

STATE OF WASHINGTON

COURT OF APPEAL

DIVISION II

950 Broadway Suites 300

Tacoma WA 98402

No. 37757-8-II

STATE OF WASHINGTON
COURT OF APPEALS
DIVISION II
SEP 11 PM 1:53
BY W CLERK

Steffanie Chau (Appellant)

Vs

Attorney General State of Washington (Respondent)

Thurston Superior Court #07-2-02566-6

APPELLANT'S BRIEF

Steffanie Kim Chau
5018 Siskiyou LP SE
Olympia WA 98501
(360)556-3894

TABLE OF CONTENTS

TABLE OF AUTHORITIES	Page 3,4,5
1. NATURE OF THE CASE	Page 6
2. ISSUES PRESENTED	Page 8
A. Conspiracy	
B. Fraudulent	
C. Perjury & Misleading Evidence	
D. Discrimination causing Negligent Infliction Emotional Distress	
3. STATEMENT OF THE CASE	Page 11
4. ARGUMENT	Page 20
A. This Court should conclude that the fact the ESD involved fraudulent documents to terminate my employment and deny my unemployment compensation benefits. I shouldn't have to repay my Unemployment Benefits.	
1. There is no evidence I intended to violate Department Rules or Procedures.	
2. There is no evidence that my conduct constituted Gross Negligence.	
3. I was never warned to refrain from the Accounting practices. The Personnel Appeal Board (PAB) erroneously determined that I initiated accounting errors in excess of \$12 million.	
B. ESD employed fraudulent documents to terminate me.	
C. The PAB mistakenly failed to consider Employment Security Dept (ESD) staff lied at hearing on April 16,17, 2003. (Mr. Trause, Mr. Rollee, Mr. Hanson, Ms. Meixsel and Ms. Kristofferson) Mr. Trause and PAB mislead evidence.	
D. The PAB mistakenly failed to conclude that I have suffered abusive and on going personal mistreatment, retaliation, Discrimination, and suffered from a hostile Environment in the workplace.	
E. CONSPIRACY	
5. CONCLUSION	Page 35

TABLE OF AUTHORITIES

Table of Case

<u>Albertson v Employment Security Dept</u> 102 Wn.App.29, 15p.3d 153 (2000)	Page 25
<u>Benchmark Land Co v City of Battle Ground</u> 146 Wn. 2d 685,49 P 3d 860 (2002)	Page 21
<u>Boyce v West</u> 71 Wn.App.657,665,862 p.2d592 (1993)	Page 26
<u>Callecod v Washington State Patrol</u> 84 Wn.App.663,929 P.2d 510, Review denied, 132 Wn. 2d 104,939 P 2.2d 215 (1977) Supra at 674	Page 25
<u>EEOC v Crown Zellerbach Corp</u> 720 f.2d 1008,1013 (9 th cir 1983)	Page 33
<u>Galvin v Employment Security Dept</u> 87 Wn.App.634,643,942 p.2d 1040 (1977)	Page 25
<u>Gogerty v Dept of Institution</u> 71 Wn.2d 1,426 P.2d 476 (1967)	Page 10
<u>Hill v BCTI Income Fund</u> 1-144 Wn.2d,172,179,23,P.3d.440 (2001)	Page 10
<u>Kahn v Salerno</u> 90 Wn.App.110,130,951 p.2d 321 (1998)	Page 33
<u>Kallas v Dept of Motor Vehicle</u> 88 Wn.2 d 354,560 P.2d.709 (1977)	Page 10
<u>Marini</u> 137 Wn.2d at 367-368	Page 7,22,31

TABLE OF AUTHORITIES

(Continues)

<u>Montlake Community Club v Central Puget Sound Growth Management Hearing Board</u> 110 Wn.App.731, 43 p.3d 57 (2002).	Page 21
<u>Nist v Tudor</u> 67 Wn.2d 322,328-330,407 p.2d79.8 (1965)	Page 26
<u>Skamania County v Columbia River George Commission</u> 144 Wn.2d 30,26 P.3d 241 (2001)	Page 21
Stiley 130 Wn.2d at 505	Page 7,18,29
<u>Tapper v Employment Security Dept</u> 122 Wn.2d 397,402,858 P.2.d 494 (1993)	Page 24
<u>Terhar v Dept of Licensing</u> 54 Wn. App.28, 771 P.2d 1180, review denied 113 Wn.2d. 1008,779 P.2d 728 (1989)	Page 21
<u>Welch v Southland Corp</u> 134 Wn.2d 629,952 p.2d 162,166	Page 32
<u>Wilmot v Kaiser Aluminum & Chem Cor</u> 118. Wn.2d 46,69,821 p2d18 (1991)	Page 33

Others authorities

Black's Law Dictionary	Page 28
Rap 10.3 (a) (5)	Page 11
Rap 13.4 (b)(4)	Page 34
Washington State Constitution, Art.1	Page 24
Washington State Constitution Art 1 &9	Page 22
16 Washington Practices ~1,3	Page 24
WPI 10.7	Page 26

Table of Status

RCW 4.22.010, 4.22.070	Page 32
RCW 5.28.020, 5.28.050, 5.28.060	Page 7,30,35,36
RCW 9.22 69.50.407	Page 31
RCW 9.38.020,19,24	Page 7,29,34,36
RCW 9.45.211	Page 7,29,34,36
RCW 9.72.010 & 9.72.050	Page 7,30,35,36
RCW 69.50.407 & 9A.208.040 (1,2 &3)	Page 6,34,36
RCW 49.60	Page 7,32,35,36
RCW 50.04.060	Page 25
RCW 34.05.70 (3)(e)	Page 25
RCW 50.20	Page 13
WAC 260-80-050	Page 34
RCW Chapter 9.22, chapter 38.38.644.69.60.407	Page 34

I. NATURE OF THE CASE

1. ERROR IS ASSIGNED TO THE TRIAL COURT'S DECISION GRANTING THE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT WITH PREJUDICE.

