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COURT OF APPEALS NO. 684426  
SNOHOMISH COUNTY SUPERIOR COURT NO.10-2-05656-2

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

RECEIVED  
SUPERIOR COURT  
SNOHOMISH COUNTY  
JAN 11 2011

MELODIE. R. HOFF

Appellant,

v.

STATE OF WASHINGTON  
DEPARTMENT OF EMPLOYMENT SECURITY,

Respondent.

APPELLANT'S OPENING BRIEF

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*Assignments of Error.*

1. The trial judge erred by failing to award the Appellant the overpayment of approximately \$6,253.00 that was awarded in a Monetary Decision with the Appellant’s primary employer, Bonnie’s Eastside Cleaning.

2. The trial judge erred by failing to award the Appellant the garnishment of approximately \$2.00 from the Appellant’s Wells Fargo account. The trial judge erred by failing to award the garnishment fee incurred at Wells Fargo.

3. The trial judge erred by failing to award the Appellant the unemployment claim the Appellant had already been granted by Employment Security with her primary employer, Bonnie's Eastside Cleaning who paid into unemployment and David Zimmar did not as he illegally made Appellant contract.

4. The trial judge erred by failing to award compensation for fees incurred for extreme hardship of Appellant without employment or unemployment.

*Issues Pertaining to Assignments of Error.*

1. Did the trial court err by failing to award the Appellant the overpayment of approximately \$6,253.00 that was awarded in a Monetary Decision with the Appellant's primary employer, Bonnie's Eastside Cleaning?

2. Did the trial court err by failing to award the Appellant the garnishment of approximately \$2.00 from the Appellant's Wells Fargo account? Did the trial judge err by failing to award the garnishment fee incurred at Wells Fargo?

3. Did the trial court err by failing to award the Appellant the unemployment claim the Appellant had already been granted by

Employment Security with her primary employer, Bonnie's Eastside Cleaning who paid into unemployment and David Zimmar did not as he illegally made Appellant contract?

4. Did the trial court err by failing to award compensation for fees incurred for extreme hardship of Appellant without employment or unemployment?

*Statement of the Case.*

See Judicial Appeal Regarding Unemployment , Reply Brief of Claimant and Respondent's Brief.

*Argument.*

**1. The Trial Court Erred by Failing to Award the Appellant the Overpayment of Approximately \$6,253.00 that was Awarded in a Monetary Decision with Employer, Bonnie's Eastside Cleaning.**

The Appellant was approved for unemployment in a Monetary Decision by Employment Security with Appellant's employment at Bonnie's Eastside Cleaning. The employer was in a business bankruptcy and pay was behind. The first cut was medical insurance ceased to be provided by the employer. Then payroll was behind. Then salary was to be cut 60%. Why would the unemployment that Appellant had already been approved suddenly be cancelled? That decision for unemployment should have had merit and Appellant should receive the unemployment for that decision

that was already made. The Appellant should not have to pay back a claim she had been approved for.

**2. The Trial Court Erred and the Appellant is Entitled to Recover the Approximate \$2.00 Garnishment and Garnishment Fee from Wells Fargo.**

The Appellant could not repay the overpayment but yet Employment Security garnished the Appellant's bank account after the unemployment that had been approved based on the employment with employer, Bonnie's Eastside Cleaning was taken away. The Appellant had no employment or unemployment.

**3. The Trial Court Erred and the Appellant is Entitled to Receive the Unemployment Claim Benefits Approved by Employment Security as a Total Claim.**

***INITIAL ORDER INACCURACIES***

*Critical dates and facts are wrong by the Telephone Conference Hearing, Judge Kimberly Boyce. If the facts are not reported on the Initial Order correctly, it distorts and gives an untrue picture of the facts of the Appellant's case. (Example: reported on Initial Order that one instance of yelling was May 2009 is incorrect. That one instance of yelling occurred August 2009 which is the timeframe the Appellant quit in October 2009. Wrong dates and facts give a false sense of judicial interpretation.*

*No. 1*

Page 42: Employer taking vacation, the employer stated "I took the vacation, I even paid her and she didn't do the work". Every time David Zimmar took a vacation or took off time at Christmas or any other time, I never received a full paycheck with deductions and much less than the agreed amount. This was always without any notice to me about receiving the deducted pay and had to absorb the pay loss at the time he took off. Generally I would only receive about a third of my pay while David Zimmar was on vacation or taking time off. I did do work during his vacations and time he left the office. The work had been given to do and I also went into the office in his absence and made client appointments with clients that had called during his absence. I monitored the mail that there were no issues to take care of.

