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

JULIE RAYSBROOK,

Appellant,

v.

EMPLOYMENT SECURITY DEPARTMENT,
STATEMENT OF WASHINGTON,

Respondent.

BRIEF OF RESPONDENT

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I. INTRODUCTION

At the end of September 2009, the Employment Security Department (Department) approved Julie Ann Raysbrook for Commissioner Approved Training (CAT) for a nursing program, and she began collecting regular unemployment benefits while she attended prerequisite nursing program classes. CAT is not a category of unemployment benefits. Rather, since she had been approved for CAT, Raysbrook was allowed to collect unemployment benefits without having to be available or actively search for or accept offers of suitable work, as unemployment compensation claimants are generally required to do, while she progressed in her approved training program. Raysbrook was also approved to receive additional Training Benefits, a specific category of unemployment benefits (the others include Regular, Extended, and Emergency Unemployment Compensation or EUC), as long as she remained in an approved training program.

Raysbrook continued attending nursing prerequisite classes through April 2011. Unfortunately, she was not accepted into a nursing program and decided, as a backup plan, to apply to Western Washington University (WWU) to pursue a Human Services Baccalaureate degree. She made a request to modify her CAT program, stating she would begin attending classes at WWU some time in the fall of 2011.

The Department's Commissioner denied Raysbrook's request, correctly concluding her "backup plan" was not "training" under the Employment Security Act (Act) but instead a course of education primarily intended to meet the requirements of a baccalaureate degree. The Commissioner also properly determined Raysbrook, who was no longer in an approved training program, was ineligible to receive Training Benefits. Because substantial evidence supports the Commissioner's decisions and they are in accordance with the Act, the Court should affirm the Commissioner's decisions.

II. COUNTERSTATEMENT OF THE ISSUES

- A. **Under RCW 50.20.043, Commissioner Approved Training does not include a course of education primarily intended to meet the requirements of a baccalaureate degree. Did the Commissioner properly deny Raysbrook's request to modify her Commissioner Approved Training plan to allow her to pursue a course of education that is primarily intended to meet the requirements of a baccalaureate degree?**

- B. **Under RCW 50.22.155, Training Benefits are available to individuals who are enrolled in a vocational training program that is specifically targeted to training for a high-demand occupation; training benefits are not allowed for any course of education primarily intended to meet the requirements of a baccalaureate degree. Did the Commissioner properly determine Raysbrook was ineligible to receive Training Benefits when she intended to pursue a baccalaureate degree in Human Services and was not enrolled in a vocational training program targeted to a specific occupation, let alone a high-demand occupation?**

III. STATEMENT OF CASE

Raysbrook planned to become a nurse. Clerk's Papers (CP) at 101. In September 2009, she enrolled full-time at Shoreline Community College (SCC) to take prerequisite nursing program classes with the expectation that she would apply for and be accepted into that school's nursing program. CP at 84, 105.

Around the same time, Raysbrook opened a claim for unemployment benefits and applied to the Department for Commissioner Approved Training (CAT) and Training Benefits while she pursued her goal of becoming a nurse. CP at 61, 90, 105. CAT, unlike Training Benefits, is not a separate category of unemployment benefits.¹ Nevertheless, they are both exceptions to the requirement in the Employment Security Act that in order to be eligible for unemployment benefits, an unemployed individual must remain "able to work, and available for work in any trade, occupation, profession, or business for which they are reasonably fitted." *See* RCW 50.20.010(1)(c). Generally, individuals who attend school are considered unavailable and, therefore,

¹ The maximum number of weeks that any claimant may collect unemployment benefits is 125, so long as she continues to file weekly claims and is otherwise eligible for such benefits: 26 weeks for regular unemployment benefits (RCW 50.20.120(1) and WAC 192-110-200), 53 weeks of Emergency Unemployment Compensation or EUC (Supplemental Appropriations Act of 2008, Pub. L. No. 110-252, 122 Stat. 2323; Unemployment Compensation Extension Act of 2008, Pub. L. No. 110-449, 122 Stat. 5014; Worker, Homeownership, and Business Assistance Act of 2009, Pub. L. No. 111-92, 123 Stat. 2984), 20 weeks of Extended Benefits (RCW 50.22.050(3), and 26 weeks of Training Benefits (RCW 50.22.155(8)(a)).

ineligible to receive unemployment benefits. *See* 50.20.095; WAC 192-200-050(1) & (2).

