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STATE OF WASHINGTON

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**COURT OF APPEALS FOR DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON
EMPLOYMENT SECURITY DEPARTMENT,

Appellant,

v.

SARA D. SPAIN,

Respondent.

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

I.	ARGUMENT	1
	A. RCW 50.20.050(2)(b) Provides An Exclusive List of Good Cause Reasons to Voluntarily Quit Employment and Qualify for Unemployment Benefits.....	1
	1. The Commissioner’s Decisions Cited by Spain Are Irrelevant As They Arose Under Previous Versions of the Employment Security Act	2
	2. The Language of RCW 50.20.050(1)(b) is Not Determinative Because (1)(b) Was Read in Conjunction With the Former (1)(c), Which Granted the Commissioner Discretion to Define “Other” Examples of Good Cause	4
	3. Spain’s Argument that RCW 50.20.050(2)(b) Encompasses “Compelling Personal Reasons” is Irrelevant as She Quit Work Due to a Work Connected Factor.....	5
	4. The Liberal Construction Provision Does Not Require the Award of Benefits When a Claimant Voluntarily Quits Work Without Good Cause	6
	B. The Employment Security Act Prohibits the Award of Attorney Fees for Work Performed at the Administrative Level and Also to the Extent Unreasonable.....	7
	1. The Employment Security Act Requires Attorney Fees to be Reasonable	9
	2. Attorney Fees for Work Performed at the Administrative Level are Not Compensable Out of the Unemployment Compensation Fund	10
II.	CONCLUSION	15

TABLE OF AUTHORITIES

Cases

<u>Ancheta v. Daly</u> , 77 Wn.2d 255, 461 P.2d 531 (1969).....	9, 11, 12
<u>Bock v. State Bd. of Pilotage Comm’ners</u> , 91 Wn.2d 94, 586 P.2d 1173 (1978).....	14
<u>Cobb v. Snohomish County</u> , 86 Wn. App. 223, 935 P.2d 1384 (1997).....	10
<u>Delagrave v. Empl. Sec. Dep’t</u> , 127 Wn. App. 596, 111 P.3d 879 (2005).....	13
<u>Gibson v. Empl. Sec. Dep’t</u> , 52 Wn. App. 211, 758 P.2d 547 (1988).....	12
<u>Gluck v. Empl. Sec. Dep’t</u> , 84 Wn.2d 316, 525 P.2d 768 (1974).....	13
<u>Hussa v. Empl. Sec. Dep’t</u> , 34 Wn. App. 857, 664 P.2d 1286 (1983).....	6
<u>In re Bale</u> , 63 Wn.2d 83, 385 P.2d 545 (1963).....	passim
<u>In re Burton</u> , 80 Wn. App. 573, 910 P.2d 1295 (1996).....	12
<u>Marine Enter., Inc. v. Sec. Pacific Trading Corp.</u> , 50 Wn. App. 768, 750 P.2d 1290 (1988).....	8
<u>McGreevy v. Oregon Mut. Ins. Co.</u> , 128 Wn.2d 26, 904 P.2d 731 (1995),.....	8
<u>Osborn v. Grant County</u> , 130 Wn.2d 615, 926 P.2d 911 (1996).....	10

<u>Pennsylvania Life Ins. Co. v. Empl. Sec. Dep't,</u> 97 Wn.2d 412, 645 P.2d 693 (1982).....	8
<u>Rettkowski v. Dep't of Ecology,</u> 76 Wn. App. 384, 885 P.2d 852 (1994),.....	8
<u>Smith v. Empl. Sec. Dep't,</u> 55 Wn. App. 800, 780 P.2d 1335 (1989).....	7
<u>Starr v. Empl. Sec. Dep't,</u> 123 P.3d 513, 2005 WL 3112938 (2005)	1, 2, 5, 6
<u>Valley View Indus. Park v. City of Redmond,</u> 107 Wn.2d 621, 733 P.2d 182 (1987).....	14
<u>Vergele v. Empl. Sec. Dep't,</u> 28 Wn. App. 399, 623 P.2d 736 (1981).....	12
<u>Wagner v. Foote,</u> 128 Wn.2d 408, 908 P.2d 884 (1996).....	8

Statutes

Laws of 1953 1st Ex. Sess. ch. 8, § 8.....	3
RCW 34.05.010(11)(a)	14
RCW 34.05.461(1)(a)	14
RCW 34.05.464(2).....	14
RCW 34.05.542	14
RCW 34.12.010	14
RCW 50.01.010	6
RCW 50.20.050	1, 3, 7
RCW 50.20.050(1)(b).....	4, 5

