

No. 73619-1-I

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

JUSTIN M. ROBINSON,

Appellant,

vs.

EMPLOYMENT SECURITY DEPARTMENT,

Respondent.

BRIEF OF APPELLANT

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I. INTRODUCTION

This case arises from an improper denial of unemployment benefits by the Employment Security Department. Appellant Robinson was discharged by his employer after he gave a two-week notice of resignation.¹ Robinson texted his two weeks' notice to his supervisor and discussed his final two weeks of employment with Human Resources. However, when he went into work for his next scheduled shift, he could not clock-in because his employer had processed his separation that morning. Robinson applied for unemployment benefits, but was denied. The Commissioner's Delegate of the Employment Security Department found—based entirely on hearsay evidence—that Robinson resigned immediately. The Commissioner's reliance on inadmissible hearsay unduly abridged Robinson's due process right to confront witnesses. The Commissioner's findings were therefore invalid and not supported by substantial evidence.

Robinson filed a Petition for Review with the King County Superior Court asking that the Court review the Commissioner's decision. The Superior Court did not affirm the Commissioner's decision, but agreed with Robinson that the Commissioner depended on "unreliable

¹ The general rule in Washington is that if an employee gives notice of resignation, but the employee is terminated prior to the end of the notice period, the separation from employment is considered a "discharge." The employee is then eligible for unemployment benefits. *In re Satcher*, Empl. Sec. Comm' r Dec.2d 741 (1983).

hearsay evidence.” However, on its own initiative, the Superior Court ordered the case to be remanded to the Office of Administrative Hearings for “additional fact finding.” The Superior Court denied attorney’s fees to Robinson pending the outcome of the additional fact-finding.

Robinson filed a Motion for Reconsideration asserting that remand for additional fact-finding was not permissible because the Department had not established a basis to re-open the agency record pursuant to RCW 34.05.562. Robinson also asserted that attorney’s fees should be awarded because the Commissioner’s decision was not confirmed and Robinson was the “prevailing party.” The Superior Court denied this Motion for Reconsideration.

Now, Robinson seeks review of the Superior Court’s Findings of Fact, Conclusions of Law, and Order entered on May 20, 2015 and the Order Denying Motion for Reconsideration entered on June 17, 2015. The Superior Court was correct that the Commissioner depended on “unreliable hearsay evidence” to deny Robinson unemployment benefits. However, the proper remedy was to reverse the Commissioner’s decision, not remand for further fact-finding. The Superior Court erred because there is no lawful basis to re-open the record on remand. RCW 34.05.562(2) lists the limited situations where a remand for further fact-finding is appropriate; none of which exist in this case. The Superior

Court also erred by denying an award of attorney's fees pursuant to RCW 50.32.160. Even with the remand, the Superior Court should have award attorney's fees because the Department's decision was not confirmed, and the appeal to the Superior Court was necessary to protect Robinson's due process rights infringed by the Commissioner.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in remanding the case for further fact-finding in violation of RCW 34.05.562.
2. The trial court erred in denying attorney's fees pursuant to RCW 50.32.160.

III. ISSUES RELATED TO ASSIGNMENTS OF ERROR

1. Whether the court erred in remanding the case for further fact-finding when none of the following statutory grounds to re-open the agency record were established: (1) the agency failed to prepare or preserve an adequate record, (2) new evidence became available that one or more of the parties did not know and was under no duty to discover until after the agency action, (3) the agency improperly excluded or omitted evidence from the record, or (4) a relevant provision of the law changed.
2. Whether a claimant for unemployment benefits is entitled to an award of attorney's fees when the claimant demonstrates that the

agency decision cannot be affirmed and obtains a remand to the agency to cure error made by the agency.

IV. STATEMENT OF FACTS

A. **Robinson Gives Two-Weeks' Notice to His Employer and is Terminated**

Appellant, Justin Robinson, began working for the Target Corporation (“Target”) in June 2012. CR 23:18-20.² He held the full-time position of Protection Specialist earning approximately \$11.27 per hour. CR 14:13-15; CR 15: 19-21; CR 24:12-14.

Mr. Robinson put in his two-weeks' notice on May 17, 2014 by texting his supervisor Julia Robison. The text message stated, “Hey, Julia, it’s Justin. I’m really sorry. And I have been thinking about the past few days, I’m going to have to put in my two weeks and step away from Target.” CR 22: 8-11; CR 18:3-6; CR 78-79.

Mr. Robinson then called Emily Hughes in Human Resources on May 17th to inform her of his two-weeks' notice. CR18:6-7; CR 24:1-3; CR 50:1-3. Ms. Hughes called Mr. Robinson back on May 18th. They discussed Mr. Robinson’s resignation and looked at their calendars to schedule his last weeks of work until May 31. CR 18:21-25; CR 38:24-

² “CR” refers to the Commissioner’s Record from the Employment Security Department, which is not included in the Clerk’s Papers but was sent as an original to the Court. All citations to this record reference the page numbers located in the bottom center of each page.

39:6. Mr. Robinson stressed that he was putting in his two-weeks' notice. CR 37:19-25; CR 38:17-23. Mr. Robinson never said that he was resigning effective immediately. *Id.*

On May 19th, Mr. Robinson went to work, but he could not “punch-in” at the time clock. CR 19:5-7. The leader on duty that day told Mr. Robinson that he was no longer on the schedule and therefore could not punch-in for work. CR 23:1-7; CR 40:14. Target admits that Mr. Robinson’s separation was keyed into the system on May 19, which removed Mr. Robinson in the system so he could no longer be scheduled. CR 24:3-9.

Mr. Robinson asked Kelsey Sparks—the Human Resources employee who worked in the same office as the time clock—if his supervisor, John Randall, was at the store. CR 41:19-42:4. She told Mr. Robinson that she had not yet seen Mr. Randall that morning. CR 41:19-25; 42:7-14. Mr. Robinson wanted to see if Mr. Randall was in so that he could talk to him. He had previously been told by Mr. Randall not to contact him about work on his cell phone if Mr. Randall was not “on the clock.” CR 43:10-18.

Mr. Robinson went home and called Human Resources to ask Emily Hughes why he was no longer on the schedule. CR 44:7-21; CR 45:4-5; CR45:17-21. Mr. Hughes told Mr. Robinson that he would

receive a call back when the situation was figured out. CR 44:22-23; CR 45:19-25. Mr. Robinson waited, but was not called back, so he called Ms. Hughes again. For the second time he was told that he would get a call back. CR 20:15-18; CR 44:25-45:5. Mr. Robinson was never called back. CR 20:15-18.

B. Robinson Is Denied Unemployment Benefits After Administrative Hearing

Robinson filed for unemployment compensation. CR 9-15. On August 12, 2014, Administrative Law Judge (“ALJ”) Karey Huges affirmed the Employment Security Department’s denial of unemployment benefits for Mr. Robinson, finding that Mr. Robinson voluntarily quit without good cause. CR 87-91.

