

NO. 35710-1-II

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

CHARLOTTE L. KING,

Appellant,

v.

STATE OF WASHINGTON, EMPLOYMENT SECURITY
DEPARTMENT,

Respondent.

FILED
COURT OF APPEALS
DIVISION II
07 JUN 12 PM 1:37
STATE OF WASHINGTON
DEPUTY

RESPONDENT'S BRIEF

ROBERT M. MCKENNA
Attorney General

John G. Macejunas
Assistant Attorney General
WSBA No: 37443
P.O. Box 40110
Olympia, Washington 98504-0110
(360) 753-4556

ORIGINAL

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. STATEMENT OF THE ISSUES1

III. STATEMENT OF THE CASE.....1

IV. STANDARD OF REVIEW.....3

V. ARGUMENT4

 A. King Has Failed To Meet Her Burden Of Proving That She Had Good Cause To Voluntarily Quit.6

 1. King’s Workplace Safety Remained Stable Throughout Her Five-Year Tenure With The Employer.8

 2. King Failed To Timely Notify The Employer’s Family Of Deteriorating Safety Conditions.10

 3. King Failed To Give The Employer’s Family Adequate Time To Address The Situation.13

 B. The Employment Security Act Prohibits the Award of Attorney Fees For Work Performed At The Administrative Level.15

 1. The Employment Security Act Requires Attorney Fees To Be Reasonable.17

 2. Attorney Fees For Work Performed At The Administrative Level Are Not Compensable Out Of The Unemployment Compensation Fund.....18

VI. CONCLUSION24

TABLE OF AUTHORITIES

Cases

<i>Ancheta v. Daly</i> , 77 Wn.2d 255, 461 P.2d 531 (1969).....	19, 20
<i>Batey v. Empl. Sec. Dep't</i> , 137 Wn. App. 506, 154 P.3d 266 (2007).....	6
<i>Bock v. State Bd. of Pilotage Comm'rs</i> , 91 Wn.2d 94, 586 P.2d 1173 (1978).....	21
<i>Brown v. Dental Disciplinary Bd.</i> , 94 Wn. App. 7, 972 P.2d 101 (1998).....	4
<i>Cobb v. Snohomish County</i> , 86 Wn. App. 223, 935 P.2d 1384 (1997).....	18
<i>Employees of Intalco Aluminum Corp. v. Empl. Sec. Dep't</i> , 128 Wn. App. 121, 114 P.3d 675 (2005).....	3
<i>Fuller v. Empl. Sec. Dep't</i> , 52 Wn. App. 603, 762 P.2d 367 (1988).....	4
<i>Gibson v. Empl. Sec. Dep't</i> , 52 Wn. App. 211, 758 P.2d 547 (1988).....	20
<i>Gluck v. Empl. Sec. Dep't</i> , 84 Wn.2d 316, 525 P.2d 768 (1974).....	21
<i>Hussa v. Empl. Sec. Dep't</i> , 34 Wn. App. 857, 664 P.2d 1286 (1983).....	5
<i>In re Atkinson</i> , Empl. Sec. Comm'r Dec.2d 621 (1980).....	11
<i>In re Bale</i> , 63 Wn.2d 90, 385 P.2d 545 (1963).....	21

<i>In re Burton</i> , 80 Wn. App. 573, 910 P.2d 1295 (1996).....	21
<i>In re Crawford</i> , Empl. Sec. Comm'r Dec.2d 777 (1986).....	8
<i>In re Hamilton</i> , Empl. Sec. Comm'r Dec.2d 490 (1979).....	9
<i>In re Luther</i> , Empl. Sec. Comm'r Dec.2d 582 (1979).....	10
<i>In re Murphy</i> , Empl. Sec. Comm'r Dec.2d 750 (1984)	5
<i>In re Smalley</i> , Empl. Sec. Comm'r Dec.2d 1242 (1975).....	9, 10
<i>In re Sweeney</i> , Empl. Sec. Comm'r Dec.2d 1255 (1975).....	13
<i>In re Townsend</i> , Empl. Sec. Comm'r Dec.2d 302 (1977).....	13
<i>Koster v. Wingard</i> , 50 Wn.2d 855, 314 P.2d 928 (1957).....	8
<i>Macey v. Empl. Sec. Dep't</i> , 110 Wn.2d 308, 752 P.2d 372 (1988).....	4
<i>Marine Enter., Inc. v. Sec. Pacific Trading Corp.</i> , 50 Wn. App. 768, 750 P.2d 1290 (1988), <i>review denied</i> , 111 Wn.2d 1013 (1988).....	16
<i>Martini v. Empl. Sec. Dep't</i> , 98 Wn. App. 791, 990 P.2d 981, 984 (2000).....	4
<i>McGreevy v. Oregon Mut. Ins. Co.</i> , 128 Wn.2d 26, 904 P.2d 731 (1995).....	16

<i>Nordlund v. Empl. Sec. Dep't</i> , 135 Wn. App. 515, 144 P.3d 1208 (2006).....	7
<i>Osborn v. Grant County</i> , 130 Wn.2d 615, 926 P.2d 911 (1996).....	18
<i>Penick v. Empl. Sec. Dep't</i> , 82 Wn. App. 30, 917 P.2d 136 (1996).....	4
<i>Pennsylvania Life Ins. Co. v. Empl. Sec. Dep't</i> , 97 Wn.2d 412, 645 P.2d 693 (1982).....	16
<i>Rettkowski v. Dep't of Ecology</i> , 76 Wn. App. 384, 885 P.2d 852 (1994), <i>aff'd in part, rev'd on other grounds in part</i> , 128 Wn.2d 508, 910 P.2d 462 (1996)	16
<i>Robinson v. Empl. Sec. Dep't</i> , 84 Wn. App. 774, 930 P.2d 926 (1996).....	3
<i>Safeco Ins. Co. v. Meyering</i> , 102 Wn.2d 385, 687 P.2d 195 (1984).....	3
<i>Starr v. Empl. Sec. Dep't.</i> , 130 Wn. App. 541, 123 P.3d 517 (2005).....	6
<i>Tapper v. Empl. Sec. Dep't</i> , 122 Wn.2d 397, 858 P.2d 494 (1993).....	3, 4
<i>Terry v. Empl. Sec. Dep't</i> , 82 Wn. App. 745, 919 P.2d 111 (1996).....	5
<i>Townsend v. Empl. Sec. Dep't</i> , 54 Wn.2d 532, 341 P.2d 877 (1959).....	5
<i>Valley View Indus. Park v. City of Redmond</i> , 107 Wn.2d 621, 634, 733 P.2d 182 (1987).....	21
<i>Vergeyle v. Empl. Sec. Dep't</i> , 28 Wn. App. 399, 623 P.2d 736 (1981).....	20

<i>Wagner v. Foote</i> , 128 Wn.2d 408, 908 P.2d 884 (1996).....	16
<i>Wallace v. Empl. Sec. Dep't</i> , 51 Wn. App. 787, 755 P.2d 815 (1988).....	5
<i>William Dickson Co. v. Puget Sound Air Pollution Control Agency</i> , 81 Wn. App. 403, 914 P.2d 750 (1996).....	4
<i>Wygol v. Kilwein</i> , 41 Wn.2d 281, 248 P.2d 893 (1952).....	8

Statutes

Const. art. II, § 19	6
Laws of 2006, ch. 13.....	6
RCW 34.05.010(11)(a)	21
RCW 34.05.461(1)(a)	21
RCW 34.05.464(2).....	21
RCW 34.05.510	3
RCW 34.05.542	21
RCW 34.05.570(1)(a)	3
RCW 34.05.570(3)(e)	7
RCW 34.12.010	21
RCW 50.01.010	4
RCW 50.20.050	1, 6
RCW 50.20.050(2)(a)	5
RCW 50.20.050(2)(b).....	6

RCW 50.20.050(2)(b)(viii)	passim
RCW 50.32.095	4
RCW 50.32.100	19, 20
RCW 50.32.110	18, 19, 20
RCW 50.32.120	3
RCW 50.32.150	3
RCW 50.32.160	17, 20

Other Authorities

Engrossed Substitute S.B. 6885	6
--------------------------------------	---

Rules

RAP 10.3(h)	8
RAP 18.1(b)	15
Rules of Professional Conduct 1.5	18
WAC 192-150-130(2)(b)	7

I. INTRODUCTION

The Respondent, Employment Security Department (Department), asks the Court to affirm the Commissioner's Decision which denied Charlotte King (King) unemployment benefits because she voluntarily quit her job without good cause, disqualifying her from benefits under RCW 50.20.050.

II. STATEMENT OF THE ISSUES

(1) Did the Commissioner err in finding that King did not have good cause to voluntarily quit pursuant to RCW 50.20.050(2)(b)(viii), which allows good cause to quit for deterioration of worksite safety?

(2) Does the Employment Security Act (Act) prohibit the award of attorney fees for work performed at the administrative level?

III. STATEMENT OF THE CASE

King, a certified nurse's assistant, was employed as caregiver to George Bartell, (Bartell), an 89 year-old man with dementia. Commissioner's Certified Record (CR) 12, 29, 76(3). She voluntarily quit after five years, because "[she believed that] she was in a position of danger" at the hands of George. CR 12-33, 76(2). Bartell was 5'6" tall, weighed 135 pounds, and had a colostomy bag attached to him. CR 9, 31,

76-7(3-4). King described him as “a very kind and gentle person.”
CR 22, 76(3).

King noted that Bartell’s dementia was becoming more pronounced over time. CR 77(5). The triggering event that led King to quit occurred while she was changing his colostomy bag. CR 13, 77(5). He became agitated and struck King in the chest with his fist. The blow had little or no effect on King. CR 13, 26, 77(4). King subsequently quit after giving two weeks notice to the employer.¹ CR 77(5).

King applied for and was denied benefits. CR 46-7. The Department’s decision was affirmed on appeal. CR 78. The Administrative Law Judge (ALJ) found that King was not “in jeopardy or in danger such that her circumstances constituted an emergency,” or that her “job conditions had substantially deteriorated.” CR 77[4].

On review before the Commissioner, King argued that “her workplace safety deteriorated, that she informed the employer, but that the employer did not correct the situation within a reasonable period of time.” CR 90. The Commissioner affirmed the ALJ’s decision, because King’s assertion of exigent circumstances was not credible:

¹ King and the other caregivers reported to the employer’s daughter, Jean Barber, who had power of attorney to manage the employer’s affairs in light of his dementia.

[I]f indeed the claimant's safety on [the day of the triggering event], deteriorated so suddenly that it had become an issue, which we do not find it suddenly was, we also do not find that the claimant gave the employer and his family adequate time to address the situation before the claimant decided to quit, or that the situation had become so emergent that the claimant had no option but to give her notice of her intent to quit three days after the incident. . . .