The trial Court erred in granting summary judgment to the respondent.

The trial court properly concluded that all of the requested public records were exempt from disclosure under the "Conspiracy, Negligent Infliction of Emotional Distress". The Court must enforce its rules and order, where defendant has willfully and deliberately engaged in **Conspiracy "RCW 69.50.407 & 9A .28.040 (1,2 &3)"**.

The ESD created fraudulent documents to termination of my employment. Neither the facts, nor the law supporting the fraud claim have been previously litigated nor examined in any of the prior litigation involving my termination.

FRAUDULENT

Unfortunately the ESD used a doctored version to fire me. (CP doc#9 page 7, 8 and 9). **Does not have Mr. Hanson Signature, direction or date stamp received in the Treasure's Section of the ESD.**

I shouldn't have to pay back my Unemployment Compensation Benefits, and dismiss my employment, because ESD involved fraudulent documents to

dismiss me. **Fraudulent “RCW 9.38.020,9.45.211.** Therefore, the trial court’s ruling on ESD’s motion for summary judgment should not affirmed.

A plaintiff claiming **fraud** must prove each of the following nine elements:

1) representation of an existing fact; 2) materiality 3) falsity; 4) the speaker’s knowledge of its falsity 5) intent of the speaker that it should be acted upon by the plaintiff; 6) plaintiff’s ignorance of its falsity 7) plaintiff’s reliance on the truth of the representation 8) plaintiff’s right to rely upon it; and 9) damages suffered by the plaintiff.

“each element of fraud must be establish by clear cogent, convincing evidence” **Stiley**, 130 Wn.2d at 505”.

The decision of the trial court to grant summary judgment on the issue of fraud must be reversed.

The trial court erred in dismissing appellant’s complaint, which contends, that in dismissing appellant from my employment from the Employment Security Department (ESD). ESD involved fraudulent documents (**RCW 9.38.020, RCW 9.45.211**), Personnel Appeal Board and the Attorney General committed conspired with ESD perjury & misleading evidence (**RCW 9.72.010,050; RCW 5.28.020.050.060**) wrongful termination, discrimination, retaliation, and subjected a hostile environment in the workplace, resulting in negligent infliction of emotional distress **RCW 49.60.**

I challenged in my appeal to the Personnel Appeal Board (PAB). I appealed my denial of unemployment compensation benefits to the Employment

Security Dept (ESD). Neither of these appeals involved a claim or an issue of fraud.

After these appeals had been consummated, I discovered that the ESD's had utilized fraudulent documents to dismiss my employment. I brought a separate tort action alleging unlawful dismissal, based among the other things included fraudulent, perjury etc.

The ESD's tried to cover up their error by fabricated documents. And ESD's staff contradicted themselves at the hearing on April 16, 17, 2003.

This case has caused me great distress, humiliating me my family and in the community I live in. They put a hole in my heart. What they did was cruel and they took part of my soul for the last five years. Under State law, I'm entitled to recover all damages, which are proximately caused by the unlawful conduct.

Marini,137 Wn.2d at 367-368 Conspiracy, Fraudulent, Perjury, and Negligent Infliction of Emotional Distress unlawful conduct. This includes economic and non-economic damages. I had to spend substantial time and money to bring these matter to the court

I will prove that neither the facts, nor the law supporting the fraud claim have been previously litigated or examined in any of the prior litigation involving my termination.

II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

ESD's had no legitimated to dismiss my employment by involved fraudulent documents. ESD used fraudulent documents to terminate my employment.

The trial court erred in granting summary judgment to the Attorney General, Personnel Appeal Board (PAB) and the Employment Security Dept (ESD). The trial court erred in concluding the plaintiff's claims for conspiracy, based on fraud, had been previously claimed or litigated, in either the PAB, or Unemployment Compensation Benefits case.

The PAB decision was improper and must be reversed as a matter of law, because the decision they were reviewing that of the ESD to terminate was based on fraudulent documents.

The decision of the PAB was erroneous as a matter of law, was contrary to the evidence, and was arbitrary and capricious. It's finding constitute a disregard for the actual evidence, which does not support the conclusion reached by the board.

The PAB held a hearing on April 16, 17, 2003. The decision of the PAB affirming my termination, was entered "clearly erroneous" on June 30, 2003.

The ESD overruled the administrative law judge and dismissed my Unemployment Compensation Benefits claims. I filed an appeal to the Superior Court with Honorable Judge Paula Casey. The decision of Honorable judge Casey never raised nor addressed fraudulent or potentially fraudulent documents.

Mr. Hanson, Ms.Meixsel and Ms. Kristofferson created \$12 million in errors. However, ESD accused me of creating \$12 millions in errors. I was the only one dismissed from my employment.

I was only following the directions of Mr. Hanson, my colleague, and my supervisors, as I had been doing for the six years I worked there. My supervisor

approved my work. She watched me like a hawk, and examined a great deal of my work with a fine –toothcomb.

I did not maintain the fund ledgers for these accounts, nor am I responsible for these findings, which are in error and fail to reflect the evidence adduced at the time of the hearing. These findings constitute a determination that is contrary to the evidence, and which is arbitrary and capricious.

The Court Appeal must enforce its rules and order, where defendant has willfully and deliberately engaged in conspiracy, fraudulent, misleading statement, perjury, discrimination, and retaliation hostile environment workplace caused me negligent infliction emotional distress.

The Court Appeal review of a Personnel Appeal Board (PAB) decision related to factual findings by that Board is limited to a determination of whether there was any competent, relevant and substantive evidence which, if true, would reasonably support such findings either directly or circumstantially Kallas v Department of Motor Vehicles, 88 Wn 2d 354, 560 p.2d 709 (1977).

The Court of Appeal may not evaluate the credibility of witness nor engage in weighing and balancing of conflicting evidence in decision made by the (PAB) Gogerty v Department of Institutions 71 Wn.2d 1,426 p.2d476 (1967).

