

10/28/12

Petitioner/Appellant's Opening Brief

Basil D. Yauger, II  
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Court of Appeals No. 43156-4-II  
Thurston County No. 11-2-02285-1

Basil D. Yauger, Petitioner/Appellant.

v.

State of Washington Department of Employment Security, Respondent.

FILED  
COURT OF APPEALS  
DIVISION II  
2012 NOV -5 PM 1:03  
STATE OF WASHINGTON  
BY Sm  
DEPUTY

## INTRODUCTION

I, Basil Yauger submit this information regarding my request for a judicial review of the Employment Security Department's (Department) decision regarding the late filing of an appeal for unemployment benefits. I will provide evidence that Good Cause has been established under Washington State Law, and that a "reasonable person's" perspective would support my case. I will also demonstrate that the original decision by the Department to deny me benefits was in error under Washington State Law.

I resigned from my job in March 2010 after learning from my family in North Carolina that the safety and health of my sibling was in question. This was the reason given to my supervisor at the time of resignation. I suffer from Post Traumatic Stress Disorder (PTSD) that I incurred while serving in the U.S. Army, and it surfaced during this stressful time. She died one month later, and I fell into the deepest level of depression imaginable. I was denied unemployment benefits by the Department because I quit my job. They mailed me a determination letter that I was unable to clearly review because of my disability and the effects that PTSD has on individuals – my file includes medical evidence that it can render you unable to concentrate, meet time lines, and the reading of lengthy documents. These effects have a direct correlation to the delayed timing of my appeal. I was mentally, and physically unable to respond to the denial letter as I sank into a level of depression that kept me in bed for weeks, and fogginess for months. I did not regain a clear state of mind until the day before I filed this appeal, and only after I received professional counseling. I will provide evidence that PTSD caused me to miss the deadline to file an appeal, and that this disability meets the requirements of Good Cause by definition under Washington State Law. I will also provide evidence that I resigned from my job under Good Cause that was not recognized by the Department during the initial determination for unemployment benefits – a decision that compounded the stress that I was incurring, and added to the level of PTSD effects.

## ISSUES AND ASSIGNMENTS OF ERRORS

### Assignments of Error

Error 1: The Court erred by neglecting to include the admission of evidence regarding my disability into any determination regarding this appeal. I have provided extraordinary writ, medical records, and testimony regarding my disability with verifiable documentation that explains the untimely filing of the appeal.

Error 2: The Court erred by not addressing the evidence provided regarding my disability, and its explanation regarding the excusability of error regarding the late filing of the appeal. The length of delay for my appeal has been addressed with reputable medical sources regarding the effects of PTSD – in my case it took over a year and a half to get my mind clear again, and to become able to review my life situation. I have

suffered relapses of my PTSD since this case was opened, and it is having a direct impact on my ability to find employment. The stress of addressing what I believe was an original mistake by the Department regarding Good Cause for resignation [see RCW 34.05.514 (a)] has had a negative impact on my life, and my ability to re-enter the working world.

Error 3: The Court erred by not recognizing the ADA 7/26/90 Public Law 101-336 (42 U.S.C. Sec. 12101 et seq) during any of its determination regarding this case. The Court also has refused to acknowledge the submission of evidence provided regarding my disability – a direct violation of the ADA.

Error 4: The Court erred by (until recently) contacting me regarding all notices, deadlines, and requirements via U.S. Mail vs. email or phone – information that I have provided from day 1 of the appeal. I have communicated that I am traveling the country in search of work, and that email is the best way to reach me. The Court records will confirm that I have been on the move for over a year now, but until this last stage of the appeal have refused to utilize email for communication purposes. Most of the Court notices that I have received have been in the form of mail forwarded through multiple addresses that I have held, and were either too late to meet a deadline, or did not allow for sufficient time for me to research the situation in question.

### **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

Issue 1: Does ADA 101-336 require consideration when reviewing an untimely appeal?

- Yes it does

Issue 2: Did Petitioner/Appellant provide verifiable medical documentation?

- Yes I did

Issue 3: Does a mental disability qualify as a recognized reason for the delay in filing?

- Yes pursuant under WAC 192-04-090

Issue 4: Did Petitioner/Appellant resign under Good Cause?

- Yes I did according to RCW 34.05.514(a)

### **STATEMENT OF THE CASE**

I resigned from my job in 3/10 due to concerns for my sibling's health and safety. This was communicated to my supervisor in person on my last day in the office as I cleaned out my desk. I was in good standing with my employer