RCW 50.20.050(1)(c)	2, 4, 5, 6
RCW 50.20.050(2)(b)	passim
RCW 50.20.050(2)(b)(ix)-(x)	1
RCW 50.20.100	4
RCW 50.32.100	11
RCW 50.32.110	10, 11
RCW 50.32.160	9, 11
Rem. Supp. 1945 § 9998-216	4

Other Authorities

BLACK'S LAW DICTIONARY 761 (Abr. 6 th ed. 1991).....	5
WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 1598 (1993)	5

Rules

RAP 18.1(b)	7
RAP 7.2(i)	15
RPC 1.5	10

Commissioners' Decisions

In re Groth,
Comm'r Dec. 343 (1957) 3, 4

In re Pischel,
Comm'r Dec. 2d 672 (1981)..... 2, 3, 6

In re Simpson,
Comm'r Dec. 513 (1962) 3, 4

Regulations

WAC 192-16-009..... 2, 3

I. ARGUMENT

A. **RCW 50.20.050(2)(b) Provides An Exclusive List of Good Cause Reasons to Voluntarily Quit Employment and Qualify for Unemployment Benefits**

After the filing of the Appellant's Brief, this Court issued a published decision ruling that good cause to quit employment and qualify for unemployment benefits is limited to the ten factors listed in RCW 50.20.050(2)(b):

We hold that RCW 50.20.050(2)(b)(ix)-(x) 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, 123 P.3d 513, 2005 WL 3112938 (2005).

The Court held that the plain language of the statute was unambiguous and contained "no additional open-ended circumstance of any type." *Id.* The Court further noted:

Nothing in this subsection or anywhere else in RCW 50.20.050 even hints that there could be other non-disqualifying circumstances.

Id.

Despite this Court's ruling, Spain argues that good cause is not limited to the enumerated factors. Because the issue has already been settled by this Court, her arguments must fail.

1. The Commissioner's Decisions Cited by Spain Are Irrelevant As They Arose Under Previous Versions of the Employment Security Act

Spain cites various Commissioner's Decisions for the argument that the enumerated list is not exhaustive. However, each of these decisions arose under previous versions of the Employment Security Act (Act) which granted the Commissioner of the Employment Security Department (Commissioner) discretion to define good cause. The 2003 Legislature removed the Commissioner's discretion, replacing it with RCW 50.20.050(2)(b)'s exhaustive list. *See Starr v. Empl. Sec. Dep't*, No. 33003-2-11, slip op. (Wn. App. Div. 2, Nov. 22, 2005), 2005 WL 3112938 FN 7 citing House Bill Report¹ ("The Commissioner's discretion to determine that other work-related factors are good cause for leaving work is eliminated.") As such, Spain's reliance on these decisions is without merit.

Spain cites In re Pischel, Comm'r Dec. 2d 672 (1981) for her argument that the list is not exhaustive. However, Pischel arose under RCW 50.20.050(1)(c)² and WAC 192-16-009, which provided:

In determining whether an individual has left work voluntarily without good cause, the commissioner shall consider . . . other work connected factors as the commissioner may deem pertinent

RCW 50.20050(1)(c) (emphasis added).

¹ The House Bill Report was submitted as Attachment C to the Appellant's Opening Brief.

² At the time of the Pischel decision, this was codified as RCW 50.20.050(3). *See* Laws of 1977, 1st Ex. Sess., ch. 33, § 4 (Attachment A). For clarity, reference herein will simply be to RCW 50.20.050(1)(c).

[I]n order for an individual to establish good cause for leaving work voluntarily it must be satisfactorily demonstrated:

- (a) that he or she left work primarily because of a work connected factor(s); and
- (b) that said work connected factor(s) was (were) of such a compelling nature as to cause a reasonably prudent person to leave his or her employment; and
- (c) that he or she first exhausted all reasonable alternatives prior to termination [though employee need not perform futile acts].

WAC 192-16-009, as cited in In re Pischel, Comm'r Dec. 2d 672 (1981).

Under the 2003 amendments, neither of these provisions apply to claims with an effective date after January 4, 2004, such as Spain's. RCW 50.20.050; WAC 192-16-009. Spain's reliance on Pischel is without merit.

Spain cites In re Groth, Comm'r Dec. 343 (1957) and In re Simpson, Comm'r Dec. 513 (1962) for the argument that the list is not exhaustive. At the time those cases were decided, the Act had two provisions addressing good cause to voluntarily quit employment:

An individual shall be disqualified for benefits for the calendar week in which he has left work voluntarily without good cause and for the five calendar weeks which immediately follow such week.

Laws of 1953 1st Ex. Sess. ch. 8, § 8 (Attachment B). Also cited in In re Bale, 63 Wn.2d 83, 85, 385 P.2d 545 (1963).

