 351 P.2d 525 (1960).

employment when her employer cut her hours from full time to part time and reduced her medical coverage, vacation, and sick leave, resulting in a pay decrease of 33 percent. *Grier*, 43 Wn. App. at 94, 96–97. Similarly, in *Murphy*, the court found that a reasonably prudent person would have quit his job of seventeen years instead of accepting a mandatory transfer to a new position in tremendous heat, which was extremely strenuous and would result in a five percent pay decrease. *Murphy*, 47 Wn. App. at 259. In *Forsman*, the court concluded that a 24 percent wage reduction, 45 percent reduction in hours, and loss of medical benefits, holidays, and one week of vacation was sufficiently compelling to cause a claimant to quit. *Forsman v. Empl. Sec. Dep't*, 59 Wn. App. 76, 82, 795 P.2d 1184 (1990). Mr. Abdelkadir's situation is distinguishable from *Grier*, *Murphy*, and *Forsman* because his reasons for quitting do not rise to a level of hardship comparable to any of those cases.

Moreover, the circumstances that Mr. Abdelkadir cites as his reason for leaving work are more comparable to cases in which courts have held that the claimant did not establish unreasonable hardship. In *Johns v. Empl. Sec. Dep't*, 38 Wn. App. 566, 570–71, 686 P.2d 517 (1984), the court determined that a reasonable prudent person would not be compelled to leave work due to a lack of communication, difference of philosophical opinion with supervisors, and a lack of satisfaction with

wages and responsibilities. Furthermore, courts have found that a loss of compensation that is not substantial is not sufficient to constitute an unreasonable hardship in every case. *In re Anderson*, 39 Wn.2d 356, 361-62, 235 P.2d 303 (1951) (holding that a 12.2 percent reduction in hourly pay, was not substantial enough to support good cause to quit).

Mr. Abdelkadir left his work because he was dissatisfied with his work conditions, specifically his treatment by one coworker and his employer's inability to guarantee that it could change his schedule so that he would never come into contact with the coworker. While these circumstances are unfortunate, understandably frustrating, and certainly would cause dissatisfaction with one's work, they do not amount to good cause. Unlike the claimants in *Murphy*, *Grier*, and *Forsman*, Mr. Abdelkadir was not confronted with a significant change of working circumstances. Like the claimant in *Anderson*, Mr. Abdelkadir was merely dissatisfied with his work conditions. His dissatisfaction, without a real change in conditions, was not sufficiently compelling to cause a reasonably prudent person to quit.

Moreover, Mr. Abdelkadir failed to exhaust all reasonable alternatives prior to quitting. The ALJ correctly found, "The evidence fails to establish that at the time he quit the claimant was left with no reasonable alternative except to do so as opposed to taking other

alternatives to allow the employer to correct the situation.” Comm’r Rec. at 80, FF No. 3. The ALJ found Mr. Abdelkadir could have filed another complaint if the alleged harassment continued. Therefore, it was not reasonable for Mr. Abdelkadir to quit.

**b. Mr. Abdelkadir did not demonstrate a substantial involuntary deterioration of the workplace**

A claimant may qualify for unemployment benefits if he demonstrates that his work substantially and involuntarily deteriorated. WAC 192-150-170(2)(ii). That rule provides that illegal activities by the employer, as contemplated under RCW 50.20.050(2)(b)(ix), exemplify a substantial involuntary deterioration. WAC 192-150-170(2)(ii). Since Mr. Abdelkadir failed to establish that he was subject to unlawful harassment, and he presented no evidence that his work substantially deteriorated in another manner, he cannot qualify for unemployment benefits under this provision.