Target’s position at the unemployment hearing was that Mr. Robinson quit effective immediately. CR 50:12-17. However, Mr. Randall admitted that Mr. Robinson was “previously scheduled, so that he was coming to work to try to work out the two weeks,” but that Human Resources removed him from the schedule. CR 29:21-30:8. Target’s initial documents provided to the Employment Security Department are internally inconsistent, but one clearly states that he “scheduled days for the next two weeks over the phone to the HR Team Member.” CR 72.

At the hearing, Mr. Randall asserted that he never saw Mr. Robinson at work on the 19th. CR 29:8-14. However, Mr. Randall was in his office on the second floor when Mr. Robinson tried to clock-in on the first floor. Mr. Randall would not have been able to see him. CR 30:23-31:6.

Annie Kroshus, Executive Team Leader for Target Human Resources, testified at the administrative hearing. CR 8: 9-10. However, it was Ms. Kroshus' predecessor, Emily Hughes, who talked to Mr. Robinson and dealt with his termination. CR 8: 10-13. Ms. Hughes was not at the hearing. *Id.* Ms. Kroshus' testimony at the hearing about Mr. Robinson's resignation was based solely on emails from Ms. Hughes or speculation on what Ms. Hughes would have done. CR 24:15-20; CR 25:11-16; CR 26:9-21. Ms. Kroshus did not talk to Mr. Robinson herself. CR 23:24-25. The series of emails Ms. Kroshus references for her testimony were sent by Ms. Hughes to Target's unemployment hearing consultant and the unemployment insurance consultant. None of these emails were provided at the hearing. CR 25:11-16; CR 26:22-27:5.

The ALJ denied Mr. Robinson's claim for unemployment benefits, finding that Mr. Robinson resigned, "effective immediately." CR 89. Mr. Robinson petitioned the Commissioner of the Employment Security Department, who upheld the decision to deny Mr. Robinson's claim on

September 5, 2014. CR103-104. The Commissioner's decision adopted the findings of fact and conclusions of law of the ALJ concluding that Mr. Robinson was disqualified from unemployment benefits pursuant to RCW 50.20.050(2). CR 103-104.

C. Superior Court Finds that Commissioner Depended on Unreliable Hearsay and Remands for Further Fact-Finding

Mr. Robinson petitioned the King County Superior Court on September 26, 2014 to review the Commissioner's decision disqualifying Mr. Robinson from receiving unemployment benefits. CP 1-7.³ Mr. Robinson asserted that the Commissioner's decision was not supported by substantial evidence and the Commissioner's reliance on inadmissible hearsay for findings of fact and conclusion of law unduly abridged Mr. Robinson's right to confront witnesses. CP 8-23. The Superior Court entered Findings of Fact, Conclusions of Law, and Order on May 20, 2015. CP 87-89. The Court's Conclusions of Law found that the Commissioner depended on "unreliable hearsay evidence," and the case was remanded to the Office of Administrative Hearings for "additional fact finding." *Id.* (Notably, this form of relief was not requested by Mr. Robinson or the Department.) The Court did not grant attorney's fees to Mr. Robinson. *Id.* Mr. Robinson filed a Motion for Reconsideration on

³ "CP" refers to the Clerk's Papers submitted by the King County Superior Court Clerk.

May 29, 2015. CP 60-67. Robinson asserted that remand for additional fact-finding was not permissible because the Department had not established a basis to re-open the agency record. *Id.* Robinson also asserted that attorney's fees should be awarded because the Commissioner's decision was not confirmed and Robinson was the "prevailing party." *Id.* On June 17, 2015, the Superior Court entered an Order Denying Motion for Reconsideration. CP 86.

Robinson filed a Notice of Appeal on June 26, 2015. CP 83-89. A notation ruling was entered by the Court of Appeals' Commissioner on August 5, 2015 finding that the Superior Court order was not appealable but is subject to discretionary review. (Dkt. 10). Robinson filed a motion for discretionary review on August 17, 2015, which was eventually granted on May 11, 2016. (Dkt. 12; Dkt. 33).

V. SUMMARY OF ARGUMENT

The Superior Court erred in remanding Robinson's case for further fact-finding when there was no basis to re-open the record pursuant to RCW 34.05.562(2). There was no legal or factual analysis by the Superior Court indicating that any of the criteria identified in RCW 34.05.562(2) had been met to permit additional evidence to be taken by the administrative agency. There were no problems with the record, either technical or evidentiary. Re-opening the record only serves to provide the

Department and interested employer a second opportunity to litigate this case, preventing procedural fairness and finality.

Additionally, the Superior Court erred by failing to award attorney's fees to Robinson. Awards of attorney's fees for cases arising under the Employment Security Act are governed by RCW 50.32.160. RCW 50.32.160 provides that if a commissioner's decision is "reversed or modified," attorney's fees shall be awarded. The issue in this case is whether a "remand" falls under the definition of "modified." Interpreting RCW 50.32.160 in the light of other sections of the Employment Security Act (specifically RCW 50.32.150), "remand" falls within the meaning of "modified," and attorney's fees must be awarded. The rules of statutory construction require that these specific provisions of the Employment Security Act prevail over general rules of the APA. Additionally, attorney's fees should be awarded for successful appeals of cases improperly decided by the Commissioner. When an appeal is necessary to upholding the petitioner's due process rights, a claimant substantially prevails if a court grants a remand to cure agency error.

VI. ARGUMENT

A. Standard of Review

Judicial review of a final administrative decision of the Commissioner of the Employment Security Department is governed by the

Washington Administrative Procedure Act (“APA”). *Macey v. Employment Security*, 110 Wn.2d 308, 312 (1988). The APA allows a reviewing court to reverse an administrative decision when, inter alia: (1) the administrative decision is based on an error of law; (2) the decision is not based on substantial evidence; or (3) the decision is arbitrary or capricious. RCW 34.05.570(3). In reviewing administrative action, this Court sits in the same position as the Superior Court, applying the standards of the APA directly to the record before the agency. *See Macey*, 110 Wn.2d at 312.

Robinson appeals the remedy provided by the Superior Court and the denial of an award of attorney’s fees. These are questions of law. This Court reviews questions of law and conclusions of law de novo. *Veach v. Culp*, 92 Wn.2d 570, 573, 599 P.2d 526 (1979).

B. The Superior Court Erred by Re-opening the Agency Record on Remand without Statutory Authority

The Superior Court erred when it remanded Robinson’s case for further fact-finding because the court did not have statutory authority to re-open the agency record. RCW 34.05.562 clearly limits when the agency record can be re-opened for additional fact-finding. None of the reasons found in RCW 34.05.562 apply to Robinson’s case or were

identified by the Superior Court. Without this authority, re-opening the record undermines procedural fairness and judicial finality.