CR 90.

IV. STANDARD OF REVIEW

Judicial review is governed by the Washington Administrative Procedure Act (APA). RCW 34.05.510, RCW 50.32.120. The Court of Appeals “sits in the same position as the superior court” on review of the agency action under the APA. *Tapper v. Empl. Sec. Dep’t*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993). The Commissioner’s Decision is considered *prima facie* correct and the party challenging it has the burden of proving otherwise. RCW 34.05.570(1)(a), RCW 50.32.150; *Robinson v. Empl. Sec. Dep’t*, 84 Wn. App. 774, 777, 930 P.2d 926 (1996) (*reversed on a different issue*); *Safeco Ins. Co. v. Meyering*, 102 Wn.2d 385, 391, 687 P.2d 195 (1984); *Employees of Intalco Aluminum Corp. v. Empl. Sec. Dep’t*, 128 Wn. App. 121, 126, 114 P.3d 675 (2005).

King does not challenge the Commissioner’s Findings of Fact. Therefore, they are verities on appeal. *Tapper*, 122 Wn.2d at 407; *Fuller*

v. Empl. Sec. Dep't, 52 Wn. App. 603, 606, 762 P.2d 367 (1988). The Court's review, then, is limited to whether the findings of fact support the conclusion of law and judgment. *Brown v. Dental Disciplinary Bd.*, 94 Wn. App. 7, 13, 972 P.2d 101 (1998) (citing *In re Perry*, 31 Wn. App. 268, 269, 641 P.2d 178 (1982)).

Questions of law are reviewed *de novo* under the error of law standard. *Penick v. Empl. Sec. Dep't*, 82 Wn. App. 30, 37, 917 P.2d 136 (1996); *Tapper*, 122 Wn.2d at 403. The Court must give substantial weight to an agency's construction of statutory language and legislative intent where, as here, the statute is within the agency's area of expertise. *Macey v. Empl. Sec. Dep't*, 110 Wn.2d 308, 313, 752 P.2d 372 (1988); *William Dickson Co. v. Puget Sound Air Pollution Control Agency*, 81 Wn. App. 403, 407, 914 P.2d 750 (1996).

Under RCW 50.32.095, the Commissioner may designate certain Commissioner's decisions as precedent. Such precedents are persuasive authority for the court for interpreting the Act. *Martini v. Empl. Sec. Dep't*, 98 Wn. App. 791, 795, 990 P.2d 981, 984 (2000).

V. ARGUMENT

The Act was enacted to provide compensation to individuals who are unemployed through no fault of their own. RCW 50.01.010; *Tapper v. Empl. Sec. Dep't*, 122 Wn.2d at 408. Consequently, a person

who leaves employment voluntarily without statutory good cause is not eligible to receive unemployment benefits. RCW 50.20.050(2)(a).

Claimants carry the burden of establishing good cause to terminate employment and must establish good cause by a preponderance of the evidence. *Townsend v. Empl. Sec. Dep't*, 54 Wn.2d 532, 341 P.2d 877 (1959); *In re Murphy*, Empl. Sec. Comm'r Dec.2d 750 (1984).² On review, whether “good cause” existed to terminate employment is a mixed question of law and fact. *Terry v. Empl. Sec. Dep't*, 82 Wn. App. 745, 748, 919 P.2d 111, 114 (1996). *Wallace v. Empl. Sec. Dep't*, 51 Wn. App. 787, 755 P.2d 815 (1988); *Hussa v. Empl. Sec. Dep't*, 34 Wn. App. 857, 664 P.2d 1286 (1983). Since King acknowledges that she voluntarily quit, the sole issue to be decided in this case is whether she had good cause.

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

² Attachment 1.

A. King Has Failed To Meet Her Burden Of Proving That She Had Good Cause To Voluntarily Quit.³

The revised RCW 50.20.050(2)(b) sets out ten specific factual situations that constitute good cause for quitting work. This Court has construed RCW 50.20.050(2)(b) to contain no additional, open-ended circumstance of any type and “provides the exclusive list of good cause reasons for voluntarily quitting employment that will not disqualify a claimant from receiving unemployment compensation benefits.”

Starr v. Empl. Sec. Dep’t., 130 Wn. App. 541, 123 P.3d 517 (2005).

The good cause criterion that applies to King’s claim is:

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.

RCW 50.20.050(2)(b)(viii). This subsection only supports quitting for good cause when the employer has been informed about a problem and fails to correct it within a reasonable period of time. A “reasonable period

³ In a case completely unrelated to the statutory construction issues implied by King, the Court of Appeals, Division I, recently addressed whether prior session laws affecting RCW 50.20.050 had constitutional defects. *See Batey v. Empl. Sec. Dep’t*, 137 Wn. App. 506, 154 P.3d 266 (2007). *Batey* held that two bills that amended the voluntary quit statute of the Employment Security Act, RCW 50.20.050, were violations of the subject in title requirement of Article II, § 19 of Washington’s constitution. On March 27, 2007, the Department filed a Motion for Reconsideration with Division I in *Batey*. The Department requested that the Court clarify that its decision did not apply to ESSB 6885, Chapter 13, Laws of 2006, and its prospective application of the voluntary quit statute. *Batey*. The Motion for Reconsideration was granted. *Batey*, 137 Wn. App. at 514, n. 4. The Department is petitioning the Washington State Supreme Court for review of *Batey*. The decision in *Batey* gives no support to King’s implied challenge to *Starr v. Empl. Sec. Dep’t.*, 130 Wn. App. 541, 123 P.3d 517 (2005).

of time” is defined as “the amount of time a reasonably prudent person would have remained at the worksite or continued working in the presence of the condition at issue.” WAC 192-150-130(2)(b).

Claimants are required to “take all reasonable precautions to protect their employment status, including compliance with department regulations” to show good cause to voluntarily quit. *Nordlund v. Empl. Sec. Dep’t*, 135 Wn. App. 515, 525, 144 P.3d 1208 (2006). Here, King has not met her burden of demonstrating that her workplace safety deteriorated, that she reported such safety deterioration to the employer, and that the employer failed to correct the hazards within a reasonable period of time so as to constitute good cause for leaving employment pursuant to RCW 50.20.050(2)(b)(viii).

King is asking the court to reweigh evidence and the credibility of witnesses, contrary to the “substantial evidence” standard of RCW 34.05.570(3)(e). Appellant’s Brief at 17-18. King argues that the Commissioner erred in holding that she had not voluntarily quit for good cause. Appellant’s Brief at 2, 13. However, that is a conclusion of law based on unchallenged findings of fact. *Koster v. Wingard*, 50 Wn.2d

855, 314 P.2d 928 (1957). Therefore, her assignment of error is without merit.⁴ *Wygala v. Kilwein*, 41 Wn.2d 281, 248 P.2d 893 (1952).

1. King's Workplace Safety Remained Stable Throughout Her Five-Year Tenure With The Employer.

Good cause to voluntarily quit due to a deterioration in workplace safety exists "if a reasonably prudent person could conclude that the work presented a risk to his safety which went beyond the basic nature of the work." *In re Crawford*, Empl. Sec. Comm'r Dec.2d 777 (1986).⁵ If the work is in a claimant's customary occupation, she:

must be willing to face normal risks of that work Normally, the worker who feels [her] safety is being compromised by some practice or condition should try to have the situation corrected before leaving. However, if the situation is such that it presents an immediate danger, the worker need not detachedly and leisurely explore every avenue short of quitting.

In re Crawford, citing *In re Knutson*, Empl. Sec. Comm. Dec. 679 (1966).⁶

King admitted that she could never imagine the employer hurting her, and she had been on notice that Bartell's dementia was becoming

⁴ "In addition to the assignments of error required by rule 10.3(a)(3) and 10.3(g), the brief of an appellant . . . who is challenging an administrative adjudicative order under RCW 34.05 . . . shall set forth a separate concise statement of each error which a party contends was made by the agency issuing the order, together with the issues pertaining to each assignment of error." RAP 10.3(h).

⁵ Attachment 2.

⁶ Attachment 3.

more pronounced. CR 13, 22, 76(3), 77(5). Contrary to her assertion that safety conditions had deteriorated, she did not request relief of any type:

Q: Did you inform the employer that you thought a second person should be present while you were watching Mr. Bartell?

A: No.

Q: You didn't ask that they have somebody else present?

A: No.

Q: And did you ask them if they would consider medication?

A: Um, medication, like I had said before, was tried when he was in the hospital. And it had reverse effect. And medication was discussed with Dr. Bender. But Dr. Bender was very reluctant because he was afraid that it would make him more groggy, you know, instead of trying to get a good night's rest where he'd have better days he would, you know, drugs can wear on. And I just honor the doctor's response.

CR 16, 27.

To establish good cause due to a safety risk, a claimant must show that the risk was greater for her than for other employees working under the same conditions. *In re Hamilton*, Empl. Sec. Comm'r Dec.2d 490 (1979);⁷ *In re Smalley*, Empl. Sec. Comm'r Dec.2d 1242 (1975).⁸ Here, the other caregivers did not similarly perceive the workplace safety conditions in the same light as King:

[a]ll my other caregivers have continued to work. And, again, although there may have been instances that have been happening, nobody has informed me. And they all do know that they are supposed to if something happens. . . .

⁷ Attachment 4.

⁸ Attachment 5.

CR 32. Against this backdrop, the Commissioner concluded that the September 14, 2005, incident was not indicative of King's workplace safety having had deteriorated so suddenly that it warranted immediate separation. CR 90.

In King's case, the evidence does not show that "related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor" or that there would have been "unconscionable hardship" to King if she stayed on the job. *In re Luther*, Empl. Sec. Comm'r Dec.2d 582 (1979),⁹ quoting *In re Smalley*, Empl. Sec. Comm. Dec. 1242 (1975).¹⁰ Nor has King shown "any greater risk to his safety than that of any other individual performing comparable work." *In re Luther*, Empl. Sec. Comm'r Dec.2d 582 (1979). King has not met her burden demonstrating that her workplace safety deteriorated.

2. King Failed To Timely Notify The Employer's Family Of Deteriorating Safety Conditions.

To show good cause for a voluntary quit under RCW 50.20.050(2)(b)(viii), a claimant is required to report deteriorations in safety conditions to the employer *prior* to quitting. Claimants must make a reasonable effort to put the employer on notice of an unsafe

⁹ Attachment 6.