The Department approved Raysbrook's training plan and granted her CAT and Training Benefits beginning September 20, 2009, with an end date of May 30, 2012. CR at 61, 89, 105. She would have begun receiving weekly regular unemployment benefit checks the week of September 27, 2009 (there is a one week waiting period). CP at 105; *see* WAC 192-110-005(5) (waiting week).

When it approved her CAT program and granted her Training Benefits, the Department informed Raysbrook:

If you do not start training, withdraw, or attend less than full-time, you are no longer eligible for Training Benefits or Commissioner Approved Training and must notify the Training Benefits unit by mailing them written notification.

You must provide any change in your program status in writing to the Training Benefits Unit. You must mail a completed Training Benefits Plan Modification Information application to the Training Benefits Unit prior to any change in your original approved program. There are no exceptions. Notifying any other representative instead is not sufficient notification. Submitting a progress report with a change in program is also not sufficient notification.

CR at 90-91; *see also* WAC 192-270-040.

During the fall 2009 and winter 2010 academic quarters, Raysbrook attended prerequisite nursing classes full-time at SCC. CP at 84. She

applied for but was not accepted into SCC's Nursing Program for spring quarter 2010. CP at 31, 101.

Beginning spring quarter 2010 through winter quarter 2011, Raysbrook enrolled and began taking classes at Everett Community College (ECC). CP at 33, 35, 83. She notified the Department of the switch in schools in a progress report she faxed on April 20, 2010. CP at 107-108.

Raysbrook applied to ECC's Nursing Program for spring quarter 2011 but was not accepted. CP at 101, 119. In April 2011, Raysbrook sent the Department a formal Request to Modify her Training Plan seeking to amend the completion date of her training program from June 2012 to June 2013 because she was not accepted into ECC's Nursing Program. CP at 36, 101. In that request, Raysbrook stated she intended to apply again for ECC's Nursing Program for the fall 2011 quarter. CR at 31, 101. She told the Department that as a "backup plan" she also applied to Western Washington University (WWU) to pursue a Bachelor of Arts degree in the university's "Human Services" major program. CP at 31, 36, 101-102, 105.

The Department, in two separate decisions, denied Raysbrook's formal request to modify her CAT plan and denied her Training Benefits beginning April 10, 2011. CP at 64, 92. According to the Department, she did not provide the Department with a definite training program in which she was currently enrolled: she provided no assurance of acceptance into ECC's

nursing program or acceptance into WWU or its Human Services major program for the fall quarter 2011. CP at 62, 90. Moreover, the Department concluded that even if she was accepted into WWU, Raysbrook's "backup plan" to pursue a Bachelor of Arts degree in Human Services was not an acceptable "training program." CP at 63, 91.

Raysbrook appealed the Department's decisions. CP at 68-70. At an administrative hearing at the end of May 2011, Raysbrook confirmed her intent to apply for ECC's Nursing Program for the fall quarter 2011 but was not "confident that [she] was going to get into [it.]" CP at 32. She also confirmed she applied to and was accepted into WWU's Human Services major program and that she was starting at that school at the "end of fall sometime." CP at 35-36. She did not submit any documentation at the administrative hearing that confirmed her enrollment at WWU or acceptance into the Human Services major program.

The Administrative Law Judge (ALJ) affirmed the Department's decisions in two separate orders. CP at 134, Conclusion of Law (CL) 4; CP at 140, CL 16. Raysbrook petitioned the Department's Commissioner to review the ALJ's Initial Orders. CP at 145-46. The Commissioner, in a consolidated final decision issued on July 15, 2011, adopted the ALJ's findings and conclusions of law, entered an additional finding and nine additional conclusions of law, and affirmed the ALJ's Initial Orders. CP at

150-55.² The Commissioner determined Raysbrook's plan to attend WWU was to pursue an academic degree and did not constitute "training" for purposes of CAT or Training Benefits. CP at 152-54, Additional CL V-VI, XI.