1. RCW 34.05.562 limits the court from re-opening the agency record for further fact-finding

The APA allows parties to supplement the administrative record in only “two ways: through a trial court’s acceptance of new evidence or a trial court’s order remanding a matter back to the agency for further fact-finding. RCW 34.05.562(1), (2).” *Amalgamated Transit Union, Local 1384 v. Kitsap Transit*, 187 Wn. App. 113, 123-124, 349 P.3d 1 (2015). RCW 34.05.562(2) allows the agency record to be re-opened for additional fact-finding only when: (1) the agency failed to prepare or preserve the record; (2) new evidence has been discovered where there was no duty to discover the evidence; (3) the agency improperly excluded or omitted evidence from the record; or (4) a relevant provision of law changed after the agency action.

Unless new evidence is specifically permitted pursuant to the RCW 34.05.562 exceptions, the APA prohibits parties from supplementing the agency record. *See, e.g., Samson v. City of Bainbridge Is.*, 149 Wn. App. 33, 64-65, 202 P.3d 334, 350 (2009) (affirming decision to not supplement the administrative record because party did not satisfy RCW 34.05.562(1) or (2)); *Motley-Motley, Inc. v. Pollution Control*

Hearings Bd., 127 Wn. App. 62, 76-79, 110 P.3d 812 (2005) (holding that the court was limited to the administrative record because the factors of RCW 34.05.562 were not met); *Keenan v. Employment Sec. Dep't*, 81 Wn. App. 391, 396, 914 P.2d 1191 (1996) (refusing to remand case because additional evidence did not meet the requirements of RCW 34.05.562(2)). A party must show that the requirements of RCW 34.05.562 are met, and it is not sufficient for the proponent of the evidence to assert “only that the record is incomplete.” *Herman v. State Shorelines Hearing Bd.*, 149 Wn. App. 444, 445, 204 P.3d 928 (2009).⁴

Here, the Superior Court remanded this matter to the Office of Administrative Hearings to allow additional evidence to be submitted. CP 87-89. However, there is no legal or factual analysis by the Superior Court identifying any of the criteria in RCW 34.05.562(2) that would permit additional evidence to be taken by the administrative agency. None of the factors required by RCW 34.05.562(2) are present. The Department prepared and preserved the record of the agency hearing. Neither Robinson nor the Department alleges that the ALJ improperly excluded evidence that was presented at the agency hearing or that there is new evidence that was not available at the time of hearing. Finally, the

⁴ The court’s analysis in *Herman* focuses on RCW 34.05.562(1), but the court’s discussion of the parameters of the APA is applicable to the similarly narrow exceptions found in RCW 34.05.562(2).

relevant portions of the law have not changed. Indeed, at no point in the proceedings did either party request that the record be re-opened for issues that had already been addressed at the administrative hearing.

2. Remand without specific statutory authority frustrates procedural fairness and the efficient administration of justice

Absent a legal basis to re-open the record pursuant to RCW 34.05.562, a remand serves only to provide the Department and the employer a second opportunity to litigate this case. The judicial interest in finality requires that there be a determinable point in time at which litigation ceases. *Hong v. Washington State Dept. of Social and Health Services*, 146 Wn. App. 698, 710, 192 P.3d 21 (2008). To require courts to consider and reconsider cases at the will of litigants would deprive the courts of that stability which is necessary in the administration of justice. *Id.* (citing *Kosten v. Fleming*, 17 Wn.2d 500, 505, 136 P.2d 449 (1943)).

The court must apply the law in a manner that is procedurally just to all parties. The recent case *Darkenwald v. Employment Security Dept.*, 183 Wn.2d 237, 350 P.3d 647 (2015) is instructive, because it expresses the tension between a result-oriented, “just” outcome and procedural justice. In *Darkenwald*, the petitioner raised a new issue on appeal that may have changed the outcome of the case and resulted in the petitioner receiving unemployment benefits. The Washington Supreme Court

refused to consider that argument on the basis that the APA (RCW 34.05.554) and RAP 2.5(a) prohibited the petitioner from raising new issues that were not raised before the agency or trial court. *Darkenwald*, 1983 Wn.2d at 245 n.3. There will always be cases, such as in *Darkenwald*, where the arguable “just” outcome gives way to the procedural requirements of the law. Judicial review of decisions where the employer or the Department makes a procedural error should be no less stringent. The Department should not be allowed to re-litigate a case where the employer may have made an error at the administrative level when claimants, such as the claimant in *Darkenwald*, are not entitled to re-litigate when they have made errors.⁵

Allowing a remand in this case would open the door to every litigant who wishes to present additional evidence such that a different outcome may result. That may be the most “just” method of resolving these cases, but the cost to the administration of justice would be high. The court should require that there be a legitimate basis to re-open the record pursuant to the express terms of RCW 34.05.562(2) before allowing a remand.

⁵ This is especially true where the petition for review to the Commissioner expressly raised the issue of hearsay. CR 100. The Commissioner had the opportunity to take additional evidence or order further proceedings prior to closing the record pursuant to RCW 50.32.080.

C. Attorney's Fees Should Be Awarded, Even in the Event of a Remand

Even if this Court affirms the Superior Court's order remanding the matter for the taking of additional evidence, the Court should still award attorney's fees. RCW 50.32.160 provides that if a commissioner's decision is "reversed or modified," attorney's fees shall be awarded. Under the plain language of the Employment Security Act, "remand" is included in the meaning of "modified." Because the Employment Security Act is specific to unemployment benefits, it prevails over the general principals of the APA. Additionally, attorney's fees should be awarded for successful appeals of cases improperly decided by the Commissioner, especially when an appeal is necessary to upholding the petitioner's due process rights and cure agency error.

1. Reading RCW 50.32.160 in harmony with RCW 50.32.150 shows that a remand falls under the definition of modification, requiring an award of attorney's fees

When deciding if attorney's fees should be granted to Robinson, the Court needs to look at the statutory chapter specific to appeals regarding unemployment compensation. In brief, RCW 50.32.150 states that if the court determines that the Commissioner of the Employment Security Department acted correctly, the decision of the Commissioner shall be confirmed. Otherwise, it will be "reversed or modified." The

very next section of the chapter, RCW 50.32.160, grants attorney's fees if the decision of the Commissioner is "reversed or modified." Read together, these statutes provide attorney's fees when the court does not confirm the Commissioner's decision.

RCW 50.32.150 defines the Superior Court's jurisdiction when reviewing decisions arising under the Employment Security Act. This statute reads, in pertinent part:

Jurisdiction of court.

...