The decision of the Personnel Appeal Board constituted an error of law; Was contrary to the evidence; and was arbitrary and capricious. Its findings Findings constitute a disregard for the actual evidence that allegedly supported The conclusion reached by the board. The decision of the PAB was entered On June 30, 2003 “**Clearly erroneous**”.

According to verbatim report for Judge Richard Hicks hearing on April 25, 2008 was misleading for the records. On Jan 5, 2004 I filed a Case #03-2-00263-9 Judge Tom McPhee.

According to the Thurston County Superior Court record show I have a hearing with Honorable Tom McPhee case #03-2-00263-9 which was (bold and underline) clearly erroneous.

I do not know who he is. I did not have a hearing with him. I have a hearing with Honorable Paula Casey case# 03-2-00263-9. April 16, 2004 Judge Paula Casey affirmed in the Unemployment Compensation Benefits based on PAB decision, which was in error.

On October 28, 2004 I appeal the Court Appeal regarding case#03-2-00263-9. I lost the appeal. The decision of Judge Paula Casey and Court Appeal case#03-2-00263-9 was never raised nor addressed of fraudulent or of potentially fraudulent documents. I'm entitled to Unemployment Compensation Benefits; I shouldn't have to pay back my Unemployment Compensation Benefits and should get my job back. This does not constitute misconduct within the meaning of the ESD act, because ESD tainted by fraudulent documents.

III. STATEMENT OF THE CASE

A fair statement of the facts and procedure relevant to the issues presented for review without argument reference to the record must included for each factual statement RAP 10.3 (a)(5).

After I had worked for the State of WA for 20 years, 16 of which were with ESD, the ESD terminated my employment effective April 29, 2002. The ESD charged me with neglect of duty, incompetence, insubordination, and gross misconduct.

However it was for the first time in my years of employment with the ESD, placed under intense scrutiny by my supervisor. ESD focused upon on me as the culprit, to the exclusion of my superior and co-workers.

The ESD accused me of creating inaccurate and unreliable financial records for the agency, which resulted in an accounting error totaling in excess of \$12 million. Any errors I made were the result of reasonable reliance on the actions of my supervisors and my co-workers, and were not made with intention of any misconduct profit, or any interest of personal gratification on my part.

I was only following the directions of Mr. Hanson, my colleague, and my supervisors, as I had been doing for the six years I worked there. My supervisor approved my work. She watched me like a hawk, and examined a great deal of my work with a fine –toothcomb (**CP doc#9 p 54-67,71,72 and p 74-82**).

I did not maintain the fund ledgers for these accounts, nor am I responsible for these findings, which are in error and fail to reflect the evidence adduced at the time of the hearing. These findings constitute a determination that is contrary to the evidence, and which is arbitrary and capricious **CP doc#9 p 54,67,71,72 and 74-82**).

The evidence showed that Mr. Hanson (**CP doc#9 p 27,30 and 70**) was the person who initiated the draw request. I was given incorrect information from

Mr. Hanson to do the draw. Mr. Hanson, Ms. Kristofferson and Ms. Meixsel created 12 millions dollars in error.

Ms. Kristofferson (Deputy of Financial ESD) and Ms. Meixsel (my supervisor) made an error in the amount of \$6,522,757.10 **(CP doc#9 page 14)** Ms. Kristofferson admits, under oath, that she willfully violated the rules **(CP doc#9 page 24)**. This was a violation of the Federal rules related to the draw down of Federal funds. **No disciplinary action was taken against either Ms. Meixsel or Ms. Kristofferson and Mr. Hanson. I'm the only dismissed from my employment.**

On April 29, 2002 I was dismissed from my employment. I filed Unemployment Compensation Benefits with the Honorable Administrative Law (ALJ) Judge David Foley. The ALJ entered his order on November 27, 2002. He concluded that I was not engaged misconduct and granted my appeal and the accompany benefits. His decision constituted an accurate and fair determination of my rights under the chapter **50.20 RCW**.

The ALJ was Administrative Law Judge was able to assess the credibility of the witness and determine the intention of Initial Order **(Docket#01-2002-15584)**. I was award for unemployment compensation benefits.

On Dec 27, 2002 the ESD appealed ALJ' decision on January 31, 2003 I was ordered to repay benefits. I have been garnished by the ESD.

On Feb 2003, I appealed ESD decision denying benefits to the Thurston County Superior Court **(Case # 03-2-00263-9)**.

I filed an appeal to the Personnel Appeal Board (PAB) for reinstated my employment. I contented that the ESD wrongfully terminated my employment.

On April 16, 17, 2003 hearing, board members found that there were no performance issues during the period from 7/96 through 9/2001 evidence was granted (CP doc#9 page 35a). However the board decision on June 30, 2003 indicated that I had performance problems for the period from 7/96 through 9/2001 (CP doc#9 page 36).

Perjury

At the April 16, 17, 2003 hearing, The PAB failed to consider that Mr. Trause's testimony that he spoke with my boss (Mr. Rolle) (CP doc#9 p.32). Mr. Rolle testimony that he didn't spoke to Mr. Trause (CP doc#9 p.33) "who is telling the truth." The PAB failed to consider that the ESD staff perjury themselves.

There is more evidence of Mr. Trause, Mr. Rolle (CP doc#9 p.17, 19 and 33), Mr. Hanson (CP doc#9 p 28, 29), Ms. Krisofferson (CP doc#9 p.23, 34) and Ms. Meixsel. (CP doc#9 page 71 and 72).

Discrimination causing negligent infliction of emotional distress.

I was given incorrect information from Mr. Hanson (CP doc#9 p 27,30). The PAB overlooked the testimony of Ms. Red Elk, who was the lead worker for Mr. Tim Hanson "Tim made a mistake" (CP, doc#9, p.70).