¹⁰ Attachment 7.

condition prior to quitting. *In re Atkinson*, Empl. Sec. Comm'r Dec.2d 621

(1980).¹¹ For example, the claimant *In re Atkinson*:

[d]iscussed his safety concerns with his foreman, with his shop stewards and with representatives of the Department of Labor and Industries prior to quitting. He participated in two incidents in January and February when workmen walked off the job in protest of safety conditions and lack of sufficient medical personnel. He cited one instance when a person was injured on the job and had to wait four hours for medical help when his wife arrived to take him to the hospital. The only response he received from his employer was to threaten him with discharge, and the union apparently took no action. . . .

Id. The Commissioner found that Atkinson “did in fact establish that working conditions were hazardous and posed a substantial degree of risk to his safety” because he “took very active steps ... to attempt to have the working conditions corrected.” *Id.*

King contends that she complied with the notice requirements of the statute because she “notified the family of the final punching incident and provided them a two-week notice *in which the employer could have taken additional remedial action but did not do so.*” Appellant’s Brief at 16 (emphasis added). However, claimants seeking relief under RCW 50.20.050(2)(b)(viii) are supposed to give notice of the safety concern to the employer, allow the employer a reasonable period of time to remedy the grievance, and then, if the remedy is unsatisfactory, quit.

¹¹ Attachment 8.

King gave notice of her intent to quit without allowing the employer to respond. CR 32-33. Furthermore, the employer *did* remedy the situation by notifying all staff members and changing the schedule. CR 30, 61-62.

King mischaracterizes the factual history preceding her separation. She contends that she “had first notified the employer 1 year and 4 months prior to her quitting of safety concerns and the employer was therefore aware of these concerns.” *Id.* However, King did not alert the employer's family¹² that the employer had acted erratically in the past:

Q: Did you report this incident [of the employer holding a knife demanding his car keys] to the [employer's family]?

A: No, I didn't.

Q: Why didn't you?

A: Um, after talking to my friends the night of the incident, coming back the next morning on shift, I talked to Jason about it and I had full -- I was going to tell the family about it. . . And Jason had kind of talked me out of it, to do a wait and see. . . . I mean, we all know where our passions are, and Jason knows where my passion is, as I'm sure Jean does, and that's to keep her father at home as long as possible. And Jason said Charlie, if you tell the family this they're going to put him in an institution. So he knew - so he says let's just do a wait and see. And I agreed.

CR 17. Also, King continued working for the employer in the same conditions that she alleged were unsafe, making her claims of an intolerable deterioration of safety conditions disingenuous. CR 62. King

¹² King and the other caregivers reported to the employer's daughter, Jean Barber, who had power of attorney to manage the employer's affairs in light of his dementia.

may have had other motivations for separating from the employer rather than her concerns over safety:

[C]harlie was under a lot of stress at the time. As of, I believe it was the 2nd of September, she heard that her grandmother had a stroke, and she left immediately. I gave her an extra week of vacation so she could go see her grandmother, because she'd already used up her vacation time. And, you know, she came back and had worked one shift prior to this one after that incident. So there was a lot going on in her life, and, you know, I didn't have any more communication around this other than that.

CR 33, 56-57.

Because King did not report the deterioration of safety conditions to the employer prior to voluntarily quitting, she has not shown good cause under RCW 50.20.050(2)(b)(viii).

3. King Failed To Give The Employer's Family Adequate Time To Address The Situation.

RCW 50.20.050(2)(b)(viii) requires a claimant to allow the employer a reasonable period of time to correct reported safety deficiencies. To show good cause due to deterioration in workplace safety, claimants must make their "complaints known and . . . not quit until full opportunity was had to remedy the situation. *In re Townsend*, Empl. Sec. Comm'r Dec.2d 302 (1977). One must make a "reasonable effort to solve . . . problems and continue the employment relationship." *In re Sweeney*, Empl. Sec. Comm'r Dec.2d 1255 (1975).

Here, the employer's family received the email reporting the September 14, 2005, incident and King quit after the following shift:

[T]here was one question that you talked to Charlie, you know, asked Charlotte, about how much communication occurred after this instance. The only communication was my two line e-mail. I left town, and when I came back she had sent an e-mail to my brother resigning. So we hadn't communicated any more about this instance.

CR 32-33. King did not allow the employer any time to address her grievances, contrary to the requirements of RCW 50.20.050(2)(b)(viii).

In sum, King has not met her burden as required by RCW 50.20.050(2)(b)(viii) to show good cause for voluntarily quitting. The record shows that the triggering incident was not exceptional in light of the employer's history of behavior coincident with dementia. CR 16, 27, 32. King failed to report similarly erratic behavior to the employer's family that had occurred over the years, demonstrating deterioration in safety conditions. CR 17, 33. After reporting the September 14, 2005, incident, King failed to allow the employer time to address or remedy the situation, because she had already given her notice to quit. CR 32-33.

The Department's initial determination found that King had not shown good cause to voluntarily quit due to deterioration in workplace safety. CR 46-47. On appeal, an administrative law judge similarly

concluded that King had not shown good cause to voluntarily quit pursuant to RCW 50.20.050(2)(b)(viii). CR 78. On review, the Commissioner agreed. CR 90.

The factual circumstances of King's case do not meet the requirements to establish good cause due to a deterioration of workplace safety. King did not comply with the statute's requirement of notifying the employer of the condition and allowing the employer a reasonable period of time to remedy the situation prior to quitting either. The Commissioner's decision finding that King voluntarily quit without good cause is a correct application of law supported by substantial evidence.

B. The Employment Security Act Prohibits the Award of Attorney Fees For Work Performed At The Administrative Level.

The Appellant's Brief commits substantial discussion to the argument that King is entitled to attorney fees. Although RAP 18.1(b) allows an appellant to dedicate a section in the brief to the request for attorney fees, King has included argument on the reasonableness of her attorney fees. This argument is premature. The issue of attorney fees was not at issue below, either before the superior court or the agency. Since the Court at this point is only reviewing the validity of the agency's final order, the reasonableness of King's attorney fees is not properly before the Court.

Nonetheless, Washington follows the American Rule of attorney fees under which each party to a case is expected to assume his or her own attorney fees. *Wagner v. Foote*, 128 Wn.2d 408, 416, 908 P.2d 884 (1996). *See also Rettkowski v. Dep't of Ecology*, 76 Wn. App. 384, 389, 885 P.2d 852 (1994), *aff'd in part, rev'd on other grounds in part*, 128 Wn.2d 508, 519-20, 910 P.2d 462 (1996). Under this rule, attorney fees are not recoverable unless “authorized by a private agreement, statute, or a recognized ground of equity.” *Marine Enter., Inc. v. Sec. Pacific Trading Corp.*, 50 Wn. App. 768, 771, 750 P.2d 1290 (1988), *review denied*, 111 Wn.2d 1013 (1988). *See also Wagner*, 128 Wn.2d at 416; *McGreevy v. Oregon Mut. Ins. Co.*, 128 Wn.2d 26, 904 P.2d 731 (1995), *citing* Philip A. Talmadge, *The Award of Attorneys' Fees in Civil Litigation in Washington*, 16 Gonz.L.Rev. 57 (1980). Because unemployment compensation cases arise under the APA, Washington courts lack equitable authority to grant attorney fees in such cases. *Pennsylvania Life Ins. Co. v. Empl. Sec. Dep't*, 97 Wn.2d 412, 417, 645 P.2d 693 (1982).

The attorney fees provisions in the Employment Security Act serve to: (1) regulate attorney fees and costs for the protection of unemployment benefit claimants (whether incurred in the administrative or court proceedings), and (2) provide that only those fees and costs

incurred in the court proceedings are payable out of the unemployment compensation administration fund.

1. The Employment Security Act Requires Attorney Fees To Be Reasonable.

The Employment Security Act (Act) provides a statutory exception to the American Rule of attorney fees in certain unemployment litigation cases. RCW 50.32.160. Under this rule, reasonable attorney fees in connection with judicial review may be recovered and paid from the unemployment administration fund “if the decision of the commissioner shall be reversed or modified.” RCW 50.32.160. The statute is specific in its requirement of “reasonable attorney fees” and designates certain courts to determine these 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 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 fund.

RCW 50.32.160 (emphasis added).

The Act further provides:

No individual shall be charged fees of any kind in any proceeding involving the individual’s application for initial

determination, or claim for waiting period credit, or claim for benefits, under this title by the commissioner or his representatives, or by an appeal tribunal, or any court, or any officer thereof. Any individual in any such proceeding before the commissioner or any appeal tribunal may be represented by *counsel* or other duly authorized agent who *shall neither charge nor receive a fee for such services in excess of an amount found reasonable by the officer conducting such proceeding.*

RCW 50.32.110 (emphasis added).

To determine whether a requested fee is reasonable, the Court should consider both: (1) the reasonableness of the hourly rate when compared to the hourly rates typically charged in the area for similar services and (2) the amount of time spent completing a task. *Cobb v. Snohomish County*, 86 Wn. App. 223, 237, 935 P.2d 1384 (1997). The results obtained and the level of skill necessary for the representation should also be considered. RPC 1.5; *Osborn v. Grant County*, 130 Wn.2d 615, 926 P.2d 911 (1996).

2. Attorney Fees For Work Performed At The Administrative Level Are Not Compensable Out Of The Unemployment Compensation Fund.

Under the Employment Security Act, attorney fees for work performed at the administrative level are not compensable out of the unemployment compensation fund. The Act provides:

In all proceedings provided by this title prior to court review involving dispute of an individual's initial determination, or claim for waiting period credit, or for

benefits, the fees of all witnesses attending such proceedings pursuant to subpoena shall be paid at the rate fixed by such regulation as the commissioner shall prescribe and such *fees and all costs of such proceedings otherwise chargeable to such individual, except charges for services rendered by counsel or other agent representing such individual, shall be paid out of the unemployment compensation administration fund.* In all other respects and in all other proceedings under this title the rule in civil cases as to costs and attorney fees shall apply: PROVIDED, that cost bills may be served and filed and costs shall be taxed in accordance with such regulation as the commissioner shall prescribe.

RCW 50.32.100 (emphasis added). Thus, in proceedings prior to court review, i.e. administrative proceedings, attorney fees are specifically excluded from payment out of the unemployment compensation fund. RCW 50.32.110 limits attorney fees to an amount found reasonable, it does not allow administrative attorney fees to be paid out of the fund.

Ancheta v. Daly, 77 Wn.2d 255, 461 P.2d 531 (1969), stands for the proposition that attorney fees incurred at the administrative level are not payable out of the state fund. In *Ancheta*, the superior court, in awarding attorney fees, included those incurred in the administrative proceedings. *Ancheta*, 77 Wn.2d at 265. The Commissioner there contended that “only fees for court proceedings are payable out of state funds.” *Id.* at 265-66.