Raysbrook appealed to Snohomish County Superior Court, and the Honorable Ellen Fair affirmed. Raysbrook appealed.

IV. STANDARD OF REVIEW

Raysbrook assigns error to two conclusions of law on appeal. Br. of Appellant at 6. She has not challenged any findings of fact. Therefore, the Commissioner's additional finding of fact (CP at 150) and the ALJ's findings of fact that the Commissioner adopted (CP at 132-33, 136-37) should be treated as verities on appeal. *Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 407, 858 P.2d 494 (1993).

The Administrative Procedure Act (APA), Chapter 34.05 RCW, governs the Court's review of the two conclusions of law Raysbrook challenges in her appeal. *Tapper*, 122 Wn.2d at 402. The Commissioner's decision shall be *prima facie* correct, and the burden of proof shall be upon the party attacking the decision. RCW 34.05.570(1)(a); RCW 50.32.150; *see also Eggert v. Emp't Sec. Dept.*, 16 Wn. App. 811, 813, 558 P.2d 1368 (1976) (recognizing that the court's

² Copies of the Commissioner's Decision and the ALJ's Initial Order are attached in the Appendix for the Court's convenience.

jurisdiction is “further limited by RCW 50.32.150”). Furthermore, the court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of. RCW 34.05.570(1)(d).

The Court reviews the law *de novo* under the clear error standard. *Verizon NW, Inc. v. Emp’t Sec. Dep’t*, 164 Wn.2d 909, 915, 194 P.3d 255 (2008). The APA directs the Court to affirm the Commissioner’s decision if the agency has applied the law correctly or has not decided the matter in an arbitrary or capricious manner. RCW 34.05.570(3)(d) and (i); *Hickethier v. Dep’t of Licensing*, 159 Wn. App. 203, 210-11, 244 P.3d 1010 (2011). The Court “sits in the same position as the superior court” applying the APA standards “directly to the record before the agency” and reviews the decision of the Commissioner, not the underlying decision of the ALJ. *Tapper*, 122 Wn.2d at 402; RCW 34.05.558; *Smith v. Emp’t Security Dep’t*, 155 Wn. App. 24, 226 P.3d 263 (2010). The Court accords substantial weight to an agency’s interpretation of a law within the agency’s area of expertise. *Id.*

Agencies act in an arbitrary or capricious manner when their action is “willful and unreasoning and taken without regard to the attending facts or circumstances.” *Hillis v. Dep’t of Ecology*, 131 Wn.2d 373, 383, 932 P.2d 139 (1997). The “one who seeks to demonstrate that action is

arbitrary and capricious must carry a heavy burden.” *Pierce County Sheriff v. Civil Serv. Comm’n of Pierce County*, 98 Wn.2d 690, 695, 658 P.2d 648 (1983). A decision is not arbitrary or capricious if there is room for more than one opinion and the decision is based on honest and due consideration, even if the Court disagrees with it. *Hickethier*, 159 Wn. App. at 211.

Accordingly, the Court may not reverse the Commissioner’s decision simply by disagreeing with his conclusions. *Eggert v. Emp’t Sec. Dept.* at 813. Thus, upon review of the entire record, the Court, in order to reverse the Commissioner in this case, must be left with the definite and firm conviction that a mistake has been made. *Id.*

V. ARGUMENT

Raysbrook is pursuing a baccalaureate degree with a major in Human Services so that she can become a certified counselor. In applying to modify her training program for CAT and Training Benefits, she did not show the Commissioner that her proposed course of academic education was set up to provide specific skill training of a strictly vocational nature. Nor did she establish that her proposed education course was targeted to provide specific skills for a particular certification or occupation.

Thus, Raysbrook is receiving “scholastic instruction” at a four year university, learning subjects other than those of a strictly vocational

nature. She is not in training of the kind contemplated for purposes of CAT or Training Benefits. Thus, the Commissioner properly exercised his discretion and concluded Raysbrook was not eligible for CAT or Training Benefits. The Commissioner's decision should be affirmed.