If the court shall determine that the commissioner has acted within his or her power and has correctly construed the law, the decision of the commissioner shall be confirmed; **otherwise, it shall be reversed or modified. In case of a modification or reversal the Superior Court shall refer the same to the commissioner with an order directing him or her to proceed in accordance with the findings of the court.**

RCW 50.32.150. While RCW 50.32.150 does not expressly grant the court jurisdiction to "remand" cases to the Employment Security Department, the above quote shows that this is included in the term "modification." A "remand" is defined as "[t]he sending...of the cause back to the same court out of which it came, for purpose of having some further action taken on it there." *Eastern Stainless Steel v. Nicholson*, 60 Md. App. 659, 665, 484 A.2d 296 (1984) (citing *Black's Law Dictionary*, 1162 (rev. 5th ed. 1979)). There is no appreciable difference in meaning

between “remand” and “modification” as it is used in RCW 50.32.150— both are orders instructing a lower court or agency to take additional action in accordance with the terms of the order.

RCW 50.32.160, which specifies when a court shall award attorney’s fees for appeals from the decisions of the Commissioner, must be read in conjunction with RCW 50.32.150. RCW 50.32.160 reads:

Attorneys’ fees.

...

[I]n the event of appellate review, and if the decision of the commissioner shall be reversed or modified, such fee and the costs shall be payable out of the unemployment compensation administration fund.

The language in RCW 50.32.160 mirrors the language in RCW 50.32.150 and makes is clear that the court “shall” award attorney’s fees in the event the commissioner’s decision is “reversed or modified,” *viz.* when the court does not confirm the commissioner’s decision. To rule otherwise would be to interpret the word “modified” differently in RCW 50.32.150 than in RCW 50.32.160. Instead, this statute’s chapter should be interpreted to be internally consistent. If the Superior Court has jurisdiction to “remand” a case as a “modification” under RCW 50.32.150, it must award attorney’s fees for the remand as a decision that is “modified” under RCW 50.32.160.

Conflicting case law that does not analyze RCW 50.32.150 is not dispositive on this issue. In *Hamel v. Employment Security Dept.*, 93 Wn. App. 140, 966 P.2d 1282 (1998), Division II denied attorney's fees when the Superior Court remanded a case for additional fact-finding by the Commissioner. The *Hamel* decision, however, did not interpret RCW 50.32.160 in view of RCW 50.32.150.

To the extent that the court may find the definition of "modified" ambiguous, under the rules of statutory construction, ambiguous statutes are interpreted so as to best carry out their statutory purposes. *See, e.g., Reves v. Ernst & Young*, 494 U.S. 56, 60-61 (1990); *City of Redmond v. Arroyo-Murillo*, 149 Wn.2d 607, 616, 70 P.3d 947 (2003) ("[I]t is this court's obligation to determine and carry out the intent of the legislature."). Reading RCW 50.32.150 and RCW 50.32.160 together, the only possible conclusion is that the legislature intended the courts to award attorney's fees to claimants for unemployment benefits unless the Commissioner's decision was confirmed. Carving out an exception for an award of attorney's fees in the event of a remand when the exception is not found in the Employment Security Act not only hinders the purpose of the law, it goes against a strong presumption in statutory interpretation against creating an exemption in a statute that has none. *See City of*

Chicago v. Environmental Defense Fund, 511 U.S. 328, 114 S.Ct. 1588 (1994).

2. RCW 50.32.150 and 50.32.160 are specific to unemployment benefits and therefore prevail over the general principals of the APA

The Department has argued that a “remand” is distinct from a “modification” pursuant to RCW 34.05.574 of the APA. Department’s Answer to Motion for Discretionary Review at p. 12 (Dkt. 18). This argument requires the court to use the APA to interpret RCW 50.32.160, rather than using other sections of the Employment Security Act, specifically RCW 50.32.150. This argument is contrary to the rules of statutory construction.

Under the general-specific rule, a specific statute will prevail over a general statute. *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wn.2d 275, 309, 197 P.3d 1153 (2008). The court in *Residents Opposed* explained the general-specific rule:

It is a fundamental rule that where the general statute, if standing alone, would include the same matter as the special act and thus conflict with it, the special act will be considered as an exception to, or qualification of, the general statute, whether it was passed before or after such general enactment.

165 Wn.2d at 309. RCW 50.32.150 and 50.32.160 are part of the Employment Security Act and control the discrete and specific issues of court jurisdiction and the award of attorney's fees for unemployment benefits claims. On the other hand, the APA applies generally to administrative procedure. The language of RCW 50.32.150 and 50.32.160 should therefore prevail over the general principals of the APA.

This is especially true since the Employment Security Act does not incorporate all of the APA. The Administrative Procedures Act was adopted in 1959. Laws of 1959, ch. 234. This is seventeen years after the Employment Security Act was adopted in 1942. Laws of 1942, ch. 253. The language in RCW 50.32.160 predates the APA. The extent to which the Employment Security Act incorporates the APA is explained in RCW 50.32.120, which states:

Judicial review of a decision of the commissioner involving the review of an appeals tribunal decision may be had only in accordance with the procedural requirements of RCW 34.05.570.

Thus, the Employment Security Act does not expressly incorporate the entirety of the APA; instead, it specifically incorporates RCW 34.04.570 from the APA. This further supports that RCW 50.32.150 and 50.32.160 are statutes of specific applicability, and must prevail over the APA.

Even reading the APA and the Employment Security Act *in pari materia*, “remand” under RCW 34.05.574 is the equivalent of “modified” under RCW 50.32.150. RCW 34.05.574(1) even uses the terms somewhat interchangeably by stating, “The court shall *remand* to the agency for *modification* of agency action.”⁶ There is simply is no meaningful difference between the term “remand” and “modified” for the purposes of RCW 50.32.160. Therefore, attorney’s fees should be awarded even if this Court affirms the Superior Court’s order to remand for further-fact-finding.

3. Attorney’s fees should be awarded for successful appeals of cases improperly decided by the Commissioner

RCW 50.32.160 should be interpreted to award attorney’s fees when the Superior Court finds that a case was improperly decided by the Commissioner, regardless of the ultimate outcome of the case. Procedural due process is a pillar of judicial system. When the Commissioner makes

⁶ The full text of RCW 34.05.574 (1) reads: In a review under RCW 34.05.570, the court may (a) affirm the agency action or (b) order an agency to take action required by law, order an agency to exercise discretion required by law, set aside agency action, enjoin or stay the agency action, remand the matter for further proceedings, or enter a declaratory judgment order. The court shall set out in its findings and conclusions, as appropriate, each violation or error by the agency under the standards for review set out in this chapter on which the court bases its decision and order. In reviewing matters within agency discretion, the court shall limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency. The court shall remand to the agency for modification of agency action, unless remand is impracticable or would cause unnecessary delay.

an error—such as abridging a claimant’s due process rights by basing a decision on inadmissible hearsay—that improper decision must be afforded the full remedy contemplated by the act, which includes an award of attorney’s fees. Division II in *Hamel* also noted that the claimant did not prevail after remand. *Hamel*, 93 Wn. App. at 148. However, this reasoning gives short shrift to claimants’ rights to due process. Claimants should be entitled to an award of attorney’s fees when those rights are abridged at the administrative level and the claimant obtains relief from those errors on appeal to the courts.