The PAB failed to consider that Ms. Kristofferson (Deputy of Financial ESD) and Ms. Meixsel (my supervisor) made an error in the amount of \$6,522,757.10 (CP doc#9 page 14) Ms. Kristofferson admits, under oath, that she willfully violated the rules (CP doc#9 page 24). This was a violation of the Federal rules related to the draw down of Federal funds. **No disciplinary action was taken against either Ms. Meixsel or Ms. Kristofferson and Mr. Hanson.**

Mr. Hanson, Ms.Meixsel and Ms. Kristofferson created \$12 million in errors. However, ESD accused me of creating \$12 millions in errors. I was the only one dismissed from my employment.

The PAB decision was improper and must be reversed as a matter of law, because the decision they were reviewing that of the ESD to terminate was based on fraudulent documents.

The decision of the PAB was erroneous as a matter of law, was contrary to the evidence, and was arbitrary and capricious. It's finding constitute a disregard for the actual evidence, which does not support the conclusion reached by the board.

The PAB held a hearing on April 16, 17, 2003. The decision of the PAB affirming my termination, was entered **"clearly erroneous"** on June 30, 2003.

The ESD overruled the administrative law judge and dismissed my Unemployment Compensation Benefits claims. I filed an appeal to the Superior Court with Honorable Judge Paula Casey. The decision of Honorable judge Casey never raised nor addressed fraudulent or potentially fraudulent documents.

On April 16, 2004 Honorable judge Paula Casey affirmed the decision basically ruling that the issue the PAB's decision of my termination on June 30, 2003. The decision of the Personnel Appeal Board constituted an error of law; was contrary to the evidence; and was arbitrary and capricious. Its findings constitute a disregard for the actual evidence that allegedly supported the conclusions reached by the board. The decision of the PAB was **“Clearly erroneous”**.

On October 28, 2004, I appealed the unemployment compensation benefits decision to the Court of Appeal (case # 31572-6-11) Division II, the Court Commissioner rendered a written decision affirming the superior court decision which is based the decision of the PAB and Honorable Paula Casey was **“Clearly erroneous”**.

I challenged in my appeal to the Personnel Appeal Board (PAB). I appealed my denial of unemployment compensation benefits to the Employment Security Dept (ESD). Neither of these appeals involved a claim or an issue of fraud.

After these appeals had been consummated, I discovered that the ESD had utilized fraudulent documents to dismissed my employment. I brought a separate tort action alleging unlawful dismissal, based among other things, included fraudulent, perjury etc.

I have done further research. I reviewed the CD recording of the PAB hearing on April 16, 17, 2003 and review the documents. I suspected the ESD's decision was tainted by fraudulent documents.

Therefore on April 10, 2005, I filed a lawsuit against the ESD involving fraud, perjury, retaliation and hostile environment workplace.

Case# 05-2-00708-4. However, that decision is devoid of any discussion of fraud or of potentially fraudulent documents. The issue of fraud was never raised or addressed by the parties in that lawsuit.

ESD accused me of an error total in excess of 12 million by creating inaccurate and unreliable financial records for the agency. However, the ESD's termination of my employment, involved fraudulent documents.

ORIGINAL

- Original documents (CP doc#9 page 3,4, and 5): These documents contain both Mr. Hanson's signature and his initial on the notation. It also is date stamp received in the Treasure's Section of the ESD.

These documents establish I was only following the direction of Mr. Hanson my colleague as I had been doing for years. Mr. Hanson admitted at the hearing on April 16,17,2003 (PAB) that his direction to me was wrong (CP doc# 9 page 27,30). Also his supervisor admitted, "Tim made mistake", (CP doc#9 page 70).

FRAUDULENT

- Unfortunately the ESD used a doctored version of these documents to fire me. The Fraudulent documents (CP doc#9 page 7,8 and 9). Does

not have Mr. Hanson Signature, direction or date stamp received in the Treasure's Section of the ESD.

A plaintiff claiming **fraud** must prove each of the following nine elements:

1) representation of an existing fact; 2) materiality 3) falsity; 4) the speaker's knowledge of its falsity 5) intent of the speaker that it should be acted upon by the plaintiff; 6) plaintiff's ignorance of its falsity 7) plaintiff's reliance on the truth of the representation 8) plaintiff's right to rely upon it; and 9) damages suffered by the plaintiff.

"each element of fraud must be established by clear cogent, convincing evidence Stiley, 130 Wn.2d at 505".

My original tort case was dismissed when the Honorable Chris Wickham, Thurston County Superior Court Judge granted the ESD's motion of summary judgment. The court concluded my claims, including that of fraud had been considered by the PAB and were barred because they had previously been litigated in the PAB appeal.

It was never raised nor addressed of fraudulent or of potentially fraudulent documents at the PAB hearing or Honorable Paula Casey hearing.

On July 6, 2006 The Court of Appeals, in an unpublished decision, **(Case #33830-I-II)** affirmed summary judgment in favor of ESD. The Court concluded that I arguments involving fraud were barred due to the doctrine of collateral estoppel.

On Dec 7, 2007, I filed a lawsuit against the Attorney General for conspiracy with (ESD and PAB) in fraud and negligent infliction of emotional distress. ESD involves fraud, perjury, discrimination, retaliation and an hostile environment workplace and PAB decision was erroneous as a matter of law, was contrary to the evidence and was arbitrary and capricious, its finding constitute a disregard for the actual evidence.

I was treated for depression after I was dismissed from my employment. I have suffered physical and emotional symptoms including anxiety, depression, sleeplessness inability to concentrate, nervousness, stomach problems and bouts of crying.

On Dec 27, 2007 I filed in Thurston County Superior Court **(Case #07-2-92566-6)**. A complaint for damages for conspiracy in creating fraudulent documents to dismiss my employment. The defendants in this action are the Attorney General (Mr. John A Level, the ESD, and the PAB).

The defendant Attorney General of State of Washington filed a demand for a 12 person jury in the conspiracy case. This is the first time time I claims in

On April 25, 2008 Judge Hick entered granting State's motion for summary judgment and dismissal of my case.