*No. 2*

*I DID NOT CONTINUE TO COMPLAIN* that "she was not making enough money and that she was not compensated fairly when compared to her predecessor". On tape, I stated *THAT I WAS PUT IN THE POSITION TO ASK THE EMPLOYER FOR THE INCREASE THE EMPLOYER HAD STATED HE WOULD GIVE TO ME.*

**I DID NOT COMPLAIN AT THE END OF 2008 TO MY EMPLOYER THAT I WAS NOT MAKING ENOUGH MONEY.** Money was never discussed with David Zimmar until I had an increase and he discussed it.

See **EXHIBIT 5, Page 1** on my initial quit statement. I did not continue to complain I was not making enough money. "**David Zimmar told me July 2009 he could give me \$20.00 more a week.**" The employer also stated, "**I could give you \$20.00 more a week and that would be one less church you have to ask.**"

David Zimmar never gave me the weekly increase **WHICH PUT ME IN THE POSITION TO ASK FOR SOMETHING HE SAID HE WOULD GIVE. THAT IS WHY HE WAS ASKED ABOUT INCREASES IS BECAUSE HE SAID HE WOULD GIVE ME AN INCREASE.** Judge Kimberly A. Boyce turned this situation into that I was continually asking for an increase, **BUT THE REALITY IS THAT I WAS TOLD I WOULD GET AN INCREASE WHICH WAS NEVER GIVEN, WHICH PUTS ME IN THE POSITION TO ASK FOR SOMETHING I WAS TOLD I WOULD RECEIVE. THE INFORMATION ABOUT WHY THE INCREASE WAS ASKED FOR IS ON TAPE AND FURTHER IN EXHIBIT 5, PAGE 1.**

*No. 3*

Page 2 - No. 3: "The claimant's pay was not based upon the number of hours that she worked." *The employer David G. Zimmar stated that she made \$25.00 an hour after her increase.* When he gave me the raise, he calculated the raise based on an hourly amount. The employer used his calculator and stated "you will be making \$25.00 per hour". He stated "you work 3 hours per day". I told him then I worked 4 hours per day. *As recorded on transcript the employer stated that I made an hourly amount and my raise was calculated on hours and the employer based the raise on a 3 hour work day, instead of a 4 hour work day which was what was agreed upon.*

*See Page 39 of the transcript where David Zimmar states "she was making \$25.00 an hour".*

*No. 4*

Page 2 - No. 7: "The claimant did not quit in May of 2009 when Mr. Zimmar yelled at her, and she never raised with him an ongoing issue about his yelling, either at her or at others." **The date on the Initial Order is wrong about the significant date when one of the instances with yelling had occurred when I was seen for high blood pressure in an emergency clinic right at the time I was yelled at on August 1, 2009 (Exhibit 1 of Judicial Appeal). Also Exhibit 2 of Judicial Appeal**

*shows where I had raised an ongoing issue about his yelling and that it was compromising my health.*

The date of August 2009 is the accurate date which is the date I saw a emergency clinic as I had been yelled at then. The eyelid spasms developed shortly after. **It was directly related to the employer David G. Zimmar as I had not been working for Bonnie's Eastside Cleaning since March 2009.**

Dr. Kerry Atkins worked for years as the primary Ophthalmologist for J. C. Penneys at Alderwood Mall. Dr. Kerry Atkins is a very credible doctor and J. C. Penneys placed their utmost trust in him as J. C. Penneys would be also held accountable. Dr. Kerry Atkins also represented J. C. Penneys as he worked as the store's primary Ophthalmologist. Dr. Kerry Atkins has opened two private practices. One is located in Kirkland and the other in the Roosevelt neighborhood. Dr. Kerry Atkins is the sole Ophthalmologist and has a successful and credible doctor's office.

*No. 5*

Page 2 - No. 8: "The claimant testified that she also quit because of activities on the part of one client on one occasion, which shocked her, but which she never reported to Mr. Zimmar or to authorities.