**4. Hearsay is admissible pursuant to RCW 34.05.452(1)**

Mr. Abdelkadir challenges some of the testimony from the administrative hearing arguing that it is hearsay. *See* Br. of Appellant at 28, 30. However, administrative hearings in unemployment cases are governed by the APA. *See* RCW 50.32; WAC 192-04-030. In hearings governed by the APA, evidence, including hearsay, is admissible if in the

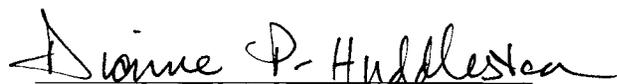
judgment of the ALJ, it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. RCW 34.05.452(1). While findings of fact cannot be based exclusively on hearsay, the ALJ and Commissioner's findings here were based on multiple witnesses' testimony and documentary evidence, and not exclusively on hearsay statements from one witness.

## VII. CONCLUSION

Based on the foregoing, the Department respectfully requests that this Court affirm the decisions of the superior court and the Commissioner denying Mr. Abdelkadir's claim for benefits.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of November, 2010.

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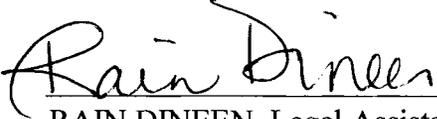
**PROOF OF SERVICE**

I, Rain Dineen, certify that I caused a copy of **Brief of Respondent** to be served on all parties or their counsel of record by US Mail Postage Prepaid via Consolidated Mail Service on the date below as follows to:

Mohamed Abdelkadir  
P.O. Box 25794  
Seattle, WA 98165

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

DATED this 11<sup>th</sup> day of November 2010 at Olympia, WA.

  
RAIN DINEEN, Legal Assistant

# Attachment A

2008  
REVISED CODE  
*of*  
WASHINGTON



Containing all laws of a general and permanent nature enacted through March 13, 2008.

## Volume 5

*Titles*

46	Motor Vehicles	49	Labor Regulations
47	Public Highways and Transportation	50	Unemployment Compensation
48	Insurance	51	Industrial Insurance
		52	Fire Protection Districts

*Published by the Statute Law Committee  
under authority of Chapter 1.08 RCW*

# Title 50

## UNEMPLOYMENT COMPENSATION

### Chapters

- 50.01 General provisions.
- 50.04 Definitions.
- 50.06 Temporary total disability.
- 50.08 Establishment of department.
- 50.12 Administration.
- 50.13 Records and information—Privacy and confidentiality.
- 50.16 Funds.
- 50.20 Benefits and claims.
- 50.22 Extended and additional benefits.
- 50.24 Contributions by employers.
- 50.29 Employer experience rating.
- 50.32 Review, hearings, and appeals.
- 50.36 Penalties.
- 50.38 Labor market information and economic analysis.
- 50.40 Miscellaneous provisions.
- 50.44 Special coverage provisions.
- 50.50 Indian tribes.
- 50.60 Shared work compensation plans—Benefits.
- 50.62 Special employment assistance.
- 50.65 Washington service corps.
- 50.70 Programs for dislocated forest products workers.
- 50.72 Youthbuild program.
- 50.98 Construction.

*Bringing in out-of-state persons to replace employees involved in labor dispute—Penalty: RCW 49.44.100.*

*Displaced homemaker act: Chapter 28B.04 RCW.*

*Industrial insurance: Title 51 RCW.*

*Job skills training program: RCW 28C.04.400 through 28C.04.420.*

*Unfair practices of employment agencies: RCW 49.60.200.*

### Chapter 50.01 RCW

#### GENERAL PROVISIONS

#### Sections

- 50.01.005 Short title.
- 50.01.010 Preamble.

**50.01.005 Short title.** This title shall be known and may be cited as the "Employment Security Act." [1953 ex.s. c 8 § 24; 1945 c 35 § 1; Rem. Supp. 1945 § 9998-140.]

**50.01.010 Preamble.** Whereas, economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state; involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. Social security requires protection against this greatest hazard of our economic life. This can be provided only by application of the insurance principle of shar-

ing the risks, and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing powers and limiting the serious social consequences of relief assistance. The state of Washington, therefore, exercising herein its police and sovereign power endeavors by this title to remedy any widespread unemployment situation which may occur and to set up safeguards to prevent its recurrence in the years to come. The legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, and that this title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum. [2005 c 133 § 2; 2003 2nd sp.s. c 4 § 1; 1945 c 35 § 2; Rem. Supp. 1945 § 9998-141. Prior: 1937 c 162 § 2.]