On May 5, 2008 I filed motion for reconsideration of Judge Hick's order granting summary judgment. I have been denied.

On May 22, 2008 I filed appeal with Court of Appeals Division II of judge Hick's order granting summary judgment to AG,ESD and PAB.

IV. ARGUMENT

The trial Court's judgment is invalid because of its erroneous conclusion that the lower tribunals had considered the issue of whether the ESD used fraudulent documents to terminate the plaintiff's employment.

Attorney General (Mr. John A Level) was expected to be well verse and knowledgeable and he suppose to help innocent victims, he should investigate thoroughly. I have lost many battles in this litigation of to this point. I believe justice and I'm entitled a date in court.

ESD accused me of creating inaccurate and unreliable financial records for the agency resulting in an accounting error totaling in excess of \$12 million in errors. The ESD dismissed my employment based on fraudulent documents (CP doc#9 p.7,8 and 9) I was given incorrect information from Mr. Hanson. Ms. Meixsel and Ms.Kristofferson and Mr. Hanson created \$12 million in error (CP doc#9 p14,24,37 and p 30). However I was the only one dismissed from my employment.

The ESD created fraudulent documents to termination of my employment. Neither the facts, nor the law supporting the fraud claim have been previously litigated nor examined in any of the prior litigation involving my termination.

The decision of the PAB was erroneous as a matter of law, was contrary to the evidence and was arbitrary and capricious. Its findings constitute a disregard

for the actual evidence, which does not supported the conclusions reached by the board. The decision of the PAB was entered “clearly erroneous”.

- 1) **Error of Law: An administrative agency**’ conclusion of law, including its interpretation of statutes, are reviewed de novo under an “error of law”

Standard that permits the court to substitute its judgment for that of the agency.

Skamania County v Columbia River George Commission

144 Wn.2d,30, 26P.3d 241 (2001). While a reviewing court may accord deference

to an agency interpretation of the law where the agency has specialized expertise in dealing with such issues, the court is not bound by the agency’s conclusion of

law Montlake Community Club v Central Puget Sound Growth Management

Hearing Board, 110 Wn.App.731,43 P.3d57(2002).

I shouldn’t have to repay my unemployment compensation benefits because ESD involved fraudulent documents to terminate me. Because the ESD utilized fraudulent documents, the decision of the PAB was clearly erroneous, arbitrary and capricious and based on a mistake of law its findings and conclusions affirming the ESD’s decision are tainted by this fraud underlying the termination, and therefore cannot stand.

I am the scapegoat. I have been subjected to verbal and mental abuse, and unjustified scrutiny. I was monitored daily and under surveillance regarding my daily activities, which took the focus away from the other employees who were ultimately responsible, leaving me as the target (**CP doc#9 page 55 thru 67, 74 thru 82**).

This case has caused me great distress, humiliating me my family and in the community I live in. They put a hole in my heart. What they did was cruel and they took part of my soul for the last five years. Under State law, I'm entitled to recover all damages, which are proximately caused by the unlawful conduct. Marini, 137 Wn.2d at 367-368 Conspiracy, Fraudulent, Perjury, and Negligent Infliction of Emotional Distress unlawful conduct. This includes economic and non-economic damages. I had to spend substantial time and money to bring these matter to the court.

I cry out for careful, fair and unbiased review of my claims, which have never been reviewed by any judicial body, rather despite the fact I has submitted substantial evidence supporting my claims to the trial court, my tort claims have been rejected. My case has been toss out in the past misinformation, misstatement, by overlooked the evidence I presented.

I'm asking the Court Appeal to rehear my lawsuit alleging torture of my claims. Attorney General (Mr. John A Level) conspired with Personnel Appeal Board (PAB) and Employment Security Dept (ESD) involved fraudulent documents and Perjury at the hearing on April 16, 17, 2003.

I will prove that neither the facts, nor the law supporting the fraud claim have been previously litigated or examined in any of the prior litigation involving my termination.

**A. THIS COURT SHOULD CONCLUDE THAT THE FACT THE
ESD INVOLVED FRAUDULENT DOCUMENTS TO TERMINATE MY**

EMPLOYMENT AND DENY MY UNEMPLOYMENT COMPENSATION BENEFITS. I SHOULD'T HAVE TO REPAY MY UNEMPLOYMENT COMPENSATION BENEFITS.

The PAB decision is devoid of any discussion of fraud or of potentially fraudulent documents, because these issues were never raised nor addressed at the PAB hearing on April 16, 17, 2003.

I appealed the decision of the ESD's Commissioner's Review of Unemployment Compensation Benefits, to the Honorable Paula Casey, Thurston County Superior Court Judge. Case# 03-2-002639 Judge Casey affirmed the PAB decision; the decision of the PAB was entered "**clearly erroneous**".

According to the Thurston County Superior Court record shown Honorable Tom McPhee heard my case# 03-2-002639. I'm not aware of who he is? Until at the hearing on April 25, 2008 Honorable Richard Hicks informed me, I have hearing with Judge Tom McPhee. **(It was an error).**

But the Court Appeal record on October 28, 2004 I appeal the Court Appeal regarding case#03-2-00263-9 it shown Honorable Paula Casey not Honorable Tom McPhee as the Thurston County Superior Court shown.

Both the decision of the ESD and that of the PAB were clearly erroneous, arbitrary and capricious, and issued under a mistake of law. This is because they were based on the employment of fraudulent documents. Therefore, plaintiff was improperly terminated and denied my unemployment compensation benefits.

The decision of Honorable Paula Casey and Chris Wickham never addressed fraudulent or potentially fraudulent documents. Therefore, neither case can serve as a basis for requiring the plaintiff to pay back my unemployment compensation benefits.

In reviewing an administrative decision, the appellate court sits in the same position as the Superior Court, applying the standards of the Administrative Procedure Act directly to the record before the agency. Tapper v Employment Security Dept, 122 Wn.2d ,397,402,858 P.2d 494 (1993). In reviewing the denial of unemployment compensation benefits for misconduct, the determination of whether an employee's behavior constitutes misconduct is a mixed question of law and fact.