**Mr. Zimmar is the person who told me about the illegal activities of a client and then performed work for the client. It was Mr. Zimmar's**

*duty to report that illegal activity which he had firsthand knowledge of, not me. The one occasion of illegal activity was significant and wrong. As an employee of a law office, I don't want to work for an attorney who has knowledge of illegal activity and then does not report it.*

*It is against my religious beliefs to have to do work for a client involved in illegal activity that the employer knowingly did work for. The employer was unethical and didn't consider my morals putting me in a wrongful position to do work for a client involved in illegal activity.*

**No. 6**

Page 3 - No. 10: The claimant did not tell Mr. Zimmar that she was having medical problems as a result of stress from this job.

*The Initial Order by Judge Boyce is incorrect. See Exhibit 2 of Judicial Appeal that shows where I had raised an ongoing issue about his yelling and that it was compromising my health and I was having medical problems as a result of the job with David Zimmar. David Zimmar had been told verbally and in writing about his yelling and the affect on my health.*

**TELEPHONE CONFERENCE TRANSCRIPT**

**There are numerous statements from the telephone conference transcript that are inaccurate and false by the employer, David G. Zimmar. STATEMENTS ARE AS FOLLOWS:**

*No. 7*

Page 36: Employer "all of this which is so inaccurate and not true". My testimony was completely true and accurate.

David Zimmar stated in the Telephone Conference Hearing on March 23, 2010 "she came in whenever she felt like". ***This is an outright lie. From the start of my employment, it was agreed that I would come in during business hours at his office, according to my son's school schedule.***

*No. 8*

Page 37: Employer stating "she was only here when she wanted to be" is an absolute lie. Every day I worked and put in the required hours. If my son's school schedule changed or if I had anything I needed where I had to come in later, the employer was notified promptly. When I came in to work and even if my son's schedule for school was later I always put in the required hours. I took personal pride in my work and my work ethics of working the number of hours agreed upon.

*No. 9*

Page 38: Employer states "I'm not going to pay you on a hourly basis". The work agreement from the beginning was hourly and the rate was figured on 4 hours per day, so much per hour from the beginning. If the number of hours was changed from 4 in the beginning to 3 hours, then my pay was less.

*No. 10*

Page 42: Employer taking vacation, the employer stated "I took the vacation, I even paid her and she didn't do the work". Every time David Zimmar took a vacation or took off time at Christmas or any other time, **I never received a full paycheck with deductions and much less than the agreed amount. This was always without any notice to me about receiving the deducted pay and had to absorb the pay loss at the time he took off. Generally I would only receive about a third of my pay while David Zimmar was on vacation or taking time off. I did do work during his vacations and time he left the office. The work had been given to do and I also went into the office in his absence and made client appointments with clients that had called during his absence. I monitored the mail that there were no issues to take care of.**

*No. 11*

Page 57: "Ms. - that's complete hearsay -- Judge Boyce cut me off immediately but not the employer. The employer would completely talk about his hearsay such as what his wife said. The employer was allowed to totally speak his hearsay about me. After she heard it then she would cut it off after the hearsay was completely spoken.

**4. The Trial Court Erred and the Appellant is Entitled to Receive Compensation for Fees Incurred for Extreme Hardship of Appellant Without Employment or Unemployment.**

The Appellant had been granted unemployment through the Appellant's primary employer, Bonnie's Eastside Cleaning as a result of the employer not being able to pay and the employer in a business bankruptcy. The Appellant suffered in that position for 6 months while the payroll was behind, medical insurance cancelled and ultimately the pay to be reduced 60%. The unemployment that the Appellant had been granted was taken away leaving the Appellant with no employment or unemployment. The Appellant then after suffering 6 months in the position endured tremendous hardship as a single parent with no employment or unemployment. The Appellant has incurred fees as a result.

***ARGUMENT SUMMARY***

As recorded on tape during the telephone conference on March 23, 2010, I worked day and night, 16 hours per day with no sleep in between jobs, for two employers who didn't pay, reduced my hours, reduced my pay, changed my pay with no notice when David Zimmar was out of the office on vacation or weeks taken off during the holiday, and yelled at me giving me severe health issues and put in the position to perform work for

clients that the employer, David G. Zimmar, had informed me were engaged in illegal activity.