If claimants were required to prevail after remand in order to recover attorney’s fees under RCW 50.32.160, it would render that statute weaker than its APA counterpart, RCW 4.84.350 (Equal Access to Justice Act). Under RCW 4.84.350, a court “shall award a qualified party that prevails in a judicial agency action fees and other expenses, including reasonable attorneys’ fees, unless the court finds that the agency action was substantially justified or that circumstances make an award unjust.” Because RCW 50.32.160 is the statute of specific authority, Appellant is not claiming that attorney’s fees should be awarded under RCW 4.84.350. However, by analogy, there is no rational basis to interpret RCW 50.32.160 more narrowly than RCW 4.84.350. The Employment Security

Act contains mandatory language requiring attorney's fees to be awarded, while RCW 4.84.350 grants discretion to the trial.

In *Eidson v. State Dept. of Licensing*, 108 Wn. App. 712 (2001), a case interpreting the Equal Access to Justice Act, this Court held that a qualified party "prevails" if he or she "obtained relief on a significant issue that achieves some benefit" he or she sought. In *Eidson*, the appellant obtained a remand, and was deemed to be a prevailing party and was awarded attorney's fees. There was no "wait and see" provision requiring that Eidson prevail below in order to recover fees.

Similarly, in the present case, Mr. Robinson appealed to the Superior Court on the basis that the commissioner of the Employment Security Department unconstitutionally relied on hearsay evidence. The Superior Court rejected the Commissioner's reliance on "unreliable hearsay" and remanded the case. The Superior Court found that Robinson prevailed in part at the trial court level, but that he "may or may not be the prevailing party" after remand. CP 86. Requiring that Robinson prevail after remand runs contrary to the plain language of the Employment Security Act and would not be proper basis for a denial of attorney's fees under the Equal Access to Justice Act. This court should hold that a fair hearing is a "benefit" and attorney's fees are warranted in cases arising

under the Employment Security Act where an appeal is necessary to afford a claimant his statutory and constitutional rights to due process.

D. RAP 18.1 Request for Attorney's Fees

For the same reasons that Robinson has argued that attorney's fees should have been awarded below, Appellant requests attorney's fees pursuant to RCW 50.32.160. This court should award attorney's fees in the event the Commissioner's decision is reversed or modified.

VII. CONCLUSION

Appellant requests that this Court find that the Superior Court erred in remanding this case for further fact-finding when there was no basis to re-open the record pursuant to RCW 34.05.562(2). The Superior Court did not find that the Commissioner's decision was supported by substantial evidence, but rather that the Commissioner depended on "unreliable hearsay evidence." On this basis alone, the Commissioner's decision should be reversed and Robinson should be granted unemployment benefits and attorney's fees.

If this Court finds that the remand is appropriate in this case, Robinson requests that attorney's fees still be awarded pursuant to RCW 50.32.160, both for work before the Superior Court and this Court of Appeals.

RESPECTFULLY SUBMITTED this ¹⁴25 day of July, 2016:

BEAN LAW GROUP



Matthew J. Bean, WSBA #23221
Lauren Guicheteau, WSBA #47137

CERTIFICATE OF SERVICE

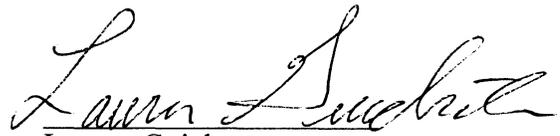
I hereby certify that on July 25, 2016, I caused to be served a true and correct copy of the **BRIEF OF APPELLANT** to the following parties at these addresses:

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CHAPTER 234.

[S. B. 257.]

ADMINISTRATIVE PROCEDURES.

AN ACT relating to procedure of state administrative agencies and review of their determinations.

Be it enacted by the Legislature of the State of Washington:

Definitions.
"Agency."

SECTION 1. For the purpose of this act:

(1) "Agency" means any state board, commission, department, or officer, authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches.

"Rule,"

(2) "Rule" includes every regulation, standard, or statement of policy or interpretation of general application and future effect, including the amendment or repeal thereof, adopted by an agency, whether with or without prior hearing, to implement or make specific the law enforced or administered by it or to govern its organization or procedure, but does not include regulations which concern only the internal management of the agency and do not directly affect the rights of or procedures available to the public.

"Contested case."

(3) "Contested case" means a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing.

Rule-making requirements enumerated.

SEC. 2. In addition to other rule-making requirements imposed by law:

(1) Each agency shall adopt rules governing the formal and informal procedures prescribed or authorized by this act. Such rules may state the qualifications of persons for practice before the agency. Such rules shall also include rules of practice before the agency, together with forms and instructions.

List to each
broker.

public, and he shall mail one (1) to each licensed broker.

Partial
invalidity.

SEC. 28. If any section, sub-division, sentence or clause in this act shall be held invalid or unconstitutional, such fact shall not affect the validity of the remaining portions of this act.

Statutes
repealed.

SEC. 29. Chapter 129, Laws of 1925, Extraordinary Session (sections 8340-1 to 8340-23, inclusive, Remington's Revised Statutes) are hereby repealed.

Passed the Senate March 1, 1941.

Passed the House March 10, 1941.

Approved by the Governor March 25, 1941.

CHAPTER 253.

[S. S. B. 275.]

UNEMPLOYMENT COMPENSATION.

AN ACT relating to unemployment compensation, amending chapter 162 of the Laws of 1937, as amended by chapter 214 of the Laws of 1939, repealing sections 19, 22 and 23 of chapter 162 of the Laws of 1937 and section 17 of chapter 214 of the Laws of 1939, establishing liens and providing for the enforcement thereof.

Be it enacted by the Legislature of the State of Washington:

Amend-
ments.

SECTION 1. Section 3 of chapter 162 of the Laws of 1937, as amended by section 1 of chapter 214 of the Laws of 1939, is hereby amended to read as follows:

Benefits
payable.
Time.

Section 3. (a) PAYMENT OF BENEFITS. Twenty-four months after the date when contributions first accrue under this act, benefits shall become payable from the fund: *Provided*, That wages earned for services defined in section 19(g) (6) (viii) of this act, irrespective of when performed, shall not be included for the purpose of determining eligibility under section 4(e) or the weekly benefit amount

Exception.