**Findings—Intent—Conflict with federal requirements—Effective date—2005 c 133:** See notes following RCW 50.20.120.

**Additional employees authorized—2005 c 133:** "To establish additional capacity within the employment security department, the department is authorized to add two full-time equivalent employees to develop economic models for estimating the impacts of policy changes on the unemployment insurance system and the unemployment trust fund." [2005 c 133 § 8.]

**Conflict with federal requirements—2003 2nd sp.s. c 4:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2003 2nd sp.s. c 4 § 36.]

**Severability—2003 2nd sp.s. c 4:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 2nd sp.s. c 4 § 37.]

**Effective date—2003 2nd sp.s. c 4:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 20, 2003]." [2003 2nd sp.s. c 4 § 39.]

### Chapter 50.04 RCW

#### DEFINITIONS

#### Sections

- 50.04.020 Base year—Alternative base year.
- 50.04.030 Benefit year.
- 50.04.040 Benefits.
- 50.04.050 Calendar quarter.
- 50.04.060 Commissioner.
- 50.04.065 Common paymaster or pay agent.
- 50.04.070 Contributions.
- 50.04.072 Contributions—"Contributions" and "payments in lieu of contributions" as money payments and taxes due state.

mined by the commissioner under rules prescribed by the commissioner, to attend a job search workshop or a training or retraining course when directed by the department and such workshop or course is available at public expense, such individual shall not be eligible for benefits with respect to any week in which such failure occurred. [1984 c 205 § 8.]

Conflict with federal requirements—Severability—Effective dates—1984 c 205: See notes following RCW 50.20.120.

**50.20.050 Disqualification for leaving work voluntarily without good cause.** (1) With respect to claims that have an effective date before January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual shall not be considered to have left work voluntarily without good cause when:

- (i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;
- (ii) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment: PROVIDED, That these precautions need not have been taken when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system;
- (iii) He or she has left work to relocate for the spouse's employment that is due to an employer-initiated mandatory transfer that is outside the existing labor market area if the claimant remained employed as long as was reasonable prior to the move; or
- (iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110.

(c) In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent,

including state and national emergencies. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the individual at the time he or she accepted the employment and where, in the judgment of the department, the distance is customarily traveled by workers in the individual's job classification and labor market, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment, unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual were he or she required to continue in the employment.

(d) Subsection (1)(a) and (c) of this section shall not apply to an individual whose marital status or domestic responsibilities cause him or her to leave employment. Such an individual shall not be eligible for unemployment insurance benefits beginning with the first day of the calendar week in which he or she left work and thereafter for seven calendar weeks and until he or she has requalified, either by obtaining bona fide work in employment covered by this title and earning wages in that employment equal to seven times his or her weekly benefit amount or by reporting in person to the department during ten different calendar weeks and certifying on each occasion that he or she is ready, able, and willing to immediately accept any suitable work which may be offered, is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and placement services as are available through the department. This subsection does not apply to individuals covered by (b)(ii) or (iii) of this subsection.

(2) With respect to claims that have an effective date on or after January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual is not disqualified from benefits under (a) of this subsection when:

- (i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;
- (ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve his or her employment status by requesting a leave of absence, by having promptly notified the employer of the

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reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated his or her employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii)(A) With respect to claims that have an effective date before July 2, 2006, he or she: (I) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: (1) Is outside the existing labor market area; and (2) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and (II) remained employed as long as was reasonable prior to the move;

(B) With respect to claims that have an effective date on or after July 2, 2006, he or she: (I) Left work to relocate for the spouse's employment that, due to a mandatory military transfer, is outside the existing labor market area; and (II) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 26.50.010, or stalking, as defined in RCW 9A.46.110;

(v) The individual's usual compensation was reduced by twenty-five percent or more;

(vi) The individual's usual hours were reduced by twenty-five percent or more;

(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time;