I tried and tried to change the working conditions with both employers for months to the extreme point where my pay and hours were reduced.

The issues related to the hostile, yelling work environment at David G. Zimmar's compromised my religion, morals; I developed severe health conditions while working in the environment. *David Zimmar was informed in writing and verbally about his yelling and that it was compromising my health. This is two of the unemployment reasons for a valid quit in the Washington State Unemployment Claims Kit at Page 16, Nos 2 and 10:*

- 2. Due to your illness or disability or the death, illness or disability of a member of your immediate family, as long as you pursued all reasonable alternatives to keep your job.**
- 10. If your employer caused your usual work to change that would now violate your religious convictions or sincere moral beliefs.**

***Constitutional Provision.***

*The First Amendment of the Constitution allows the Appellant the*

*right to her religious and moral beliefs. To work in an employer's office who yells at the Appellant and his family members on a regular basis is an extreme conflict of who I am both morally and by my religious convictions. As an employee, I have a right to not be subjected to the actions of yelling in an office. As an employee, I have a right to a professional work environment and not having that in place is a direct violation of the First Amendment and my religious and moral convictions.*

*My income ability was reduced 38%. David Zimmar was informed that my hours from the start of my employment were 4 hours per day and he changed those hours to 3 hours per day which was one of the reasons I quit as it was a 25% reduction in hours. This is two of the unemployment reasons for a valid quit in the Washington State Unemployment Claims Kit at Page 16. Nos 5 and 6:*

- 5. Because your employer reduced your usual pay by 25 percent or more.**
- 6. Because your employer reduced your usual hours of work by 25 percent or more.**

*RCW 50.20.050 (B) (v) (vi)*

*(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;*

**INCOME ABILITY WORKING 4 HOURS PER DAY AS MY HOURS WERE FOR OVER 1-1/2 YEARS:**

**MY INCOME ABILITY WAS REDUCED 38% AS I WOULD HAVE MADE \$25.00 PER HOUR x FOUR HOURS = \$100.00 per day = \$400.00 PER WEEK**

**INCOME ABILITY WORKING 3 HOURS PER DAY:**

**THE INCOME CALCULATED AT \$25.00 PER HOUR X 3 HOURS PER DAY = \$75.00 PER DAY = \$300.00 PER WEEK (ACTUAL PAY \$290.00 PER WEEK IS A 38% REDUCTION)**

My son and I have lived the Great Depression Era when unemployment was not available and when workers were out of work they had no unemployment or income to rely upon. President Roosevelt then put into place unemployment so workers who were subjected to unethical employment standards could live while they sought new employment. In the years 2010 and 2011 my son and I have not been able to rely upon the unemployment I had already been approved for based on Bonnie's Eastside Cleaning's business bankruptcy (No. 09-10269). David G. Zimmar didn't even pay into unemployment.

David G. Zimmar made me a contract employee and I had asked him to make me an employee. He refused. Attached is the investigation conducted by the Internal Revenue Service dated July 1, 2011 which has been in process since I quit David Zimmar's employment October 2009. The investigation by Internal Revenue Service concludes that I was an employee and had worked at David Zimmar's office for two years. The

law is stated in the letter from the Internal Revenue Service which was stated as another reason I left the employer's employment. It was illegal that David Zimmar made me a contract employee and I was an employee.

The letter from the Internal Revenue Service cites 4 pages of law to my employer, David G. Zimmar, who knows law. Based on the IRS letter the employer, David G. Zimmar, commenced my employment with inequity and not legal determined by the SS-8 Determination conducted by the IRS. The SS-8 Determination Letter illustrates his ability to do things to reduce his expenses and not even pay into unemployment as he should have because I was an employee.