Pages 871 to 881 omitted

Procedure.	the Commissioner for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete
Record of proceedings.	record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed.
Witness fees.	Section 6. (g) WITNESS FEES. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the Commissioner. Such fees and all expenses of proceedings involving disputed claims excepting charges for services rendered by counsel or other agent representing the claimant, employer or other interested party shall be deemed a part of the expenses of administering this act.
Expenses of proceeding.	
Decision of Commissioner final in 30 days.	Section 6. (h) APPEAL TO COURTS. Any decision of the Commissioner in the absence of an appeal therefrom as herein provided shall become final thirty days after the date of mailing written notification thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies as provided in sections 6 (c), 6 (d), and 6 (e). The Commissioner shall be deemed to be a party to any judicial action involving any such decision, and shall be represented in any such judicial action by the Attorney General.
Commissioner party to action on appeal.	Section 6. (i) COURT REVIEW. Within thirty days after final decision has been communicated to any interested party, such interested party may appeal to the Superior Court of the county of his residence, and such appeal shall be heard as a case in equity but upon such appeal only such issues of law may be raised as were properly included in his application before the appeal tribunal. The proceedings of every such appeal shall be informal and summary, but full opportunity to be heard upon the issues of
Appeal.	
In equity.	
Proceedings summary.	

law shall be had before judgment is pronounced. Such appeal shall be perfected by filing with the Clerk of the Court a notice of appeal and by serving a copy thereof by mail or personally on the Commissioner, and the filing and service of said notice of appeal within thirty days shall be jurisdictional. The Commissioner shall within twenty days after receipt of such notice of appeal serve and file his notice of appearance upon appellant or his attorney of record, and such appeal shall thereupon be deemed at issue. No bond shall be required on such appeal or on appeals to the Superior or the Supreme Courts. When a notice of final decision has been placed in the United States mail properly addressed, it shall be considered prima facie evidence of communication to the appellant and his attorney, if of record.

Notice of appeal.

Filing and service.

Answer in twenty days.

No bond.

Mailing notice of decision.

The Commissioner shall serve upon the appellant and file with the Clerk of the Court before trial a certified copy of his complete record of the claim which shall upon being so filed become the record in such case. No fee of any kind shall be charged the Commissioner for filing his appearance or for any other services performed by the Clerk of either the Superior or the Supreme Court.

Commissioner to serve and file complete record.

No filing fee for Commissioner.

If the Court shall determine that the Commissioner has acted within his power and has correctly construed the law, the decision of the Commissioner shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the Superior Court shall refer the same to the Commissioner with an order directing him to proceed in accordance with the findings of the Court: *Provided*, That any award shall be in accordance with the schedule of unemployment benefits set forth in this act.

Decision of court.

Contents.

Proviso.

It shall be unlawful for any attorney engaged in any such appeal to the Courts as provided herein to

Unlawful for attorney to charge greater fee than fixed by court.

Costs payable from fund.

Appeal to Supreme Court.

Burden of proof.

Commissioners costs paid from fund.

Amendments.

Payment of contributions.

Paid by employer.

charge or receive any fee therein in excess of a reasonable fee to be fixed by the Courts in the case, and if the decision of the Commissioner shall be reversed or modified, such fee and the fees of witnesses and the costs shall be payable out of the Unemployment Compensation Administration Fund. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the Superior Court to the Supreme Court as in other civil cases. In all Court proceedings under or pursuant to this act the decision of the Commissioner shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

Whenever any appeal is taken from any decision of the Commissioner to any Court, all expenses and costs incurred therein by said Commissioner including court reporter costs and attorney's fees and all costs taxed against such Commissioner shall be paid out of the Unemployment Compensation Administration Fund.

SEC. 5. Section 7 of chapter 162 of the Laws of 1937, as amended by section 5 of chapter 214 of the Laws of 1939, is hereby amended to read as follows:

Section 7. (a) PAYMENT.

(1) On and after January 1, 1937, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages payable for employment (as defined in section 19 (g) occurring during such calendar year, such contributions shall become due and be paid by each employer to the treasurer for the fund in accordance with such regulation as the Commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in his employ;

(2) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

RCW 4.84.350**Judicial review of agency action—Award of fees and expenses.**

(1) Except as otherwise specifically provided by statute, a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees, unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. A qualified party shall be considered to have prevailed if the qualified party obtained relief on a significant issue that achieves some benefit that the qualified party sought.

(2) The amount awarded a qualified party under subsection (1) of this section shall not exceed twenty-five thousand dollars. Subsection (1) of this section shall not apply unless all parties challenging the agency action are qualified parties. If two or more qualified parties join in an action, the award in total shall not exceed twenty-five thousand dollars. The court, in its discretion, may reduce the amount to be awarded pursuant to subsection (1) of this section, or deny any award, to the extent that a qualified party during the course of the proceedings engaged in conduct that unduly or unreasonably protracted the final resolution of the matter in controversy.

[1995 c 403 § 903.]

NOTES:

Findings—1995 c 403: See note following RCW 4.84.340.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

RCW 34.05.554

Limitation on new issues.

(1) Issues not raised before the agency may not be raised on appeal, except to the extent that:

(a) The person did not know and was under no duty to discover or could not have reasonably discovered facts giving rise to the issue;

(b) The agency action subject to judicial review is a rule and the person has not been a party in adjudicative proceedings that provided an adequate opportunity to raise the issue;

(c) The agency action subject to judicial review is an order and the person was not notified of the adjudicative proceeding in substantial compliance with this chapter; or

(d) The interests of justice would be served by resolution of an issue arising from:

(i) A change in controlling law occurring after the agency action; or

(ii) Agency action occurring after the person exhausted the last feasible opportunity for seeking relief from the agency.

(2) The court shall remand to the agency for determination any issue that is properly raised pursuant to subsection (1) of this section.

[1988 c 288 § 512.]

RCW 34.05.562**New evidence taken by court or agency.**

(1) The court may receive evidence in addition to that contained in the agency record for judicial review, only if it relates to the validity of the agency action at the time it was taken and is needed to decide disputed issues regarding:

(a) Improper constitution as a decision-making body or grounds for disqualification of those taking the agency action;

(b) Unlawfulness of procedure or of decision-making process; or

(c) Material facts in rule making, brief adjudications, or other proceedings not required to be determined on the agency record.

(2) The court may remand a matter to the agency, before final disposition of a petition for review, with directions that the agency conduct fact-finding and other proceedings the court considers necessary and that the agency take such further action on the basis thereof as the court directs, if:

(a) The agency was required by this chapter or any other provision of law to base its action exclusively on a record of a type reasonably suitable for judicial review, but the agency failed to prepare or preserve an adequate record;

(b) The court finds that (i) new evidence has become available that relates to the validity of the agency action at the time it was taken, that one or more of the parties did not know and was under no duty to discover or could not have reasonably been discovered until after the agency action, and (ii) the interests of justice would be served by remand to the agency;

(c) The agency improperly excluded or omitted evidence from the record; or

(d) A relevant provision of law changed after the agency action and the court determines that the new provision may control the outcome.

[1988 c 288 § 514.]