(Wells Fargo) at the time, and had just received a positive annual performance review. I did not provide a written resignation letter because I felt the face-to-face communication would suffice, and I was under extreme stress due to the situation and needed to get on with my drive to NC. I believe that this qualifies as Good Cause pursuant to RCW 34.05.514(a). I suffer from PTSD, and this was the beginning of a terrible period of deep depression/withdrawal from the world. I was not in a good frame of mind. My sister died under questionable conditions one month later. Her death sent me spiraling into the deepest level of depression that I have experienced. It rendered me helpless. I was unable to communicate effectively with the outside world. I had filed for unemployment benefits based off of the definition of Good Cause as defined by Washington State Law, and interpreted by a "Reasonable Person". I quit because my family informed me that they were worried about the health and safety of my sister, and it triggered my immediate need to get to her to evaluate the situation. I was unable to focus on anything else. I was able to spend two weeks with her before she died, and continue to question the true cause. The Department denied my case, but at that time I was not in a mental or physical state of awareness to read the letter completely – I had my girlfriend read me the decision only. I was in a state of confusion for over a year. I could not perform properly during interviews for new employment, and was concerned regarding my next move. I researched Washington State Law regarding resigning under Good Cause, and was left with the opinion that I qualified. I discussed my situation with friends who are professional people that by definition are reasonable people, and we all agreed that I should have been approved on my initial filing. I then filed this appeal – far beyond the time limits listed on the denial letter. I immediately communicated my disability to the Department, and the effects that it caused regarding the timeliness. My disability has been unrecognized by the Department, and then the Court of Appeals throughout the remainder of this case. My file includes medical records from the Department of Veterans Affairs confirming the diagnosis of PTSD as a result of my service in the U.S. Army. I have also provided reliable medical opinions that describe some of the effects of PTSD that include the inability to concentrate, meet time lines, and the reading of lengthy documents. My inability to respond to the denial of unemployment insurance in a timely manner is a result of PTSD – a medically registered disability. My appeal was denied, but the Court did not take into consideration or reference the disability. I researched the decision, and believe that it violates the ADA Act 7/26/90 Public Law 101-336 (42 U.S.C. Sec. 12101 et seq), and meets the requirements of Washington State Law RCW 50.32.075 regarding the late filing of an appeal.

## **ARGUMENT**

Good cause as defined by RCW 50.32.075 has been established by the petitioner/appellant through verifiable medical records that shows I have been

(Wells Fargo) at the time, and had just received a positive annual performance review. I did not provide a written resignation letter because I felt the face-to-face communication would suffice, and I was under extreme stress due to the situation and needed to get on with my drive to NC. I believe that this qualifies as Good Cause pursuant to RCW 34.05.514(a). I suffer from PTSD, and this was the beginning of a terrible period of deep depression/withdrawal from the world. I was not in a good frame of mind. My sister died under questionable conditions one month later. Her death sent me spiraling into the deepest level of depression that I have experienced. It rendered me helpless. I was unable to communicate effectively with the outside world. I had filed for unemployment benefits based off of the definition of Good Cause as defined by Washington State Law, and interpreted by a "Reasonable Person". I quit because my family informed me that they were worried about the health and safety of my sister, and it triggered my immediate need to get to her to evaluate the situation. I was unable to focus on anything else. I was able to spend two weeks with her before she died, and continue to question the true cause. The Department denied my case, but at that time I was not in a mental or physical state of awareness to read the letter completely – I had my girlfriend read me the decision only. I was in a state of confusion for over a year. I could not perform properly during interviews for new employment, and was concerned regarding my next move. I researched Washington State Law regarding resigning under Good Cause, and was left with the opinion that I qualified. I discussed my situation with friends who are professional people that by definition are reasonable people, and we all agreed that I should have been approved on my initial filing. I then filed this appeal – far beyond the time limits listed on the denial letter. I immediately communicated my disability to the Department, and the effects that it caused regarding the timeliness. My disability has been unrecognized by the Department, and then the Court of Appeals throughout the remainder of this case. My file includes medical records from the Department of Veterans Affairs confirming the diagnosis of PTSD as a result of my service in the U.S. Army. I have also provided reliable medical opinions that describe some of the effects of PTSD that include the inability to concentrate, meet time lines, and the reading of lengthy documents. My inability to respond to the denial of unemployment insurance in a timely manner is a result of PTSD – a medically registered disability. My appeal was denied, but the Court did not take into consideration or reference the disability. I researched the decision, and believe that it violates the ADA Act 7/26/90 Public Law 101-336 (42 U.S.C. Sec. 12101 et seq), and meets the requirements of Washington State Law RCW 50.32.075 regarding the late filing of an appeal.

## **ARGUMENT**

Good cause as defined by RCW 50.32.075 has been established by the petitioner/appellant through verifiable medical records that shows I have been

diagnosed with PTSD, and that I am classified as 40% permanently disabled. The respondent has stated, and cited legal definitions in their brief that the evaluation in the excusability of the delay shall take into account any physical, mental, educational, or linguistic limitations of the appealing or petitioning party WAC 192-04-090. I have provided medical records from the Veterans Administration that prove that I suffer from PTSD - by medical definition a mental disability. The sliding scale that the respondent describes in their brief fails to explain the factors that are included in the reasoning behind sliding scale theories, or how a disability weighs into the equation.

### **CONCLUSION**

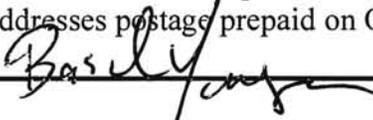
I suffer from PTSD - a mental disability that caused me to withdraw from the world for a year and a half before seeking professional care. During that time period I was mentally, and physically unable to function. It was during this time period that I missed the filing of an appeal for my unemployment benefits. I believe that my disability explains my position, but it has not been taken into consideration regarding the appeal. I am seeking relief in the form of reevaluating my appeal that will include taking my disability into account and a reversal to the original decision that denied me benefits that I feel I have proven I am entitled to.

10/29/12

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**CERTIFICATE OF SERVICE FOR JUDICIAL APPEAL**

I certify that I mailed a copy of my Petitioner/Appellant's Opening Brief to the within  
named interested parties  
at their respective addresses postage prepaid on October 30, 2012.

  
Basil D. Yauger

FILED  
COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY   
DEPUTY

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