In addressing the issue of “the allowance of attorneys’ fees out of the unemployment compensation administration fund,” the Supreme Court

considered the three provisions quoted above: RCW 50.32.100, 50.32.110, and 50.32.160. *Id.* at 265-66. In reading these provisions, the *Ancheta* court stated that “the purpose of the [three] statutes when read together is to provide for regulation of attorney fees incurred in relation to administrative or court proceedings” and that “when the commissioner erroneously denies unemployment compensation, the subsequent fees and costs incurred in court proceedings are compensable from state funds.” *Ancheta*, 77 Wn.2d at 266.

Because there was “no evidence in the record showing how the superior court determined the fees allowed,” the *Ancheta* court remanded the case “for a determination as to what would constitute reasonable attorney fees at both the administrative level and in the superior court.” *Id.* at 266. But the court cautioned: “Only those fees and costs for services in the appeal to the superior court shall be compensable out of the unemployment compensation administration fund.” *Id.* at 266-67.

Despite the Supreme Court’s holding in *Ancheta*, King quotes *Gibson v. Empl. Sec. Dep’t*, 52 Wn. App. 211, 758 P.2d 547 (1988), and *Vergeyle v. Empl. Sec. Dep’t*, 28 Wn. App. 399, 623 P.2d 736 (1981), for the proposition that she is allowed attorney fees incurred at the administrative level. Those cases did not squarely address the issue of whether such fees are payable out of the state fund. Thus, their comments

are dicta. See generally *In re Burton*, 80 Wn. App. 573, 582, 910 P.2d 1295 (1996).

King asserts it is illogical to allow attorney fees for judicial-level work and not for administrative-level work. Appellant's Brief at 32. However, such a result was clearly within the purview of the Legislature. *Gluck v. Empl. Sec. Dep't*, 84 Wn.2d 316, 318, 525 P.2d 768 (1974) (unemployment benefits are a privilege granted by statute, not a right). "If the [petitioner] feels this consequence is unduly harsh, [her] redress is to the legislature." *In re Bale*, 63 Wn.2d 90, 385 P.2d 545 (1963).

The Legislature had a reasoned basis in limiting attorney fees to work performed during judicial review of an agency action. First, the work done at the administrative level is mostly before Office of Administrative Hearings (OAH), a separate and independent state agency than the Department. RCW 34.12.010. Only the action of the Commissioner (not the OAH) is reviewable by the court. See RCW 34.05.461(1)(a) and RCW 34.05.464(2) (distinguishing between initial orders and final orders). *Bock v. State Bd. of Pilotage Comm'rs*, 91 Wn.2d 94, 99, 586 P.2d 1173 (1978); *Valley View Indus. Park v. City of Redmond*, 107 Wn.2d 621, 634, 733 P.2d 182 (1987); RCW 34.05.542 and RCW 34.05.010(11)(a) (only the agency's final order is reviewable).

Second, in the case of a reversal, the claimant is left in the same position as she would have been in had the Commissioner initially awarded benefits: responsible for her own attorney fees at the administrative level. A claimant who prevails on appeal should not be awarded an unfair benefit not given to claimants who initially prevail before the Commissioner.

Finally, the Department has limited funds which must be preserved for the benefit of Washington's unemployed workers. The Legislature has authority to make an economic decision that administrative attorney fees are not the best way to spend limited funds.

In sum, should King prevail on appeal, she would not be entitled to attorney fees for work performed at the administrative level because such fees are not recoverable from the unemployment compensation fund. Also, King would not be permitted to recover attorney fees in an amount that is unreasonable. A reasonable fee rate is one that is comparable to the compensation provided to court appointed attorneys or guardian ad litem.

Here, King has not submitted a cost bill, so the Department is unable to discuss the reasonableness of her attorney or paralegal fees.

Should it become necessary, the Department will require additional time to respond after a properly submitted cost bill.¹³

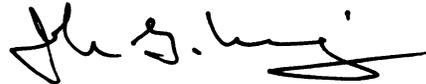
¹³ The Department's response would address the requested hourly rate, the amount of time spent completing tasks, as well as the general reasonableness of the fee requested.

VI. CONCLUSION

The Commissioner determined that King voluntarily quit her job without good cause under the relevant statute and, thus, was not eligible to receive unemployment benefits. Substantial evidence supports this decision and it contains no errors of law. Therefore, the Department respectfully asks that this Court affirm the Commissioner's Decision denying King unemployment benefits.

RESPECTFULLY SUBMITTED this 12th day of June, 2007.

ROBERT M. MCKENNA
Attorney General



JOHN G. MACEJUNAS
WSBA No: 37443
Assistant Attorney General
Attorney for Respondent
(360) 753-4556

Attachment 1

his burden of proof.

On the evidence presented, this is a "close case". However, we do not have to be persuaded beyond a reasonable doubt as to the true state of affairs. Nor do we have to be clearly, cogently, and convincingly persuaded. It is our only duty to determine what more likely happened. In making that judgment we should not simply consider the testimony and demeanor of the conflicting witnesses; rather we should look to the totality of the circumstances presented and the logical persuasiveness of the respective positions in light of the total circumstances.

In the instant case, the trier of fact felt unable to resolve the factual issues that were presented. In view of this, we conclude that the proper procedure is to remand the case for a hearing de novo. Accordingly,

IT IS HEREBY ORDERED that this matter be REMANDED for a hearing and a decision de novo. Any interested party feeling aggrieved by the Office of Administrative Hearings' decision shall have further rights of appeal to the Commissioner, pursuant to the provisions of RCW 50.32.070.

DATED at Olympia, Washington, March 30, 1984.



Commissioner's Delegate

Attachment 2

II.

The boilers in question had been malfunctioning since the prior day, and the necessary repair parts had been ordered erroneously by the employer, and hence at the time of the incident in question, the boilers were still impaired. During the exchange between petitioner and Mr. Campbell, petitioner was essentially instructed in no uncertain terms, to get the boilers going and to always keep them going. Mr. Campbell did not provide any guidance as to how that may have been accomplished, nor did he express any awareness that safety factors may have been involved.

III.

It is clear from the record that petitioner has a detailed knowledge of pertinent aspects of the operation and functioning of boilers. In his testimony, he exhibited his clear understanding of the functioning and malfunctioning of boilers, and the hazards of operating malfunctioning boiler. Petitioner also possesses a working understanding of WAC regulations and professional safety standards relating to boiler operations, according to his unchallenged testimony. (See also Exhibit 7, Pg. 1,2,3). To operate the boilers in the conditions existing at the time was unsafe, against all reasonable operating practices and in violation of the above regulations and standards. Petitioner felt he could not ask the men he supervised to work under those conditions, nor could he so work.

IV.

Petitioner is currently unemployed, but is able and available for work, and is actively seeking employment.

From the foregoing Findings of Fact, the undersigned frames the following.

ISSUE

Has petitioner met his burden to establish good cause for voluntarily terminating his employment so as not to be subject to disqualification under RCW 50.20.050?

From the issue as framed, the undersigned does adopt the following

CONCLUSIONS

I

The provisions of RCW 50.20.050 and WAC 192-16-009 through WAC 192-16-017 are applicable. An indefinite period of disqualification is imposed denying benefits to an individual who leaves work voluntarily without "good cause".

II

Generally speaking, to show "good cause" the petitioner must establish that work-related circumstances were of such a compelling nature as to cause a reasonably prudent person to leave his or her employment. Necessarily, the petitioner must exhaust those reasonable alternatives which might preserve the employer/employee relationship.

III

Good cause may not be found based upon work-related factors generally known and present at the time of hire, unless:

(a) the petitioner can establish that the work-related circumstances have substantially and involuntarily deteriorated; or

(b) the petitioner can show that continued employment would be "shockingly harsh" due to circumstances which are not the result of the petitioner's voluntary action.

IV

Good cause for voluntarily leaving work must be granted if a reasonably prudent person could conclude that the work presented a risk to his safety which went beyond the basic nature of the work. If the work is in the petitioner's customary occupation, he must be willing to face normal risks of that work. But he need not expose himself to risks which are due to the actions of his particular employer. Normally, the worker who feels his safety is being compromised by some practice or condition should try to have the situation corrected before leaving. However, if the situation is such that it presents an immediate danger, the worker need not detachedly and leisurely explore every avenue short of quitting. In re Knutson Comm. Dec. 679 (1966).

V

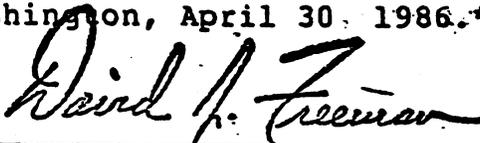
The Administrative Law Judge pointed out that petitioner quit because of the argumentative discussion between the petitioner and Mr. Campbell. That may be true, but it is actually more of an "occassion" for quitting, than the reason for quitting. It is apparant from the record that petitioner's reasons for quitting were his fear for the safety of himself and others, and his unwillingness to operate malfunctioning boilers contrary to lawful regulations and accepted safety.

standards. We conclude these are valid reasons for quitting, and hence conclude that good cause has been established.

Accordingly, now, therefore,

IT IS HEREBY ORDERED that the Decision of the Office of Administrative Hearings entered in this matter on March 21, 1986, shall be SET ASIDE. Benefits shall be allowed pursuant to the provisions of RCW 50.20.050 provided the petitioner is otherwise eligible therefor.

DATED at Olympia, Washington, April 30, 1986.*



Commissioner's Delegate

* Copies of this Decision were mailed to the interested parties on this date.

Attachment 3

BEFORE THE COMMISSIONER OF
THE EMPLOYMENT SECURITY DEPARTMENT
OF THE STATE OF WASHINGTON

Review No. 7543

In re)	Case No. 679
)	Docket No. A-58314
DEAN A. KNUTSON,)	
SSA #544-36-9208)	
)	DECISION OF COMMISSIONER
Petitioner)	

DEAN A. KNUTSON, represented by A. L. Stevens, Business Representative, Local 883, Teamster's Union, duly petitioned the undersigned Commissioner to review a Decision of an Appeal Tribunal entered in this matter on the 25th day of October, 1966. Having now completed a thorough examination of the record and files herein, thereby being fully advised in the premises, the Commissioner hereby enters the following:

FINDINGS OF FACT

I

The appellant is classified occupationally as a truck driver. He is a member of the Teamster's Local No. 883, Hood River, Oregon. He began employment with the interested employer in April of 1966 and last worked on July 21, 1966. He was originally hired as a truck driver at a wage rate of \$3.45 per hour, but at the time that he quit he had been operating a Euclid #17 ("Hardtail"), doing some hauling from a gravel pit.