All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights. **Wash.Const.art.I.**

My dismissal from my employment for misconduct is not supported by substantial evidence. Negligence is conduct, a state of mind 16 Washington practice ~1.32 app.31 (2ded.2000). The test here is whether I knew or should have known that I was acting contrary to accepted accounting procedures. The record fails to reveal that I either knew, or should have known I was acting contrary to accepted accounting practices. I was acting under the direction of staff, and in particular Mr. Hanson, whose advice I had consistently followed during my tenure at the ESD. Even if my conduct were to amount negligence, ordinary negligence, as a matter of law, is sufficient to demonstrate misconduct under

RCW 50.04.060 “Behavior that is mere incompetence, inefficiency, erroneous judgment, or ordinary negligence does not constitute misconduct for the purposes of denying Unemployment Compensation Benefits” Galvin v Employment Security Dept., 87 Wn.App.634,643,942 p.2d 1040 (1977) citing Tapper, Supra at 409”. The Commissioner’s citation to Albertson’s Inc v Employment Security Dept 102 Wn.App.29,15p.3d 153 (2000) does not support his decision. (The three part test for misconduct stated in Albertson’s requires the intentional performance of a wrongful act, and does not propose, as the Commissioner implies that misconduct can be inferred solely, because I knew or should have know my action were wrong).

An administrative decision must be supported by sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order Callecod v Washington State Patrol, 84 Wn.App.663,673,929, p2d510, (1977). The evidence must be substantial when viewed in light of the whole record before the court **RCW 34.05.570(3)(e)** where no evidence is offered to rebut a claimant’s testimony on a given point.

Substantial evidence does not exist to support a finding contrary to that point. See Callecod, Supra at 674. Here there is no substantial evidence to support a finding of misconduct in any of the three categories recognized by the Tapper Court.

1) There is no evidence; **I intended to violate Department Rules or Procedures.** I testifying at the PAB hearing on April 16, 17, 2003 that I did not draw fund from accounts other than following the direction of Mr. Hanson as I

had been doing for six years and my supervisor approved my work because she watched me like a hawk, and examined a great deal of my work with a fine toothcomb (CP doc#9 p 64-67, and p 74-82).

I was not cross-examined on this testimony, which constituted competent evidence as my state of mind at the time the accounting errors were made. In fact, there is no evidence, much less substantial evidence that I intended to violate any rule or department procedures.

Mr. Hanson admitted at the PAB hearing, he told me wrong (CP doc#9 page 27,30) and also Mr. Hanson lead worker (supervisor) “Tim made a mistake” (CP doc#9 page 70).

2) There is no evidence that **I conduct constituted Gross Negligence.**

The term “Gross Negligence” has never been statutorily defined, and indeed, historically has been elusive of accurate definition Nist v Tudor 67 Wn 2d 322,328-330,407 p.2d79 8 (1965). The Washington Pattern Jury Instruction (Civil) defines gross negligence care. It is negligence that is substantially greater than ordinary negligence. **WPI 10.7.** The comment to this instruction cites Boyce v West, 71 Wn app.657,665,862 p.2d592(1993).

For the requirement that “to raise an issue of gross negligence, there must be substantial evidence of serious negligence”

The Commissioner point to no evidence, much less substantial evidence, that I was grossly negligence, on the contrary, the commissioner noted that” we would be inclined to categorize claimant’s original errors as necessarily constituting misconduct. No such evidence exists in this case.

3) **I was never warned to refrain from the accounting practice.** There is no evidence that I intentionally refused to heed warnings in connection with the activities at issue on the appeal.

I had only one meeting with Mr. Rolle (my boss) and Ms. Kristofferson (Mr. Hanson boss) on Dec 7, 2001. Mr. Rolle informed me ESD received 12 million dollars audit finding errors from State Auditor (CP doc#9 p 12,13).

At no time has no indication in the record Mr. Rolle (my boss), Ms. Meixsel (my supervisor), Mr. Trause (Head of the ESD), and Administrator for Human Resource Management had ever confer with regard to any of discovery my response (CP doc#9 page 12,13).

ESD charged me with neglect of duty, incompetence, insubordination and gross misconduct. No evidence of any kind shows that I failed to heed warnings addressed to my work performance.

**B. ESD EMPLOYED FRAUDULENT DOCUMENTS
TO TERMINATE ME.**

ESD accused me of an error total in excess of 12 million by creating inaccurate and unreliable financial records for the agency. The ESD's unlawfully terminated my employment.

BLACKLAW DICTIONARY: FRAUD

“Concealment of a material fact to induce another to act to his or her detriment”.

“A scheme of Fraud could be depriving other of their intangible right to honest services”

Article 1 section 9 of the constitution the principle of Limited Government is also closely related to the “rule of law”.

In the American government everyone is a citizen, powerful leaders must obey the law. Individual or groups cannot twist or bypass their services of their own interests.

ORIGINAL DOCUMENTS

- Original documents (CP doc#9 page 3,4, and 5): It contains both Mr. Hanson’s signature and his initial on the notation. It also is date stamp received in the Treasure’s Section of the ESD.

Original documents: I was only following the direction of Mr. Hanson my colleague that I had been doing for years. Also Mr. Hanson admitted at the hearing on April 16,17,2003 (PAB) that he told me wrong (CP doc#9 page 27,30). Also his supervisor admitted, “**Tim made mistake**”, (CP doc#9 page 70) under oath.

FRAUDULENT

Unfortunately the ESD used a doctored version to fire me. (CP doc#9 page 7, 8 and 9). **Does not have Mr. Hanson Signature, direction or date stamp received in the Treasure’s Section of the ESD.**

I shouldn't have to pay back my Unemployment Compensation Benefits, because ESD involved fraudulent documents to dismiss me. **Fraudulent "RCW 9.38.020,9.45.211.** Therefore, the trial court's ruling on ESD's motion for summary judgment should not affirmed.