The employer, David G. Zimmar, reduced my hours from 4 to 3 per day and that was one of the Appellant's reasons for quitting as it affected the Appellant's pay by a 25% reduction. Every day I worked there was a parking record kept by my employer that he submitted as an offset to his business expenses. **Each daily parking record accurately reflects the hours I worked by the time documented that I parked and clearly reflected the decrease in hours from 4 per day in the beginning and then changed to 3.** The testimony by David G. Zimmar in the transcript is an absolute lie on Page 38 that "I'm not going to pay you on an hourly basis". The agreement from the beginning was based on 4 hours per day. The statement on Page 64 of the transcript that "there was

no such thing as cutting pay". *My pay was cut every day when the hours that I would be compensated for changed from 4 to 3. My pay was cut all the time when the employer went on vacation or was out of the office.*

The daily parking record clearly shows the hours I worked by the hours parked. David G. Zimmar did reduce my hours from 4 to 3 per day documented in the daily parking record. He lied about it in the telephone conference hearing.

***FURTHER PAY DEDUCTIONS:***

***PAY REDUCED EVERY TIME THE EMPLOYER WAS OUT:***

*David G. Zimmar reduced my earnings to about a third of what I made when he went to Russia for almost a month. When David G. Zimmar went to Russia my paycheck was almost \$500.00 less. He reduced my pay to approximately one-third when he went to North Carolina. Every opportunity he had he reduced my paycheck. I was supposed to receive a set amount each week and he continually took advantage of me by deducting my check whenever he was out. During Christmas he sent me a check for \$120.00 for the week because he decided to not go into the office. The reduced checks occurred as a result of him taking time off and then not keep the agreement of my weekly wages, paying me a full check.*

**If I never received a deduction to my check then why was I always paid a fraction whenever the employer was out on vacation or out of the office? My check was deducted every day when the employer changed my agreed work hours from 4 hours per day from the start of my employment to 3 hours per day.**

As a senior and single parent I worked 2 jobs totaling 16 hours of work per day, back-to-back with no sleep in between jobs to provide. My unemployment I was approved for based on my primary employer, Bonnie's Eastside Cleaning, who paid into unemployment and David G. Zimmar paid nothing into unemployment, was taken from me and my son.

As a senior and worker in the State of Washington who worked 2 jobs, 16 hours per day, myself and my son have had to endure what was endured during the Great Depression. No Unemployment or Employment. I thought this country had come out of the Great Depression with the morality and laws to treat workers decently for their job labor and what I endured from 2 employers.

**As a single parent, I worked 2 jobs and for that have lived the Great Depression.** My son and I have suffered beyond words as a result of the hearing and decisions that took away unemployment from a

senior and single mother who had multiple reasons for both employers to leave both of their employments.

***Conclusion.***

For each of the foregoing reasons, this Court should reverse and hold that Ms. Hoff is entitled to recover the overpayment of unemployment, that all payments made to Employment Security on the overpayment be returned to the Ms. Hoff and the interest dismissed. It has been an extreme hardship to Ms. Hoff as a single parent with no employment or unemployment. The unemployment Ms. Hoff had been granted through her primary employer, Bonnie's Eastside Cleaning was approved by Employment Security as a claim. Then the claim that was granted taken away.

Additionally, this Court should reverse and hold that the garnishment of Ms. Hoff's bank account be returned to Ms. Hoff. This Court should reverse and hold that the garnishment fee incurred at Wells Fargo be paid by Employment Security. Ms. Hoff could not repay the overpayment but yet Employment Security garnished her bank account after the unemployment she had been approved for with her primary employer, Bonnie's Eastside Cleaning, was taken away.

Additionally, this Court should reverse and hold that Ms. Hoff should receive compensation from Employment Security for fees incurred as a result of the extreme hardship of being granted unemployment in a Monetary Decision with Bonnie's Eastside Cleaning. Then the unemployment granted taken away.

In addition, this Court should reverse and hold that the unemployment claim benefits approved by Employment Security with her primary employer, Bonnie's Eastside Cleaning be paid to Ms. Hoff as a total claim. The Monetary Decision approved through Ms. Hoff's employment with Bonnie's Eastside Cleaning should have merit. Why would the unemployment Ms. Hoff had already been approved for suddenly be cancelled? That decision for unemployment should have had merit and Ms. Hoff should receive the unemployment for that decision that was already made. The unemployment that the decision was made on Bonnie's Eastside Cleaning should have not just been erased leaving Ms. Hoff with no employment or unemployment.

Respectfully submitted this 31<sup>th</sup> day of May, 2012.

  
Melodie R. Hoff  
Appellant, Pro Se