(x) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs; or

(xi) The individual left work to enter an apprenticeship program approved by the Washington state apprenticeship training council. Benefits are payable beginning Sunday of the week prior to the week in which the individual begins active participation in the apprenticeship program. [2008 c 323 § 1; 2006 c 13 § 2. Prior: 2006 c 12 § 1; 2003 2nd sp.s. c 4 § 4; 2002 c 8 § 1; 2000 c 2 § 12; 1993 c 483 § 8; 1982 1st ex.s. c 18 § 6; 1981 c 35 § 4; 1980 c 74 § 5; 1977 ex.s. c 33 § 4; 1970 ex.s. c 2 § 21; 1953 ex.s. c 8 § 8; 1951 c 215 § 12; 1949 c 214 § 12; 1947 c 215 § 15; 1945 c 35 § 73; Rem. Supp. 1949 § 9998-211; prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Conflict with federal requirements—2008 c 323: "If any part of this act is found to be in conflict with federal requirements that are a prescribed

condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state." [2008 c 323 § 3.]

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Retroactive application—2006 c 12 § 1: "Section 1 of this act applies retroactively to claims that have an effective date on or after January 4, 2004." [2006 c 12 § 2.]

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Severability—1981 c 35: See note following RCW 50.22.030.

Severability—1980 c 74: See note following RCW 50.04.323.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

**50.20.060 Disqualification from benefits due to misconduct.** With respect to claims that have an effective date before January 4, 2004, an individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has been discharged or suspended for misconduct connected with his or her work and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount. Alcoholism shall not constitute a defense to disqualification from benefits due to misconduct. [2006 c 13 § 11. Prior: 2003 2nd sp.s. c 4 § 7; 2000 c 2 § 13; 1993 c 483 § 9; 1982 1st ex.s. c 18 § 16; 1977 ex.s. c 33 § 5; 1970 ex.s. c 2 § 22; 1953 ex.s. c 8 § 9; 1951 c 215 § 13; 1949 c 214 § 13; 1947 c 215 § 16; 1945 c 35 § 74; Rem. Supp. 1949 § 9998-212; prior: 1943 c 127 § 3; 1941 c 253 § 3; 1939 c 214 § 3; 1937 c 162 § 5.]

Retroactive application—2006 c 13 §§ 8-22: See note following RCW 50.04.293.

Conflict with federal requirements—Part headings not law—Severability—2006 c 13: See notes following RCW 50.20.120.

Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4: See notes following RCW 50.01.010.

Application—2000 c 2 §§ 1, 2, 4, 5, 8, and 12-15: See note following RCW 50.22.150.

Conflict with federal requirements—Severability—Effective date—2000 c 2: See notes following RCW 50.04.355.

Effective dates, applicability—Conflict with federal requirements—Severability—1993 c 483: See notes following RCW 50.04.293.

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Effective dates—Construction—1977 ex.s. c 33: See notes following RCW 50.04.030.

Effective date—1970 ex.s. c 2: See note following RCW 50.04.020.

# Attachment B

WAC 192-16-009

Disqualification for leaving work voluntarily — Meaning of good cause for claims with an effective date prior to January 4, 2004 — RCW 50.20.050(1).

(1) **General rule.** Except as provided in WAC 192-150-050 and 192-150-055, in order for an individual to establish good cause within the meaning of RCW 50.20.050(1) for leaving work voluntarily it must be satisfactorily demonstrated:

- (a) That he or she left work primarily because of a work connected factor(s); and
- (b) That said work connected factor(s) was (were) of such a compelling nature as to cause a reasonably prudent person to leave his or her employment; and
- (c) That he or she first exhausted all reasonable alternatives prior to termination: Provided, that the individual asserting "good cause" may establish in certain instances that pursuit of the otherwise reasonable alternatives would have been a futile act, thereby excusing the failure to exhaust such reasonable alternatives.