II

The brakes on the Euclid were in poor repair and the transmission gears would slip out when the machine was going up or down hill. The steering gear was also faulty. The appellant had spoken to his supervisor about the poor condition of the equipment and it had been repaired to a certain extent after a minor accident but still had not been put in condition so that it was safe to operate. The business agent for the heavy equipment division for the Teamster's Union with which the employer had a working agreement had been on the job and had discussed the poor conditions of the equipment with the foreman. Corrective action was not taken prior to the time that the appellant left.

III

On Friday, July 22, 1966, the petitioner was scheduled to work a swing shift in lieu of his regular shift commencing at 5:00 a.m. in the morning. Another worker who took the petitioner's place on the day shift drove the truck normally assigned to the petitioner. After making one trip with this equipment, the other employee walked off the job, resulting in the employer calling the petitioner at 6:30 a.m. to come to work immediately and finish out the shift. The petitioner refused to do so and gave notice of quitting at that time.

From the foregoing Findings of Fact, the Commissioner frames the following:

ISSUE

Did the petitioner voluntarily quit work without good cause, thereby incurring disqualification pursuant to Section 73 of the Act?

From the Issue as framed, the Commissioner draws the following:

CONCLUSION

Having admitted that he voluntarily quit work, we are left to determine whether or not the petitioner had "good cause" for so doing within the meaning of Section 73 of the Act. As pointed out by the Appeal Tribunal, we are obliged to consider the provisions of Section 78 of the Act in ascertaining the presence or absence of good cause. Pertinent to our discussion of the provisions of Section 78 of the Act is that portion of said section which relates specifically to "the degree of risk involved to his health, safety and morals, . . ."

We are satisfied that the record shows that the petitioner was assigned to operate mechanically defective equipment. Not only had the petitioner pointed out his concern in this area to the employer, but the business agent of his union had voiced an objection concerning the condition of the equipment to the foreman of the employer as well. It appears that the employer took only limited steps to alleviate the obvious difficulties and that these steps were totally inadequate. We can only conclude that continued operation of this equipment by the petitioner would have constituted a substantial risk to his

health and safety, thereby giving him good cause for quitting his work.

It is pointed out by the Appeal Tribunal that the precipitant cause for the petitioner's voluntary quit was his being called to work an extra shift for which he had not been scheduled. While we must agree with this observation, it is our belief that this circumstance served only as the occasion of, but not the reason for, the petitioner's voluntary termination. Being satisfied that the petitioner was required to operate defective equipment and that such requirement constituted a substantial risk to his health and safety, good cause for quitting is clearly established within the meaning of Section 73 of the Act. The actual timing of the quit under the circumstances presented is not, in our opinion, material to the fundamental issue of good cause. Accordingly,

IT IS HEREBY ORDERED that the Decision of the Appeal Tribunal entered in this matter on the 25th day of October, 1966, shall be SET ASIDE. Benefits shall be allowed the petitioner commencing with the week ending July 23, 1966, through the week ending August 27, 1966, providing he is otherwise eligible and qualified therefor.

DATED at Olympia, Washington, December 13, 1966.

MAXINE E. DALY
Commissioner
Employment Security Department

Attachment 4

of American personnel in Turkey but did advise precautions regarding travel in the area. The claimant contends that his job separation was not a "quit" because he had completed the two year term of the contract at the time he left. He was aware that he could have continued in the job had he so desired. His last day of actual work was approximately June 7, 1978, at which time he took accrued vacation time.

From the foregoing Findings of fact, the undersigned frames the following

ISSUE

Did the claimant voluntarily quit work without good cause pursuant to RCW 50.20.050?

From the Issue as framed, the undersigned draws the following

CONCLUSIONS

I

The provisions of RCW 50.20.050 apply to one who voluntarily leaves work. The claimant herein had the right to an indefinite term of employment with Boeing, subject to termination by either party on giving sixty days' written notice. The claimant voluntarily elected to terminate that agreement, thereby severing the employment relationship and RCW 50.20.050 is therefore the appropriate statute under which to adjudicate claimant's entitlement to unemployment benefits. In re Wood, Docket No. 8-08814, Review No. 31998 (12/29/78). (Insofar as the Appeal Tribunal's Conclusion No. 4 appears to consider the provisions of RCW 50.20.080, disqualification for refusal to work, we must respectfully disagree due to the foregoing.)

II

We adopt Conclusions 1, 2 and 3 of the Appeal Tribunal's Decision as if fully set forth herein. Briefly, an indefinite period of disqualification from benefits will be imposed against one who leaves work voluntarily without good cause. RCW 50.20.050 provides in pertinent part that to establish good cause consideration shall be given to the degree of risk involved to the individual's safety. It further provides that good cause will not be established where the quit is due to distance or other work related factors known at the time, unless the work-related factors have substantially and involuntarily deteriorated or that other related circumstances would work an unconscionable hardship on the individual.

Considering first the claimant's allegations regarding safety due to civil unrest in Turkey, it was not established that he and his family were in any significant danger. He acknowledged that there was no violence, merely demonstrations involving school personnel. In order to establish good cause due to risk to safety, it must be established that the risk was greater for the individual claimant than for other employees working under the same conditions. In re Smalley, Comm.Dec. 1242 (1975). The facts herein show that claimant and all other American personnel in Turkey had reason for some concern, as evidenced by the travel precautions. Claimant did not establish that continued employment constituted a substantial risk to his safety. In re Beal, Comm. Dec. 1196 (1974).

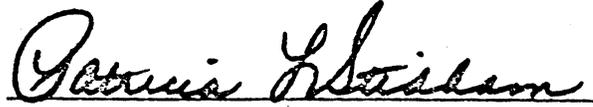
III

With respect to claimant's cost of living increase as part of his decision to quit his job, as noted above the statute requires that the quit was due to work related factors. Generally speaking, inflation is not a work related factor, but is a general economic condition presently prevalent in the United States and many other countries. An individual's difficulty in paying normal monthly living expenses with wages received from his job cannot constitute good cause for leaving work under RCW 50.20.050. To hold otherwise would create an indefinable, subjective criterion for determining good cause based only upon the individual claimant's ability to budget and spend his earned income. In re Brunk, Comm.Dec. (2nd) 399 (1978). In effect, claimant is urging that his rate of pay was insufficient to meet his inflated living expenses. Dissatisfaction with one's rate of pay does not constitute good cause for quitting one's job. Cowles Publishing Co. v. Employment Security Department, 15 Wash. App. 590, 550 P.2d 712 (1976). Claimant did not establish that he had good cause for voluntarily leaving this employment. Accordingly

IT IS HEREBY ORDERED that the Decision of the Appeal Tribunal entered in this matter on the 17th day of October, 1978, shall be SET ASIDE. Pursuant to RCW 50.20.050, benefits shall be denied the claimant beginning June 11, 1978, and continuing thereafter until he has obtained work and earned wages of not less than his

suspended weekly benefit amount in each of five calendar weeks.

DATED at Olympia, Washington, FEB 15 1979



Commissioner's Delegate

AMERICAN EMPLOYERS' ASSOCIATION

III SUPPLEMENTAL AGREEMENT

between Basing Services International, Inc. ("BSI") and: [Signature] Middle

AGREEMENTS

Upon completion of the period of performance for the above-referenced AGREEMENT, as defined in PART II - SPECIFIC TERMS AND CONDITIONS, said AGREEMENT shall remain in full force and effect for an indefinite period...

[Signature] Employee Date 14 May 76 [Signature] BSI Representative Date 15 May 76

written notice of BSI's intent to execute such termination. Upon completion of the written notice period, BSI shall have no further obligation for compensation of the employee.

21.0 SECURITY OF EMPLOYMENT

If it is determined that the employee is denied a right to work in the United States Government, it is the discretion of the United States Government to terminate this agreement...

22.0 CERTIFICATION OF EMPLOYEE

I understand and agree to all of the general terms and conditions stated herein. For this, I certify that the terms "Specific Terms and Conditions" constitute my entire understanding with BSI and that no other promises or understandings have been made.

[Signature] Signature of Applicant Date 14 May 76

[Signature] Signature of Spouse Date 14 May 76

BSI's employment offer to you is contingent upon your return of this booklet properly signed for both you and your spouse. An extra copy is provided for your records.

This agreement, made and entered into this 10th day of May, 1946 between Boeing Services

International, Inc. (BSI), and:

William Henry Denny Middle
Last Name First Middle

SS No. 330-28-1060, for the position of:

Head Senior Supervisor
Title

at an annual rate of salary of \$ 12,000.

Mr. William Henry will be assigned to Detachment 12 No. 12000

located at 12000, Turkey. The terms of this agree-

ment will start the 10 day of May, 1946, and will

continue through the 15 day of June, 1946.

12 hours duration

The following information is a part of the terms and conditions of employment.

Passport No.: E 2289416

Point of Hire: St. Charles, MO
City & State

Allowance: _____ lbs.

Household Goods: 4,000 lbs. Refrigerator

Maximum of 3 travel days

Residence of St. Charles, MO
City & State

BA Hamilton
Name

Wife 35 E 2289847
Relationship Age Passport No.

SU-LAI Hamilton
Name

Daughter 7 E 2288617
Relationship Age Passport No.

Name

Relationship Age Passport No.

I understand and acknowledge that the above specific terms and conditions along with the general terms and conditions of Part I, "General Terms and Conditions," in this booklet constitute my entire employment agreement with BSI.

Henry L Hamilton 14 May 46
Employee Date

Greg Hamilton 5-10-46
BSI Representative Date

In case of emergency, notify: Please Complete

MARLE M. ROSEMAN
Name

1903 6TH ST
Address

MADISON ILL 62060
City & State Zip

618 876-1857
Area Code Phone No.

Attachment 5

BEFORE THE COMMISSIONER OF
THE EMPLOYMENT SECURITY DEPARTMENT
OF THE STATE OF WASHINGTON

Review No. 22121

In re:)
) DOCKET NO. 4-12594
ALONZO R. SMALLEY)
SSA # 534-34-9131)
) DECISION OF COMMISSIONER
-----)

On the 20th day of January, 1975, the undersigned Commissioner issued an Order taking the above-entitled matter under advisement on his own motion for the purpose of reviewing a Decision of an Appeal Tribunal entered with respect thereto on the 9th day of January, 1975. Having now completed a thorough examination of the record and files herein, thereby being fully advised in the premises, the Commissioner does hereby enter the following:

FINDINGS OF FACT

I

The claimant herein, ALONZO R. SMALLEY, is a steamfitter by occupation, and a member of the Steamfitter's Union, Local #82. On November 11, 1974, he was referred to a job at the Tacoma Smelter, where he was employed by the interested employer, Stearns-Roger, Inc. The area where he was working was approximately 1000 yards from the actual smelter operation. However, there was some sulfur pollution in the area, which was worse at some times than at others. The claimant felt some throat irritation as a result of the sulfur. There were respirators in the area for use if needed, but the claimant made no attempt to use them.