RCW 34.05.570**Judicial review.**

(1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b)(i) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(ii) From June 10, 2004, until July 1, 2008:

(A) If the petitioner's residence or principal place of business is within the geographical boundaries of the third division of the court of appeals as defined by RCW 2.06.020(3), the petition may be filed in the superior court of Spokane, Yakima, or Thurston county; and

(B) If the petitioner's residence or principal place of business is within the geographical boundaries of district three of the first division of the court of appeals as defined by RCW 2.06.020(1), the petition may be filed in the superior court of Whatcom or Thurston county.

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the

appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

[2004 c 30 § 1; 1995 c 403 § 802; 1989 c 175 § 27; 1988 c 288 § 516; 1977 ex.s. c 52 § 1; 1967 c 237 § 6; 1959 c 234 § 13. Formerly RCW 34.04.130.]

NOTES:

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 34.05.574**Type of relief.**

(1) In a review under RCW 34.05.570, the court may (a) affirm the agency action or (b) order an agency to take action required by law, order an agency to exercise discretion required by law, set aside agency action, enjoin or stay the agency action, remand the matter for further proceedings, or enter a declaratory judgment order. The court shall set out in its findings and conclusions, as appropriate, each violation or error by the agency under the standards for review set out in this chapter on which the court bases its decision and order. In reviewing matters within agency discretion, the court shall limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency. The court shall remand to the agency for modification of agency action, unless remand is impracticable or would cause unnecessary delay.

(2) The sole remedy available to a person who is wrongfully denied licensure based upon a failure to pass an examination administered by a state agency, or under its auspices, is the right to retake the examination free of the defect or defects the court may have found in the examination or the examination procedure.

(3) The court may award damages, compensation, or ancillary relief only to the extent expressly authorized by another provision of law.

(4) If the court sets aside or modifies agency action or remands the matter to the agency for further proceedings, the court may make any interlocutory order it finds necessary to preserve the interests of the parties and the public, pending further proceedings or agency action.

[1989 c 175 § 28; 1988 c 288 § 517.]

NOTES:

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 50.20.050**Disqualification for leaving work voluntarily without good cause (as amended by 2009 c 247).**

(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 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.

(3) Notwithstanding subsection (2) of this section, for separations occurring on or after July 26, 2009, an individual who was simultaneously employed in full-time employment and part-time employment and is otherwise eligible for benefits from the loss of the full-time employment shall not be disqualified from benefits because the individual:

- (a) Voluntarily quit the part-time employment before the loss of the full-time employment; and
- (b) Did not have prior knowledge that he or she would be separated from full-time employment.

[2009 c 247 § 1; 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.]

RCW 50.20.050

Disqualification for leaving work voluntarily without good cause (as amended by 2009 c 493).

~~(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.~~

~~(e) 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 (e) 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, and for separations that occur before September 6, 2009:~~

~~(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 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.
- (2) With respect to separations that occur on or after September 6, 2009:

(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. Good cause reasons to leave work are limited to reasons listed in (b) of this subsection.

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 has good cause and is not disqualified from benefits under (a) of this subsection only under the following circumstances:

(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 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) The claimant: (A) Left work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area; and (B) 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.

[2009 c 493 § 3; 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.]

NOTES:

Reviser's note: RCW 50.20.050 was amended twice during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Conflict with federal requirements—2009 c 493: See note following RCW 50.29.021.

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.

RCW 50.32.150**Jurisdiction of court.**

In all court proceedings under or pursuant to this title the decision of the commissioner shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

If the court shall determine that the commissioner has acted within his or her power and has correctly construed the law, the decision of the commissioner shall be confirmed; otherwise, it shall be reversed or modified. In case of a modification or reversal the superior court shall refer the same to the commissioner with an order directing him or her to proceed in accordance with the findings of the court.

Whenever any order and notice of assessment shall have become final in accordance with the provisions of this title, the court shall upon application of the commissioner enter a judgment in the amount provided for in said order and notice of assessment, and said judgment shall have and be given the same effect as if entered pursuant to civil action instituted in said court.

[2010 c 8 § 13039; 1945 c 35 § 131; Rem. Supp. 1945 § 9998-269. Prior: 1941 c 253 § 4.]

NOTES:*Judgments*

entry of: Chapter 4.64 RCW.

generally: Chapter 4.56 RCW.

RCW 50.32.160**Attorneys' fees.**

It shall be unlawful for any attorney engaged in any appeal to the courts on behalf of an individual involving the individual's application for initial determination, or claim for waiting period credit, or claim for benefits to charge or receive any fee therein in excess of a reasonable fee to be fixed by the superior court in respect to the services performed in connection with the appeal taken thereto and to be fixed by the supreme court or the court of appeals in the event of appellate review, and if the decision of the commissioner shall be reversed or modified, such fee and the costs shall be payable out of the unemployment compensation administration fund. In the allowance of fees the court shall give consideration to the provisions of this title in respect to fees pertaining to proceedings involving an individual's application for initial determination, claim for waiting period credit, or claim for benefits. In other respects the practice in civil cases shall apply.

[1988 c 202 § 48; 1971 c 81 § 121; 1945 c 35 § 132; Rem. Supp. 1945 § 9998-270. Prior: 1941 c 253 § 4.]

NOTES:

Severability—1988 c 202: See note following RCW 2.24.050.

Attorneys' fees: Chapter 4.84 RCW.

Costs: RCW 50.32.100.

Costs on appeal: Chapter 4.84 RCW.

RULE 2.5
CIRCUMSTANCES WHICH MAY AFFECT
SCOPE OF REVIEW

(a) Errors Raised for First Time on Review. The appellate court may refuse to review any claim of error which was not raised in the trial court. However, a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right. A party or the court may raise at any time the question of appellate court jurisdiction. A party may present a ground for affirming a trial court decision which was not presented to the trial court if the record has been sufficiently developed to fairly consider the ground. A party may raise a claim of error which was not raised by the party in the trial court if another party on the same side of the case has raised the claim of error in the trial court.

(b) Acceptance of Benefits.

(1) Generally. A party may accept the benefits of a trial court decision without losing the right to obtain review of that decision only (i) if the decision is one which is subject to modification by the court making the decision or (ii) if the party gives security as provided in subsection (b)(2) or (iii) if, regardless of the result of the review based solely on the issues raised by the party accepting benefits, the party will be entitled to at least the benefits of the trial court decision or (iv) if the decision is one which divides property in connection with a dissolution of marriage, a legal separation, a declaration of invalidity of marriage, or the dissolution of a meretricious relationship.

(2) Security. If a party gives adequate security to make restitution if the decision is reversed or modified, a party may accept the benefits of the decision without losing the right to obtain review of that decision. A party that would otherwise lose the right to obtain review because of the acceptance of benefits shall be given a reasonable period of time to post security to prevent loss of review. The trial court making the decision shall fix the amount and type of security to be given by the party accepting the benefits.