(2) **Exceptions.** Notwithstanding the provisions of subsection (1) above, neither the distance of the work from the individual's residence, if known at the time of hire nor any other work factor which was generally known and present at the time of hire will provide good cause for voluntarily leaving work unless the individual demonstrates to the satisfaction of the department:

- (a) That the distance from the individual's residence at time of hire is substantially greater than the distance customarily traveled by workers in the individual's job classification and labor market; or,
- (b) That the related work connected circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor; or
- (c) That other work related circumstances would work an unreasonable hardship on the individual if he or she were required to continue in the employment.

(3) **Definitions.** For purposes of subsection (2) above:

- (a) "Distance customarily traveled" means a distance normally traveled by a significant portion of the work force in the individual's job classification in the labor market area;
- (b) "Generally known" means commonly known without reference to specific cases or individuals; and
- (c) "Individual's job classification" means the job classification in which the individual was working when the individual voluntarily left work; and
- (d) A "labor market" is the geographic area in which those workers in the individual's job classification, living in the vicinity of his or her residence, customarily work; and
- (e) "Substantial involuntary deterioration" means an actual and considerable worsening of the work factor outside the control of the individual; and
- (f) "Unreasonable hardship" means a result, not due to the individual's voluntary action, that would cause a reasonable person to leave that employment.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 05-01-076, § 192-16-009, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040, 82-17-052 (Order 6-82), § 192-16-009, filed 8/17/82; 80-10-052 (Order 4-80), § 192-16-009, filed 8/6/80; Order 2-77, § 192-16-009, filed 9/2/77.]

# Attachment C

## NEW SECTION

**WAC 192-150-170 Meaning of Good Cause—RCW 50.20.050(2).** (1) **General.** RCW 50.20.050(2) provides that you will not be disqualified from receiving unemployment benefits when you voluntarily leave work for good cause. The Washington Supreme Court in *Spain v. Employment Security Department* held that the factors listed in RCW 50.20.050(2)(b) are not the only circumstances in which an individual has good cause for voluntarily leaving work. While these are considered *per se* or stand alone good cause reasons, the court held that the department is required under RCW 50.20.050(2)(a) to consider whether other circumstances constitute good cause for voluntarily leaving work.

(2) **Other factors constituting good cause—RCW 50.20.050(2)(a).** The department may determine that you had good cause to leave work voluntarily for reasons other than those listed in RCW 50.20.050(2)(b).

(i) For separations under subsection (3) below, all of the following conditions must be met to establish good cause for voluntarily leaving work:

- (A) You left work primarily for reasons connected with your employment; and
- (B) These work-connected reasons were of such a compelling nature they would have caused a reasonably prudent person to leave work; and
- (C) You first exhausted all reasonable alternatives before you quit work, unless you are able to show that pursuing reasonable alternatives would have been futile.

(ii) **Substantial involuntary deterioration of the work.** As determined by the legislature, RCW 50.20.050(2)(b), subsections (v) through (x), represent changes to employment that constitute a substantial involuntary deterioration of the work.

(3) **Unreasonable hardship.** In addition to the good cause reasons listed in RCW 50.20.050(2)(b), other work-connected circumstances may constitute good cause if you can show that continuing in your employment would work an unreasonable hardship on you. "Unreasonable hardship" means a result not due to your voluntary action that would cause a reasonable person to leave that employment. The circumstances must be based on existing facts, not conjecture, and the reasons for leaving work must be significant.

Examples of work-connected unreasonable hardship circumstances that may constitute good cause include, but are not limited to, those where:

- (A) Repeated behavior by your employer or co-worker(s) creates an abusive working environment.
- (B) You show that your health or physical condition or the requirements of the job have changed and the work is no longer suitable under RCW 50.20.100 because your health would be adversely affected by continuing in that employment.

(4) **Commissioner Approved Training.** After you have been approved by the department for Commissioner Approved Training, you may leave a temporary job you have taken during training breaks or terms, or outside scheduled training hours, or pending the start date of training, if you can show that continuing with the work will interfere with your approved training.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-16-009 Disqualification for leaving work voluntarily—Meaning of good cause for claims with an effective date prior to January 4, 2004—RCW 50.20.050(1).