A plaintiff claiming **fraud** must prove each of the following nine elements:

1) representation of an existing fact; 2) materiality 3) falsity; 4) the speaker's knowledge of its falsity 5) intent of the speaker that it should be acted upon by the plaintiff; 6) plaintiff's ignorance of its falsity 7) plaintiffs reliance on the truth of the representation 8) plaintiff's right to rely upon it; and 9) damages suffered by the plaintiff.

"each element of fraud must be establish by clear cogent, convincing evidence" **Stiley**, 130 Wn.2d at 505".

C. I CAN ESTABLISH PAB OVERLOOKED ESD STAFF'S PERJURY THEMSELVES/ THE PAB AND MR. TRAUSE MISLEADING EVIDENCE AT HEARING ON APRIL 16,17, 2003.

PERJURY

ESD staff (Mr. Trause, Mr.Rolle, Mr. Hanson, Ms.Kristofferson and Ms.Meixsel) perjury themselves at the hearing on April 16, 17, 2003.

PAB overlooked that Mr. Trause testified that he spoke with my boss (Mr. Rolle) (CP doc#9 page 32). According to Mr. Rolle, he testified that he didn't speak to Mr. Trause (CP doc#9 page 33). **RCW 9.72.010, RCW 9.72.050, RCW 5.28.060, and RCW 5.28.020.**

Mr. Trause gave sharply different testimony than Mr. Rolle. "Who is telling the truth." Moreover the PAB overlook Mr. Hanson, Ms. Meixsel and Ms. Kristofferson perjury themselves (CP doc#9 p 17,19,23,28,29,34, 71 and p 72).

MISLEADING EVIDENCE

Mr. Trause misleads the evidence, that I had a bad evaluation during the period from 7/96 through 9/2001. (CP doc#9 p 37,38,44, and p45).

According to the evidence (CP doc#9 p 39, 40) I did not have a bad evaluation.

The PAB misleads the evidence, that I have a bad evaluation during the period from 7/96 through 9/2001 (CP doc#9 p36). According to the evidence (CP doc#9 p35) I did not have a bad evaluation. The board arbitrary and capricious credibility of these witnesses.

The ESD's cover up their error by fabricated documents, ESD's staffs perjury themselves at the hearing on April 16, 17, 2003.

D. I CAN ESTABLISH PAB OVERLOOKED THAT I HAVE BEEN SUFFERED ABUSIVE AND ON GOING PERSONAL

**MISTREATMENT, DISCRIMINATION, HOSTILE ENVIRONMENT
WORKPLACE.**

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

ESD had no legitimated to dismiss my employment by involved fraudulent documents to dismiss me. PAB determined that the errors that were made were those of mine. Mr. Hanson was the person who initiated the draw request. PAB overlooked the evidence that three other people were involved for the errors (Mr. Hanson, Ms Meixsel and Ms.Kristofferson). I am the only one dismissed from my employment.

Moreover the PAB overlooked Ms. Kristofferson (Financial Deputy of ESD) and Ms. Meixsel (my supervisor) who made an error for the amount of \$6,522,757.10 (CP doc#9 page 14) Ms. Kristofferson admitted, under oath, that she willfully violated the rules (CP doc#9 page 24) **No disciplinary action was taken against either Ms. Meixsel or Ms. Kristofferson.**

The ESD wrongfully terminated my employment. This case has caused me great distress, humiliating me my family and in the community I live in. They put a hole in my heart. What they did was cruel and they took part of my soul for the last five years. Under State law, I'm entitled to recover all damages, which are proximately caused by the unlawful conduct. Marini,137 Wn.2d at 367-368 Conspiracy, Fraudulent, Perjury, and Negligent Infliction of Emotional Distress unlawful conduct. This includes economic and non-economic damages.

I am their scapegoat. My supervisor approved my work; she watched me like a hawk and examined a great deal of my work with a fine toothcomb. I have been subjected to verbal and mental abuse and unjustified, scrutiny. I was monitored daily under surveillance of my daily activities, taking the focus of other employees that were equally responsible, leaving me as the target (CP doc#9 page 55 thru 67, 74 thru 82).

The PAB and ESD determined that the errors that were mine total excess of \$12 million. That three others peoples were involved for the errors

PAB determined that the errors that were made were those of mine. Mr. Hanson was the person who initiated the draw request. However PAB overlooked Ms. Kristofferson and Ms. Meixsel who made the error for the amount of \$6,522,757.10. The actions of the ESD and PAB constitute discrimination under the **RCW 49.60**. Washington' Law against Discrimination, chapter **49.60 RCW**.

The concept of comparative fault (**codified at RCW 4.22.070**) is not applicable at all to discrimination cases, which are intentional act claims, not based on negligence. The comparative fault statute is not for intentional acts. As noted by the Washington Supreme Court, "intentional torts are part of a wholly different legal realm and are inapposite to the determination of fault pursuant to {the statutory scheme}" Welch v Southland Corp, 134 Wn.2d 629,952 p.2d 162, 166 (Wash 1998) {citing Price v Kitsap Transit,886 P2.2d.556,560(Wash.1994)}.

I have been suffered abusive and going personal mistreatment. I have been singled out for extreme discipline from an agency of the State of Washington, whose mission intrinsically involves providing security in employment.

Kahn v Salerno, 90 Wn.App.110, 130,951 P.2d 321 (1998) (quoting Wilmot v Kaiser Aluminum & Chem. Corp., 118 Wn.2d 46,69,821 P 2d 18 (1991)).

Protected Oppositional Activity: If the plaintiff had a reasonable and good faith belief that the practice or act may violate the law, the oppositional activity is protected. EEOC v Crown Zellerbach Corp., 720 F.2d 1008, 1013 (9th Cir.1983)
And, “an employee’s complaints about the treatment of others is considered a protected activity, even if the employee is not a member of the class that claims suffered from discrimination”.