A. The Commissioner properly denied Raysbrook's request to modify her Commissioner Approved Training program.

The Commissioner properly concluded Raysbrook's academic pursuit of a Human Services baccalaureate degree was not "training" for purposes of CAT under RCW 50.20.043. CP at 152-53, Additional CL V-VI.

Generally, to be eligible for regular and extended unemployment benefits, a claimant must be able and available to accept suitable work and actively seeking such work. RCW 50.20.010(1)(c)(ii); RCW 50.22.020(1). However, the work search and availability requirement does not apply to any individual who is in approved training within the meaning of RCW 50.20.043. RCW 50.20.095(1); WAC 192-200-020(1).

The Legislature gave the Department discretion to determine what constitutes an approvable "training" program under RCW 50.20.043. According to the Department's regulations, "training" is "[a] course of education with the primary purpose of *training in skills* that will allow [an individual] to obtain employment." WAC 192-200-010(1)(a) (emphasis

added). However, “‘training’ does not include a course of education primarily intended to meet the requirements of a baccalaureate or higher degree.” WAC 192-200-010(2). An academic training course “may” be approved if it meets “specific requirements for certification, licensing, or specific skills necessary for the occupation.”³ WAC 192-200-020(4).

Historically, the Department has interpreted “training” under RCW 50.20.043 to be a program that is short in duration and focused on development of vocational, rather than professional, skills. CP at 130-31. Hence the Department’s use of the term “training in skills . . . to obtain employment” in its “training” definition. WAC 192-200-010(1)(a).

Accordingly, students who are in a course of study providing “scholastic instruction” are also typically disqualified from receiving such benefits because attending school will interfere with their availability for full-time work. RCW 50.20.095; WAC 192-200-005. "Scholastic instruction" includes all teaching or opportunity for learning subjects *other than* those of a *strictly vocational nature*. WAC 192-200-005(4)(b). Subjects of a vocational nature are those embraced in the definition of "training" contained in WAC 192-200-010. *Id.*

³ The Department considers a number of factors when reviewing a CAT application before determining whether a proposed academic training course may be approved; none of those factors are at issue in this appeal. WAC 192-200-020(2)(a).

Here, the Commissioner properly exercised his discretion in denying Ms. Raybrook's request to modify her CAT program for several reasons. First, her proposed program—to attend WWU to major in Human Services and obtain a baccalaureate degree—is inconsistent with the historical purpose of “training” under RCW 50.20.043 to enable unemployed workers to develop specific vocational skills that will assist them with becoming employable in a particular occupation. On the contrary, Raysbrook's proposed program is primarily intended by WWU to meet the requirements of a baccalaureate degree and is not targeted toward development of vocational skills in any particular occupation. Thus, her proposed program is excluded from the Department's definition of “training” in WAC 192-200-010(2).

Second, Raysbrook's proposed plan is “scholastic instruction”, not to meet a specific certification requirement. While majoring in Human Services may be one degree that qualifies a person to become a certified counselor, Raysbrook will nevertheless be learning subjects other than those of a strictly vocational nature while she pursues that degree. Moreover, she has not shown that her academic pursuits at WWU will only provide her with “specific skills” necessary for a particular occupation, as required by the rules pertaining to CAT benefit eligibility. WAC 192-200-020(4). Thus, her proposed plan does not meet “specific

requirements” of the counseling profession for certification. WAC 192-200-020(4).

Finally, Raysbrook did not show WWU regards the Human Services degree program as a course of education with the “primary purpose” of training in “skills” that will allow students to obtain employment as certified counselors, as the Department’s “training” definition requires. WAC 192-200-010(1)(a). Instead, the Human Services major only requires 76 out of the 180 credits that are necessary to graduate with a baccalaureate degree. CP at 115. And WWU does not require students to take Human Services electives to fulfill the remaining 104 credits. CP at 115. Therefore, the majority of the credits required to obtain a Human Resources baccalaureate degree from WWU are not for the “primary purpose” of “training” in skills to obtain employment. WAC 192-200-010(1)(a).