(3) Conflict With Statutes. In the event of any conflict between this section and a statute, the statute governs.

(c) Law of the Case Doctrine Restricted. The following provisions apply if the same case is again before the appellate court following a remand:

(1) Prior Trial Court Action. If a trial court decision is otherwise properly before the appellate court, the appellate court may at the instance of a party review and determine the propriety of a decision of the trial court even though a similar decision was not disputed in an earlier review of the same case.

(2) Prior Appellate Court Decision. The appellate court may at the instance of a party review the propriety of an earlier decision of the appellate court in the same case and, where justice would best be served, decide the case on the basis of the appellate court's opinion of the law at the time of the later review.

RULE 18.1
ATTORNEY FEES AND EXPENSES

(a) Generally. If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court.

(b) Argument in Brief. The party must devote a section of its opening brief to the request for the fees or expenses. Requests made at the Court of Appeals will be considered as continuing requests at the Supreme Court, except as stated in section (j). The request should not be made in the cost bill. In a motion on the merits pursuant to rule 18.14, the request and supporting argument must be included in the motion or response if the requesting party has not yet filed a brief.

(c) Affidavit of Financial Need. In any action where applicable law mandates consideration of the financial resources of one or more parties regarding an award of attorney fees and expenses, each party must serve upon the other and file a financial affidavit no later than 10 days prior to the date the case is set for oral argument or consideration on the merits; however, in a motion on the merits pursuant to rule 18.14, each party must serve and file a financial affidavit along with its motion or response. Any answer to an affidavit of financial need must be filed and served within 7 days after service of the affidavit.

(d) Affidavit of Fees and Expenses. Within 10 days after the filing of a decision awarding a party the right to reasonable attorney fees and expenses, the party must serve and file in the appellate court an affidavit detailing the expenses incurred and the services performed by counsel.

(e) Objection to Affidavit of Fees and Expenses; Reply. A party may object to a request for fees and expenses filed pursuant to section (d) by serving and filing an answer with appropriate documentation containing specific objections to the requested fee. The answer must be served and filed within 10 days after service of the affidavit of fees and expenses upon the party. A party may reply to an answer by serving and filing the reply documents within 5 days after the service of the answer upon that party.

(f) Commissioner or Clerk Awards Fees and Expenses. A commissioner or clerk will determine the amount of the award, and will notify the parties. The determination will be made without a hearing, unless one is requested by the commissioner or clerk.

(g) Objection to Award. A party may object to the commissioner's or clerk's award only by motion to the appellate court in the same manner and within the same time as provided in rule 17.7 for objections to any other rulings of a commissioner or clerk.

(h) Transmitting Judgment on Award. The clerk will include the award of attorney fees and expenses in the mandate, or the certificate of finality, or in a supplemental judgment. The award of fees and expenses, including interest from the date of the award by the appellate court, may be enforced in the trial court.

(i) Fees and Expenses Determined After Remand. The appellate court may direct that the amount of fees and expenses be determined by the trial court after remand.

(j) Fees for Answering Petition for Review. If attorney fees and expenses are awarded to the party who prevailed in the Court of Appeals, and if a petition for review to the Supreme Court is subsequently denied, reasonable attorney fees and expenses may be awarded for the prevailing party's preparation and filing of the timely answer to the petition for review. A party seeking attorney fees and expenses should request them in the answer to the petition for review. The Supreme Court will decide whether fees are to be awarded at the time the Supreme Court denies the petition for review. If fees are awarded, the party to whom fees are awarded should submit an affidavit of fees and expenses within the time and in the manner provided in section (d). An answer to the request or a reply to an answer may be filed within the time and in the manner provided in section (e). The commissioner or clerk of the Supreme Court will determine the amount of fees without oral argument, unless oral argument is requested by the commissioner or clerk. Section (g) applies to objections to the award of fees and expenses by the commissioner or clerk.

[Amended to become effective December 29, 1998; December 5, 2002; September 1, 2003; September 1, 2006; September 1, 2010]

WestlawNext

Washington State Employment Security Department Precedential Decisions of Commissioner

IN RE SANDRA J. SATCHER PETITIONER

Commissioner of the Employment Security Department
September 30, 1983

Empl. Sec. Comm'r Dec.2d 741 (WA), 1983 WL 492328

Commissioner of the Employment Security Department

State of Washington

*1 IN RE SANDRA J. SATCHER PETITIONER

*1 September 30, 1983

*1

Case No.

*1

741

*1

Review No.

*1

3-46321

*1

Docket No.

*1

3-11100

DECISION OF COMMISSIONER

*1 SANDRA J. SATCHER , duly petitioned the Commissioner for a review of a Decision of The Office of Administrative Hearings entered in this matter on the 15th day of July, 1983 , and the undersigned, having carefully reviewed the entire record, thereby being fully advised in the premises, does hereby enter the following.

FINDINGS OF FACT

I

*1 Prior to filing the claim here contested, petitioner last worked for the interested employer. On May 28, 1983 , she informed her supervisor that she wanted to tender her notice and quit. She intended to give two weeks' advance notice of her quit date. Her supervisor, however, told her to quit immediately.

*1 From the foregoing, we frame the following:

ISSUE

*1 Is petitioner subject to disqualification from benefits pursuant to RCW 50.20.050 or RCW 50.20.060?

*1 From the Issue as framed, we draw the following:

CONCLUSIONS

I

*1 Where a claimant, intending to quit, is not allowed to work through his or her notice period, the separation from employment is considered a discharge. See, e.g., In re Sauer, Comm. Dec. (2nd) 334 (1977). The present case, therefore, is properly adjudicable pursuant to RCW 50.20.060.

II

*1 Rcw 50.20.060 essentially provides for disqualification from benefits where an employee has been discharged from employment for misconduct connected with his or her work. Misconduct consists of an employee's intentional or negligent unsatisfactory behavior of such a degree, or occurring with such frequency, as to show a substantial disregard of the employer's interests: The burden of proving misconduct rests with the party alleging it, and this burden is satisfied only when misconduct is established by a preponderance of evidence.

III

*1 The evidence in the case before us fails to establish misconduct on petitioner's part. Now, therefore,

*1 IT IS HEREBY ORDERED that the Decision of the Office of Administrative Hearings entered in this matter on the 15th day of July, 1983 , shall be SET ASIDE. Petitioner is not subject to disqualification pursuant to either RCW 50.20.050 or RCW 50.20.060, and benefits are accordingly allowed, provided she is otherwise eligible therefor. There has been no overpayment.
*1 DATED at Olympia, Washington, September 30, 1983 .

*1 David J. Freeman
*1 Commissioner's Delegate

Empl. Sec. Comm'r Dec.2d 741 (WA), 1983 WL 492328

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