I’m entitled to recover all damages, which flowed from the retaliatory acts against. This includes damages due to leaves my employment. All such damages are recoverable whether they are labeled a hostile work environment arising from retaliatory acts. This Court should affirmed ESD’s PAB’s has caused me great distress negligent infliction of emotional distress.

E. I CAN ESTABLISH AG, PAB CONSPIRACY WITH ESD TO COVER UP THE ERROR.

CONSPIRACY

The Attorney General (Mr. John A Level) conspired with ESD’s and PAB’s. The Court has authority to address Attorney General (Mr. Level and Mr. James) cover up (conspiracy with ESD and PAB) chapter 38.38.644.69.60.407 and chapter 9.22 RCW 69.50.407 to the Common Law of the State of

Washington. The Court has jurisdiction over the subject matter of this action WAC 260-80-050.

601 Statutory definition “Conspiracy is committed when a person, acting with intent that conduct constituting a crime be performed agrees with someone else to engage in or cause that conduct”

Conspiracies and attempt to violate the uniform controlled substance Act RCW 69.50.407.

602 History of statute Conspiracies a gross misdemeanor, regardless of the crimes 9A.28.040 criminal conspiracy 1,2 & 3.

Attorney General (Mr. Level) conspiracy with PAB personnel Appeal Board (PAB) and Employment Security Dept (ESD) covered up ESD errors by involved Fraudulent documents and at the PAB hearing on April 16,17, 2003 ESD staff’s witness perjury themselves.

I shouldn’t have been dismissed my employment and I shouldn’t have to pay back my Unemployment Compensation Benefits because ESD and PAB staff “deliberate” committed and conspired to destroy an innocent person. It was the most humiliation embarrassment experience of my life.

The Court has authority to address the underlying ESD fraudulent issue here under Rap 13.4(b)(4) and RCW 9.38.020, 9.45.211. ESD used fraudulent documents to prejudice my case.

The Court has authority to address the underlying perjury and misleading evidence issue raised here under RCW 9.72.010 RCW 9.72.050, RCW 5.28.060

and RCW 5.28.020. ESD staff perjury themselves at the PAB hearing on April 16,17, 2003.

The Court has authority to address the issue whether the action of the ESD in termination my employment in violation of Washington's Law against Discrimination chapter **49.60.RCW.**

The state has done me wrong an injustice and I need to know that someone is listening to my plea. My case has contributed to poor judgment from upper level in the investigation.

If conspiracy, fraudulent, misleading, perjury, discrimination, retaliation and hostile environment workplace are **legal** then the state will walk away from this free of consequence. I pray that you do not let this happen I need to know in my mind that I did not do this injustice.

The ESD and the PAB and the Attorney General have through their actions related to my termination caused me negligence emotional distress. I have unjustly been single out as the scapegoat for careless accounting practices. I have been the subject of unfair discipline. I'm entitled to my claims and the date in court.

II. CONCLUSION

The Court should reverse the decision made by Thurston County Superior Court and enter a judgment to grant my Unemployment Compensation Benefits (Pay back my Unemployment Compensation Benefits) and reinstate my employment). Based upon the facts I presented to the court.

RCW 69.50.407,9a.28.040 (1,2&3), RCW 9.72.010, 9.72.050, 5.28.020, 5.28.060, RCW 9.38.020,9.45.211 and RCW 49.60.

The ESD created fraudulent documents to termination of my employment. Neither the facts, nor the law supporting the fraud claim have been previously litigated nor examined in any of the prior litigation involving my termination.

The Court's judgment is invalid, because of its erroneous conclusion that the lower tribunals had considered the issues of whether the ESD's used fraudulent documents to terminated my employment.

The PAB decision was improper and must be reversed as a matter of law, because the decision they were reviewing that of the ESD's to terminate was based on fraudulent documents. The PAB held a hearing on April 16, 17, 2003 the decision of the PAB affirming my termination was entered **"Clearly erroneous"** on June 30, 2003.

The decision of the trial court to grant summary judgment on the issue of fraud must be reversed.

The Attorney General, ESD and PAB staff manipulated the process. They should be accountable for their misbehavior. I believe in justice. The defendants manipulated the process.

ESD committed Fraud, Perjury, Discrimination, and Retaliation Hostile Environment Workplace.

Here is a case of overkill, which reveals an agency, presumably bent upon protecting itself from the embarrassment of negative findings from the State Auditor, driven to removing, at all costs by fabricated documents to dismiss a

member of a protected class. This extreme and unnecessary behavior is not what members of the public expect from the many fine public servants working for the good of this state.

At this time the only thing I am sure of is the fact that when I go to sleep at night, I sleep with a clear conscience that I did nothing wrong. This could not be the same for the people who have stepped out of their way to cover up for their indiscretion by using me as their scapegoat, destroying an innocent person (One made to bear the blame for the mistakes or sins of others).

I suppose it is easier to bury small crumbs under the rug than it is an entire loaf of bread. An investigation of the upper crust would be an embarrassment to the State, where as this investigation only got rid of someone he or she knew could take a fall without causing to much commotion to the public.

Dated this 10 day of September 2008

Steffanie Kim Chau



5018 Siskiyou LP SE
Olympia WA 98501
(360) 556-3894

PROOF OF SERVICE

I Steffanie Kim Chau that on September 10, 2008 I serve a copy of this document the Appellant's Brief Papers on all parties or their counsel of record on the date below as follows

Hand delivered to State of Washington Thurston County Superior Court.

US mail Postage to Court of Appeal and Attorney General of Washington State to Mr. Paul F James.

I certify under penalty or perjury under the laws of the State of Washington that the forgoing is true and correct.

Date this 10 September, 2008 at Olympia WA

Steffanie Kim Chau

Steffanie Kim Chau

5018 Siskiyou LP SE
Olympia WA 98501
(360)556-3894

BY Steffanie Kim Chau
COUNTY CLERK
09 SEP 11 PM 1:53
COURT OF APPEALS
STATE OF WASHINGTON