Thus, Raysbrook is a student receiving scholastic instruction primarily intended to meet the requirements of a baccalaureate degree with a Human Services major—which is specifically excluded from the term “training.” WAC 192-200-010(2). She is not in training of the type contemplated by RCW 50.20.043 because her academic pursuits are not specifically targeted toward any particular vocation. The Commissioner therefore did not err in concluding her proposed modified CAT program

was not an approvable “training” plan. Nor did the Commissioner, in considering the facts and circumstances surrounding Raysbrook’s request to modify her CAT program, act arbitrarily or capriciously in denying her request. CP at 152-53, Additional CL V-VI.

B. The Commissioner properly determined Raysbrook was ineligible to receive Training Benefits.

The Commissioner also correctly concluded Raysbrook was no longer eligible for Training Benefits because she was not enrolled in an approvable “training program” under RCW 50.22.155.

Training Benefits are available to an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits; the individual must be enrolled in and making satisfactory progress in a training program approved by the commissioner.⁴ RCW 50.22.155(2); WAC 192-270-005(4). Thus, to qualify, the individual must first develop and submit an individual training program to the Commissioner for approval. RCW 50.22.155(3)(a).

“Training program” means, among other things, “a *vocational* training program at an educational institution that . . . is *targeted* to training for a high-demand occupation.” RCW 50.22.155(7)(d)(ii)(A).

⁴ “Training Benefits” are defined as “Additional Benefits”, which excludes “Regular” and “Extended” Benefits. RCW 50.22.010(5) (Regular Benefits); RCW 50.22.010(6) (Extended Benefits); RCW 50.22.010(7) (Additional Benefits); RCW 50.22.155(7)(c) (Training Benefits).

(emphasis added). “Training program” does not include “any course of education primarily intended to meet the requirements of a baccalaureate or higher degree unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.” RCW 50.22.155(7)(d); WAC 192-270-050(2).

Here, the Commissioner properly interpreted and applied RCW 50.22.155(7)(d)(ii) to deny Raysbrook Training Benefits for several reasons. Her proposed training program—to attend WWU to obtain a baccalaureate degree—is not a “vocational training program” that is “targeted” toward developing specific skills for any particular “high-demand occupation,” as required by RCW 50.22.155(7)(d)(ii)(A).

Rather, as the Commissioner stated, Raysbrook’s proposed program is a major study within a broader academic scheme that is intended to confer a baccalaureate degree: CP at 154, Additional CL XI. Students who graduate with a Human Services degree can then use their degree to pursue any number of occupations. Thus, her course of education is not “vocational” and is primarily intended to meet the requirements of a baccalaureate degree. It is, therefore, expressly excluded from the definition of “training” for purposes of Training Benefits. RCW 50.22.155(7)(d).

Raysbrook argues a baccalaureate degree is required to become a certified counselor. However, as noted in the preceding section, the Human Services program and the four-year baccalaureate degree that Raysbrook now seeks was not created to provide students with “specific skills” necessary to become a certified counselor.

The Commissioner correctly interpreted and applied the law in denying Raysbrook Training Benefits pursuant to RCW 50.22.155. Moreover, while Raysbrook has a different opinion about how the applicable statutes should be interpreted, that does not mean that the Commissioner acted arbitrarily or capriciously in reaching his decision.

C. Pro se litigants are not entitled to attorney fees.

Raysbrook is not entitled to attorney fees. She is proceeding as a non-lawyer, pro se litigant in her appeal. Attorney fees are not available to a non-lawyer, pro se litigant, even if the pro se litigant is successful on appeal. *In re Marriage of Brown*, 159 Wn. App. 931, 938, 247 P.3d 466 (2011). Accordingly, the Court should deny Raysbrook’s request for attorney fees.

VI. CONCLUSION

For the foregoing reasons, and because the policy behind CAT and Training Benefits is to provide “training” targeted to a specific vocation, not to subsidize a four-year college degree, the Department respectfully

requests that the Court affirm the Commissioner's decision denying Raysbrook's application to modify her Commissioner Approved Training plan and Training Benefits.

RESPECTFULLY SUBMITTED this 4 day of April, 2012.

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PROOF OF SERVICE

I, Daniel Marvin, certify that I served a copy of this **Brief of Respondent** on all parties or their counsel of record on the date below as follows:

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

DATED this 4th day of April, 2012, at Seattle, WA.


Daniel Marvin, Legal Assistant