II

It is established that the claimant had an allergy to sulfa drugs. He states that his wife also had certain allergies, for which she was taking medication, and that the literature she

had indicated that continued exposure to an allergic condition could be fatal. He assumed that sulfur was a form of sulfa, and that he was being exposed to a condition which could conceivably result in serious consequences. He did not consult with his doctor at the time, but on November 19th explained his problem to his foreman, and requested a lay-off. It appears he understood this would be allowed, so left the job. The foreman did not have authority to grant a lay-off, but reported claimant's departure to his superiors, who considered that the claimant had quit his job.

III

Subsequent to leaving the job, the claimant consulted with a doctor who explained to him that sulfa and sulfur were dissimilar, and that exposure to the sulfur would not create any danger to him because of his allergy to sulfa. Further, that the only problem which could be caused by exposure to the sulfur would be some throat irritation.

IV

Employer testimony indicates that areas of substantial exposure to sulfur pollution are monitored, and that the area where the claimant was working was not monitored because it was not considered to have any substantial pollution, being separated as it was from the main plant. Further, that every effort was made to insure safe working conditions for all employees.

From the foregoing Findings of Fact, the Commissioner frames the following:

ISSUE

Is the claimant subject to disqualification pursuant to RCW 50.20.050?

From the Issue as framed, the Commissioner draws the following:

CONCLUSION

The Appeal Tribunal in its Decision finds that the claimant had established good cause for leaving his employment, based apparently on the promise that the claimant believed that he had no alternative but to quit when he did, and was acting in good faith in doing so. We are unable to agree.

In considering the degree of risk to an individual's health or safety within RCW 50.20.100, it must be established that the risk was greater for the person than for other employees working under the same conditions. Also, in considering whether the individual has established good cause within RCW 50.20.050, it must be established that he made a reasonable effort to retain his employment, and had no alternative but to quit when he did.

We believe the record will show that the claimant was not working under conditions which presented any greater danger to him than to other employees working in the same area. It may be true that he believed he was in greater danger, but even then he was not placed in a situation where he had no alternative but to quit. It is shown that respirators were available to him, but he made no effort to use them. It is also shown that after he quit his job he went to a doctor where he learned that the sulfur pollution posed no threat to him because of his allergy to sulfa. Consequently, if he had attempted to use the respirators, he might well have been able to continue his work without further problems. In any event, if he had consulted with his doctor prior to quitting, he would have learned that his fears were unfounded, and that the conditions of his work were no real threat to his life or health. As a result, he did have viable alternatives at the time he quit, and we are therefore unable to find that his situation was such that he had no choice but to quit when he did. Accordingly,

IT IS HEREBY ORDERED that the Decision of the Appeal Tribunal entered in this matter on the 9th day of January, 1975, shall be SET ASIDE. Benefits shall be denied the petitioner beginning November 17, 1974, and until he has obtained work and earned wages of not less than his suspended weekly benefit amount in each of five calendar weeks: PROVIDED, the disqualification shall not extend beyond February 1, 1975, pursuant to the provisions of RCW 50.20.050.

DATED at Olympia, Washington, APR 14 1975



Commissioner

Attachment 6

involved. Petitioner did not object to his job duties when the helicopter crew was involved in spraying or fire fighting. He did object to the work involved in the fertilizing season, September through April, because that was when he operated a front loader to load fertilizer into the helicopter and was also when he drove a fuel truck to various sites in the mountains. He was concerned about making a mistake while operating the loader, but felt capable of doing the work. He was not licensed to drive heavy trucks on highways, and although his supervisor asked him repeatedly to obtain such a license, petitioner stalled and did not do so. He was never threatened with discharge for failure to get the license or for not driving the truck on the highway. He had never driven such a truck before and felt the company did not train him to operate it. He described no incidents of danger or lack of safety in which he was personally involved while driving the truck. Prior to quitting, petitioner testified that he twice requested transfer to aircraft mechanic openings in the employer's Arkansas operations; he described their crew's time allocations as 30 versus 70% but did not state which percentage applied to straight aircraft maintenance or which to equipment operation.

III

In his petition for review, petitioner states that safety and overtime were part of his accumulated reasons for deciding to quit, which accords with his testimony that his main reason for quitting was the percentage of time spent in operating equipment rather than mechanical work. A good deal of his testimony did relate to his objection to the employer's method of paying overtime. Petitioner was hired at a monthly salary rate, \$1,250 initially, at separation \$1,410. Petitioner understood at

the time of hire that he would be paid on the basis of a fluctuating work week. He was paid his weekly salary if he worked less than 40 hours in that week; if he worked more than 40 hours in a week, the total number of hours worked was divided into his fixed weekly pay to establish his hourly rate for that week, and the hours worked in excess of 40 were paid at one-half that hourly rate. Compensable time off was given by the employer but evidently petitioner did not like to take this time off because he felt a responsibility to the employer to get the job done.

From the foregoing Findings of Fact, the undersigned frames the following.

ISSUE

Did petitioner voluntarily quit work without good cause pursuant to RCW 50.20.050?

From the Issue as framed, the undersigned draws the following.

CONCLUSIONS

I

The Appeal Tribunal cited and appended the applicable statute and regulations. An individual who voluntarily leaves work without good cause is subject to an indefinite period of disqualification from benefits. Inasmuch as the reasons given by petitioner for leaving this job all pertain to working conditions, the applicable portion of the statute is RCW 50.20.050(3) and the regulation is WAC 192-16-009. The work-related reasons for leaving must be of "such a compelling nature as to cause a reasonably prudent person to leave the employment and the individual must first exhaust all reasonable alternatives prior to leaving."

Petitioner's primary reason for leaving was the apportionment of work he performed for the employer, too much heavy equipment operation and too little aircraft mechanical work. These working conditions were "generally known and present at the time he . . . accepted employment." The evidence does not show that "related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor" or that there would have been "unconscionable hardship" to petitioner if he continued in the employment. There is no showing that the nature or the amount of work changed significantly from the time of hire. In fact, one wonders at the degree of objection which petitioner had to performing equipment operating work since he was willing to attempt transfer to Arkansas and do, at least partly, the same work.

Nor did petitioner show any greater risk to his safety than that of any other individual performing comparable work. In re Smalley, Comm. Dec. 1242 (1975).

III

In his petition for review, petitioner concedes that the employer's method of payment was legal. The Washington Minimum Wage Act, at RCW 49.46.130, provides that:

"[I]n any industry in which federal law provides for an overtime payment based on a work week other than forty hours then provisions of this section shall not apply; however the provisions of the federal law regarding overtime payment based on a work week other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state."

The applicable federal law is 29 U.S.C. 201, et seq., and 29 CFR 778.114 provides the computation of overtime for employees whose

hours of work fluctuate from week to week. The method of computation used by the employer in this case is that permitted by this federal regulation for petitioner's fluctuating work week.

The Appeal Tribunal's Conclusion No. 3 requires comment. As noted above, there was no statutory violation by the employer in its method of computing petitioner's overtime pay. The Court in Cowles Publishing Co. v. Employment Security Dept., 15 Wash. App. 590, 550 P. 2d 712 (1976), in applying a "fault" concept to that claimant's unemployed status, observed that her employer was not at fault, that it was not argued that her employer paid less than a legal minimum wage. While the Court was not called upon to decide that issue, we feel certain that had that claimant's pay been less than a legal minimum wage, including less than minimum by virtue of the employer's failure to pay statutorily required overtime, PCW 49.46.130, the fault of the unemployment would lie with the employer and good cause would have been established. The Tribunal also held that the petitioner in this case should have been required to pursue remedies under the Fair Labor Standards Act. Such remedies require the filing of law suits in either the state or federal courts. It has never been the policy of this department that an individual is required to continue in employment while maintaining a lawsuit in order to correct an employer deficiency, or illegal action. Nor have we required the employee to seek assistance from the State Department of Labor and Industries to attempt to obtain legally required pay from the employer. Ordinarily, the individual is required to take all reasonable means to correct the conditions of which he complains: "One of the cardinal exceptions to this rule would be a condition of employment which was illegal and/or contrary to

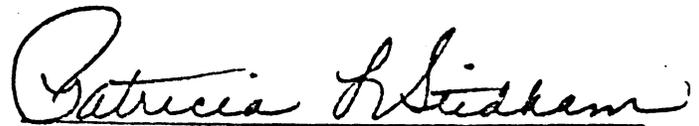
public policy on its face." In re Conner, Comm. Dec. 759 (1968). 582
In accord with the fault principle of Cowles, supra, the employer
is bound to know the law. A clearly shown employer violation of
laws or regulations or both promulgated for the benefit of em-
ployees, except violations shown to be de minimis, isolated or
remote in time from the separation date, will support a concl-
usion of good cause on public policy grounds, even if the indi-
vidual makes no effort to remedy the condition prior to quitting.
In re Holstine, Comm. Dec. (2nd) 453 (1978); In re Storseth,
Comm. Dec. (2nd) 454 (1978).

IV

For reasons set forth in Conclusions I and II above,
petitioner failed to meet his burden of establishing good cause
for having voluntarily quit this employment. The Decision will
be modified to show the correct beginning date of disqualifica-
tion. Accordingly,

IT IS HEREBY ORDERED that the Decision of the Appeal
Tribunal entered in this matter on the 28th day of September,
1979, shall be MODIFIED. Benefits shall be denied petitioner
beginning May 27, 1979, and continuing thereafter until he has
obtained work and earned wages of not less than his suspended
weekly benefit amount in each of five calendar weeks, pursuant to
RCW 50.20.050.

DATED at Olympia, Washington, NOV 30 1979


Commissioner's Delegate

Attachment 7

BEFORE THE COMMISSIONER OF
THE EMPLOYMENT SECURITY DEPARTMENT
OF THE STATE OF WASHINGTON

Review No. 36211

In re:)	
)	DOCKET NO. 0-04487
EDWARD R. ATKINSON)	
SSA # 244-74-2193)	
)	DECISION OF COMMISSIONER
Petitioner)	
)	

EDWARD R. ATKINSON duly petitioned the Commissioner for a review of an Appeal Tribunal Decision entered in this matter on the 9th day of May, 1980, and the undersigned, having carefully reviewed the entire record, thereby being fully advised in the premises, does hereby adopt the Appeal Tribunal's Findings of Fact Nos. 1 and 2, and adds the following Additional Findings of Fact and Conclusions.

"FINDINGS OF FACT:

"1. The employer was provided due notice of the time, date, and place of hearing but failed to appear. Consequently, the findings in this case are based primarily upon evidence presented by or on behalf of the claimant.

"2. The claimant was employed by the interested employer as a carpenter at the Satsop Nuclear Plant site from November 19, 1979, until he quit without notice on March 6, 1980. He was a member of the Carpenter's Union at this job. His pay at the time he left was \$13.04 per hour."

ADDITIONAL FINDINGS OF FACT

I

Petitioner quit the job because of unsafe working conditions, specifically including hazardous materials in working areas and walkways, poor lighting, frayed and worn riggings, unsafe equipment, improper scaffolding, improper or nonexistent handrails, and pipe stacked in places where it could be knocked over onto workers.

III

Petitioner discussed his safety concerns with his foreman, with his shop stewards and with representatives of the Department of Labor and Industries prior to quitting. He participated in two incidents in January and February when workmen walked off the job in protest of safety conditions and lack of sufficient medical personnel. He cited one instance when a person was injured on the job and had to wait four hours for medical help when his wife arrived to take him to the hospital. The only response he received from his employer was to threaten him with discharge, and the union apparently took no action. Petitioner provided a copy of his Labor and Industries Complaint, filed after he quit, for the hearing in this matter; per petitioner's written and verbal requests, we have collaterally obtained a copy of Labor and Industries' Citation and Notice, a copy of which is attached hereto as Commissioner's Exhibit A, showing penalty citations for lack of platform and floor opening guardrails, improper storage of gas cylinders, and an employee working without fall protection.

From the foregoing, the undersigned frames the following.

ISSUE

Did petitioner voluntarily quit with good cause pursuant to RCW 50.20.050?

From the Issue as framed, the undersigned draws the following.

CONCLUSIONS

We adopt Conclusions Nos. 1, 2 and 3 of the Appeal Tribunal's Decision as if fully set forth herein. In addition, RCW 50.20.050(3) provides that consideration be given to the degree of risk involved to the individual's health and safety. The undersigned concludes that petitioner did in fact establish that working conditions were hazardous and posed a substantial degree of risk to his safety, by his unrefuted testimony as corroborated by the Department of Labor and Industries. Petitioner took very active steps, and in our view reasonable efforts (with the exception of participating in the walkouts), to attempt to have the working conditions corrected. Petitioner left his work for compelling reasons and with good cause. In re Vliet,

Comm. Dec. 454 (1961); In re Beal, Comm. Dec. 1196 (1974);
In re Townsend, Comm. Dec. (2nd) 302 (1977). Accordingly,

IT IS HEREBY ORDERED that the Decision of the Appeal Tribunal entered in this matter on the 9th day of May, 1980, shall be SET ASIDE. Petitioner is not subject to disqualification pursuant to RCW 50.20.050, and benefits shall be accordingly allowed provided he is otherwise qualified and eligible therefor.

DATED at Olympia, Washington, JUN 30 1980


Commissioner's Delegate



DIVISION OF INDUSTRIAL SAFETY AND HEALTH
OLYMPIA, WASHINGTON 98504



CITATION & NOTICE

62

SAFETY NO. 14724	ACTIVITY SAFETY	REASON COMPLAINT	REGION 3	COUNTY WA	IND. INSURANCE NO. 700255 003	NOTICE SENT TO EMPLOYER 04/24/80	SIC 1791	REPORT NO. 216869		
LOCATION OF ESTABLISHMENT (SITE OF ACTIVITY) SATSOP NUCLEAR SITE ELMA						DATE OF ACTIVITY 04/10/80	NO. EMPLOYED IN ESTABLISHMENT 365	NO. AT RISK 3		
MANAGEMENT OFFICIAL CONTACTED AND TITLE ROGER FIKE Safety EMPLOYER / ADDRESS / CITY MORRISON-KNUDSEN COMPANY INC. P.O. BOX 1289 ELMA WA 98541				CLOSING CONFERENCE EMPLOYER REP. ROBERT WISDOM SUPER. EMPLOYER WALKAROUND REP. / TITLE ROGER FIKE SAFETY ASSISTANT DIRECTOR FOR DIVISION OF INDUSTRIAL SAFETY & HEALTH					EMPLOYEE REP. CONTACTED / TITLE ROY THOMAS UNION STEW.	

A copy of this Citation must be prominently posted immediately upon receipt at or near each place a violation referred to in the Citation occurred. (RCW 49.17.120) It must remain posted until all violations cited therein are corrected, or for three (3) working days, whichever period is longer.
Failure to correct alleged violations by the abatement date may result in a proposed penalty assessment. (RCW 49.17.140)

EMPLOYER: SEE REVERSE SIDE OF THIS FORM FOR NOTICE OF RIGHTS AND DUTIES REGARDING THIS CITATION

ALLEGED CODE VIOLATIONS							DESCRIPTION OF ALLEGED VIOLATIONS / LOCATION	ABATEMENT DATE	PENALTY ASSESSMENT
NO.	TYPE	CHAP.	SEC.	SUB SEC.	SUB DIV.	ITEM			
1	S	155	00485	01	E		STANDARD GUARDRAILS AND TOEBOARDS WERE NOT INSTALLED ON ALL OPEN SIDES AND ENDS OF PLATFORMS MORE THAN 10 FEET ABOVE THE GROUND OR FLOOR: 1. ONE EMPLOYEE WORKING ON SCAFFOLD 22 FT. HIGH IN THE FUEL HANDLING AREA, N.E. CORNER OF RAB #3 2. TWO EMPLOYEES WORKING OFF OF TWO 2 X 10 PLANKS ON THE HORIZONTAL RE-BAR. TOP LEVEL S.E. CORNER OF RAB #3	COMPLIED	\$16
2	G	155	00225	04			LIFELINES USED IN AREAS WHERE SUBJECT TO CUTTING, ABRASION, OR BURNING, WAS NOT A MINIMUM OF 7/8 INCH WIRE CORE MANILA ROPE. FUEL HANDLING AREA, N.E. CORNER OF RAB #3	05/01/80	
3	G	155	00165	01			ILLUMINATION READINGS FROM 1 TO 4 FOOT CANDLES IN VARIOUS AREAS OF RAB #3. LIGHTING REQUIREMENTS FOR GENERAL CONSTRUCTION AREAS SHALL BE A MINIMUM OF 5 FOOT CANDLES	05/01/80	

RECEIVED SAFETY DIVISION
APR 27 1980
COMMUNICATIONS SECTION

CONTINUED ON NEXT PAGE PAGE 1

TYPE CODES - D - De minimis I - Imminent Danger
G - General N - Nonabatement
S - Serious R - Repeated
W - Willful

SUB DIV - Appears As A Lower Case (Small) Alpha Character In The Washington Administrative Code.
ITEM - Appears As A Lower Case (Small) Roman Numeral In The Washington Administrative Code.

RIGHTS OF EMPLOYEES OR REPRESENTATIVES OF EMPLOYEES: The Washington Industrial Safety and Health Act, Chapter 49.17 RCW, provides that an employee or representative of employees may appeal any time period set for abatement of conditions cited as violations in this notice. Such Notice of Appeal must refer to this CITATION & NOTICE and include the name of the employer and the date of the inspection and specify the violation and the abatement date appealed. The Notice of Appeal must be received by the Assistant Director for Industrial Safety and Health, Department of Labor and Industries, P.O. Box 207, Olympia, Washington 98504, within 15 working days of "communication of the notice." No person shall discharge or discriminate against any employee because such employee has exercised rights guaranteed him by the Act.

DIVISION OF INDUSTRIAL SAFETY AND HEALTH
OLYMPIA, WASHINGTON 98504

ACTIVITY: SAFETY REASON: COMPLAINT

REGION: 3 COUNTY: *14 IND. INSURANCE NO.: 736255 003

NOTICE SENT TO EMPLOYER: 04/24/80 SIC: 1791 REPORT NO.: 216889

DATE OF ACTIVITY: 04/24/80

LOCATION OF ESTABLISHMENT (SITE OF ACTIVITY):

MANAGEMENT OFFICIAL CONTACTED AND TITLE: MORRISON-KNUDSEN COMPANY INC.

EMPLOYER / ADDRESS / CITY: MORRISON-KNUDSEN COMPANY INC.

CLOSING CONFERENCE EMPLOYER REP.: ROY THOMAS

EMPLOYER WALKAROUND REP. / TITLE: ROY THOMAS

ASSISTANT DIRECTOR FOR DIVISION OF INDUSTRIAL SAFETY & HEALTH

WERE EMPLOYEE INTERVIEWED?

CONTINUED FROM PAGE 1

A copy of this Citation must be prominently posted immediately upon receipt at or near each place a violation referred to in the Citation occurred. (RCW 49.17.120) It must remain posted until all violations cited therein are corrected, or for three (3) working days, whichever period is longer.

Failure to correct alleged violations by the abatement date may result in a proposed penalty assessment. (RCW 49.17.140)

EMPLOYER: SEE REVERSE SIDE OF THIS FORM FOR NOTICE OF RIGHTS AND DUTIES REGARDING THIS CITATION

ALLEGED CODE VIOLATIONS		NATURE OF ALLEGED VIOLATIONS OBSERVED DURING INSPECTION UNLESS OTHERWISE NOTED		DESCRIPTION OF ALLEGED VIOLATIONS / LOCATION		ABATEMENT DATE	PENALTY ASSESSMENT
NO.	TYPE	CHAP.	SEC.	SUB DIV.	ITEM		
4	G	155	00715	01	C	AIR LINE IN THE N.E. CORNER OF RAB #3 FUEL HANDLING AREA WAS NOT TIED TOGETHER OR EQUIPPED WITH A QUICK DISCONNECT COUPLING	05/01/80
5	G	155	00505	02	A	FLOOR OPENINGS WERE NOT GUARDED BY STANDARD RAILINGS AND TOEBOARDS OR COVERS: 1. MID RAIL MISSING ON THE SUMP PUMP. S.E. CORNER OF RAB #3 2. MIDRAIL MISSING ON THE SUMP PUMP PIT BESIDE THE INNER WALL. NORTH SIDE OF RAB #5	05/01/80
6	GA	155	00400	01	I	FAILURE TO STORE COMPRESSED GAS CYLINDERS IN AN UPRIGHT POSITION AND SECURED. OXYGEN AND NITROGEN CYLINDERS NOT SECURED IN THE FUEL HANDLING AREA. N.E. CORNER OF RAB #3 * ITEM NO. 6 IS A REPEAT OF THAT VIOLATION CITED ON CITATION AND NOTICE NO. 130060 ISSUED ON 11-27-78	05/01/80 \$160
7	G	155	00330	03	B	SEVERAL WIRE ROPE SLINGS	05/01/80

CONTINUED ON NEXT PAGE PAGE 2

RIGHTS OF EMPLOYEES OR REPRESENTATIVES OF EMPLOYEES: The Washington Industrial Safety and Health Chapter 49.17 RCW, provides that an employee or representative of employees may appeal any time period set for abatement of conditions cited as violations in this notice. Such Notice of Appeal must refer to this CITATION & NO. and include the name of the employer and the date of the inspection and specify the violation and the abatement appealed. The Notice of Appeal must be received by the Assistant Director for Industrial Safety and Health, Department of Labor and Industries, P.O. Box 207, Olympia, Washington 98504, within 15 working days of "communication of the notice." No person shall discharge or discriminate against any employee because such employee has exercised rights guaranteed him by the Act.



DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF INDUSTRIAL SAFETY AND HEALTH
OLYMPIA, WASHINGTON 98504



CITATION & NOTICE

621

SAFETY LB. NO.	ACTIVITY	REASON	REGION	COUNTY	IND. INSURANCE NO.	NOTICE SENT TO EMPLOYER	SIC	REPORT NO.
T4724	SAFETY	COMPLAINT	3	14	700255	603	04/24/80	17914 216889

LOCATION OF ESTABLISHMENT (SITE OF ACTIVITY)	DATE OF ACTIVITY	NO. EMPLOYED IN ESTABLISHMENT	NO. AFFECTED BY INSPECT
--	------------------	-------------------------------	-------------------------

MANAGEMENT OFFICIAL CONTACTED AND TITLE	CLOSING CONFERENCE EMPLOYER REP.
---	----------------------------------

EMPLOYER / ADDRESS / CITY	EMPLOYER WALKAROUND REP. / TITLE	EMPLOYEE REP. CONTACTED / TITLE
MORRISON-KNUDSEN COMPANY INC.	ROGER FINE	ROY THOMAS

CONTINUED FROM PAGE 2

ASSISTANT DIRECTOR FOR
DIVISION OF INDUSTRIAL
SAFETY & HEALTH

WERE EMPLOYEE
INTERVIEWED?

A copy of this Citation must be prominently posted immediately upon receipt at or near each place a violation referred to in the Citation occurred. (RCW 49.17.120) It must remain posted until all violations cited therein are corrected, or for three (3) working days, whichever period is longer.
Failure to correct alleged violations by the abatement date may result in a proposed penalty assessment. (RCW 49.17.140)

EMPLOYER: SEE REVERSE SIDE OF THIS FORM FOR NOTICE OF RIGHTS AND DUTIES REGARDING THIS CITATION

NATURE OF ALLEGED VIOLATIONS OBSERVED DURING INSPECTION UNLESS OTHERWISE NOTED ALL CITATIONS ARE TO TITLE 296 WAC

ALLEGED CODE VIOLATIONS							DESCRIPTION OF ALLEGED VIOLATIONS / LOCATION	ABATEMENT DATE	PENALTY ASSESSMENT
NO.	TYPE	CHAP.	SEC.	SUB SEC.	SUB DIV.	ITEM			
8	G	155	00020	01			HAD PROTRUDING ENDS OF STRANDS NOT COVERED OR BLUNTED	05/01/80	
9	G	155	00685				WORK AREAS & PASSAGE WAYS WERE NOT KEPT CLEAR. RE-BAR IS STORED IN THE PASSAGE WAY ON THE 362 LEVEL. S.W. CORNER OF RAB #3	05/01/80	
10	S	155	00505	02	A		FLOOR OPENINGS WERE NOT GUARDED BY STANDARD RAILINGS AND TCEBOARDS OR COVERS; FLOOR OPENING APPROX 7' X 7' BY 14 FT. DEEP. ABS014 S.E. CORNER OF RAB #3	04/27/80	\$160.
11	S	155	00225	01			AN EMPLOYEE WAS WORKING ON HORIZONTAL RE-BAR WITHOUT FALL PROTECTION. EMPLOYEE WAS APPROX 35 FOOT ABOVE THE FLOOR IN THE S.E. CORNER OF RAB #3	COMPLIED	\$80.
12	D	155	00105	03			THE EMPLOYEES DID NOT		

APR 24 1980

CONTINUED ON NEXT PAGE PAGE 3

*TYPE CODES - D - De minimus I - Imminent Danger
 G - General N - Nonabatement
 S - Serious R - Repeated
 W - Willful

*SUB DIV - Appears As A Lower Case (Small) Alpha Character In The Washington Administrative Code.
 *ITEM - Appears As A Lower Case (Small) Roman Numeral In The Washington Administrative Code.

RIGHTS OF EMPLOYEES OR REPRESENTATIVES OF EMPLOYEES: The Washington Industrial Safety and Health Act, Chapter 49.17 RCW, provides that an employee or representative of employees may appeal any time period set for abatement of conditions cited as violations in this notice. Such Notice of Appeal must refer to this CITATION & NOTICE and include the name of the employer and the date of the inspection and specify the violation and the abatement date appealed. The Notice of Appeal must be received by the Assistant Director for Industrial Safety and Health, Department of Labor and Industries, P.O. Box 207, Olympia, Washington 98504, within 15 working days of "communication of the notice." No person shall discharge or discriminate against any employee because such employee has exercised rights guaranteed him by the Act.



DEPARTMENT OF LABOR & INDUSTRIES
DIVISION OF INDUSTRIAL SAFETY AND HEALTH
OLYMPIA, WASHINGTON 98504



ACTIVITY	REASON	REGION	COUNTY	IND. INSURANCE NO.	NOTICE SENT TO EMPLOYER	SIC	REPORT NO.	
T4724 SAFETY	COMPLAINT	3	414	70J255 GO3	04/24/80	1731	216889	
LOCATION OF ESTABLISHMENT (SITE OF ACTIVITY)						DATE OF ACTIVITY	NO EMPLOYEES IN ESTABLISHMENT	NO AFFECTED BY INSPECTION

MANAGEMENT OFFICIAL CONTACTED AND TITLE	CLOSING CONFERENCE EMPLOYER REP.	
EMPLOYER / ADDRESS / CITY	EMPLOYER WALKAROUND REP. / TITLE	EMPLOYEE REP. CONTACTED / TITLE
HORRISON-KNUDSEN COMPANY INC.	ROGER FIKE	ROY THOMAS

CONTINUED FROM PAGE 3

ASSISTANT DIRECTOR FOR
DIVISION OF INDUSTRIAL
SAFETY & HEALTH

WERE EMPLOYEES
INTERVIEWED?

A copy of this Citation must be prominently posted immediately upon receipt at or near each place a violation referred to in the Citation occurred. (RCW 49.17.120) It must remain posted until all violations cited therein are corrected, or for three (3) working days, whichever period is longer.
Failure to correct alleged violations by the abatement date may result in a proposed penalty assessment. (RCW 49.17.140)

EMPLOYER: SEE REVERSE SIDE OF THIS FORM FOR NOTICE OF RIGHTS AND DUTIES REGARDING THIS CITATION

ALLEGED CODE VIOLATIONS								DESCRIPTION OF ALLEGED VIOLATIONS / LOCATION	ABATEMENT DATE	PENALTY ASSESSMENT
NO.	TYPE	CHAP.	SEC.	SUB SEC.	SUB DIV	ITEM	SUB ITEM			
								<p>APPLY THE PRINCIPALS OF ACCIDENT PREVENTION IN THEIR DAILY WORK HABITS OR USE THE SAFETY DEVICES AND PROTECTIVE EQUIPMENT AS REQUIRED BY THEIR EMPLOYER. SEVERAL INSTANCES OF EMPLOYEES NOT USING SAFETY BELTS WHEN WORKING MORE THAN 25 FT. ABOVE THE GROUND OR WHEN WORKING ON SCAFFOLDS 10 FT HIGH WITHOUT GUARD RAILS.</p> <p>* THE TYPES OF VIOLATIONS ON THIS CITATION ARE IDENTIFIED AND/OR DEFINED IN RCW 49.17.160.</p>		
TOTAL PENALTY ASSESSMENT										\$560.

RECEIVED
SAFETY DIVISION
APR 24 1980
COMMUNICATIONS SECTION

PAGE 4

*TYPE CODES - D - Demeritus I - Imminent Danger
G - General N - Nonabatement
S - Serious R - Repeated
W - Willful

* SUB DIV - Appears As A Lower Case (Small) Alpha Character In The Washington Administrative Code.
* ITEM - Appears As A Lower Case (Small) Roman Numeral In The Washington Administrative Code.

RIGHTS OF EMPLOYEES OR REPRESENTATIVES OF EMPLOYEES: The Washington Industrial Safety and Health Act, Chapter 49.17 RCW, provides that an employee or representative of employees may appeal any time period set for abatement of conditions cited as violations in this notice. Such Notice of Appeal must refer to this CITATION & NOTICE and include the name of the employer and the date of the inspection and specify the violation and the abatement date appealed. The Notice of Appeal must be received by the Assistant Director for Industrial Safety and Health, Department of Labor and Industries, P.O. Box 207, Olympia, Washington 98504, within 15 working days of "communication of the notice." No person shall discharge or discriminate against any employee because such employee has exercised rights guaranteed him by the Act.

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

US Mail Postage Prepaid via Consolidated Mail Service:

Marc Lampson
1904 Third Ave Suite 604
Seattle, Washington 98101

ABC/Legal Messenger

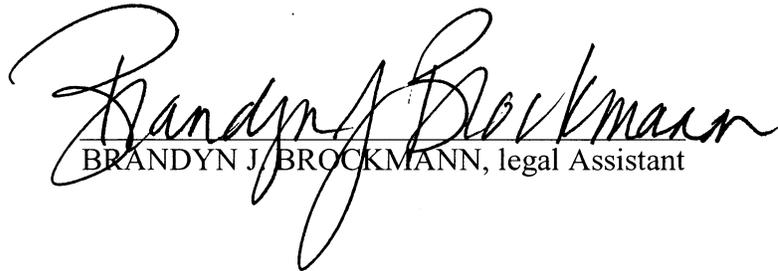
State Campus Delivery

Hand delivered to Court of Appeals II by: John G. Macejunas

FILED
COURT OF APPEALS
DIVISION II
07 JUN 12 PM 1:37
STATE OF WASHINGTON
BY _____
DEPUTY

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

DATED this 11th day of June, 2007, at, WA.


BRANDYN J. BROCKMANN, legal Assistant