Suitable work factors

In determining whether or not any such work is suitable for an individual or whether or not an individual has left work voluntarily without good cause, the Commissioner shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his

experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, the distance of the available work from his residence, and such other factors as the Commissioner may deem pertinent, including state and national emergencies.

Rem. Supp. 1945 § 9998-216 (emphasis added) (Attachment C).³

Today's version of the "suitable work factors" statute no longer grants the Commissioner discretion to define "other" examples of good cause. RCW 50.20.100. Also, there is nothing in the current statute which grants the Commissioner discretion to define good cause for claims that arise after January 4, 2004. Spain's reliance on Groth and Simpson is without merit.

2. The Language of RCW 50.20.050(1)(b) is Not Determinative Because (1)(b) Was Read in Conjunction With the Former (1)(c), Which Granted the Commissioner Discretion to Define "Other" Examples of Good Cause

Spain compares (2)(b) and (1)(b) of RCW 50.20.050 for the assertion that the (2)(b) list is not exhaustive.⁴ Respondent's Brief at 14-18. Spain asserts that, because (1)(b) was never interpreted as exhaustive, (2)(b) cannot be interpreted as exhaustive. Spain's assertion must fail.

RCW 50.20.050(1)(b) was not interpreted as exhaustive because it was read in conjunction with (1)(c), which provided:

³ This statute was the predecessor to the current RCW 50.20.100.

⁴ RCW 50.20.050(1)(b) and (2)(b) provide, in pertinent part:

An individual shall not be considered to have left work voluntarily without good cause when

RCW 50.20.050(1)(b).

An individual is not disqualified from benefits under (a) of this subsection when

RCW 50.20.050(2)(b).

In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider . . . and such other work connected factors as the commissioner may deem pertinent

....

RCW 50.20.050(1)(c) (emphasis added).

Because (1)(c) granted the Commissioner discretion to define “other”⁵ examples of good cause, the (1)(b) list was not exhaustive.

The 2003 Legislature removed (1)(c) from the statute, thus eliminating the Commissioner’s discretion to define good cause. *See Starr v. Empl. Sec. Dep’t*, No. 33003-2-11, slip op. (Wn. App. Div. 2, Nov. 22, 2005), 2005 WL 3112938 FN 7 citing House Bill Report (“The Commissioner’s discretion to determine that other work-related factors are good cause for leaving work is eliminated.”). Unlike RCW 50.20.050(1)(b), the RCW 50.20.050(2)(b) list is exhaustive.

3. Spain’s Argument that RCW 50.20.050(2)(b) Encompasses “Compelling Personal Reasons” is Irrelevant as She Quit Work Due to a Work Connected Factor

Spain cites *In re Bale*, 63 Wn.2d 83, 385 P.2d 545 (1963) for the argument that the statute encompasses “compelling personal reasons” not listed in RCW 50.20.050(2)(b). Respondent’s Brief at 18-22. This Court rejected that argument in *Starr* because the (2)(b) list contains both personal and work connected factors. *Starr v. Empl. Sec. Dep’t*, No.

⁵ “Other” is defined as, “Different or distinct from that already mentioned; additional, or further.” BLACK’S LAW DICTIONARY 761 (Abr. 6th ed. 1991). *See also* WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 1598 (1993) (“not being the one . . . first mentioned,” “distinct from the one or those first mentioned,” “an additional one,” “a different one”).

33003-2-11, slip op. (Wn. App. Div. 2, Nov. 22, 2005), 2005 WL 3112938.

Nevertheless, whether the statute encompasses “compelling personal reasons” is irrelevant to the case at hand. Work place abuse is not a personal reason, and has long been considered a work connected factor. In re Pischel, Comm’r Dec. 2d 672 (1981); Hussa v. Empl. Sec. Dep’t, 34 Wn. App. 857, 862 [FN 2-3], 664 P.2d 1286 (1983). Spain’s reliance on Bale and the “work connected factor” language of RCW 50.20.050(1)(c) is without merit.

4. The Liberal Construction Provision Does Not Require the Award of Benefits When a Claimant Voluntarily Quits Work Without Good Cause

Spain asserts that the liberal construction provision requires that she receive unemployment benefits, despite the clear mandate of the statute. Respondent’s Brief at 22-25. The liberal construction provision provides:

[T]his title shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.

RCW 50.01.010.

The title must be liberally construed to reduce the suffering caused by involuntary unemployment. It need not be liberally construed to award benefits to individuals who are voluntarily unemployed without good cause.

The Supreme Court has long stated that the liberal construction provision is not determinative and must be read in context with the

language of RCW 50.20.050. In re Bale, 63 Wn.2d 83, 87, 385 P.2d 545. The Supreme Court has also noted that the liberal construction provision “is neither clear, unambiguous nor well understood.” *Id.*

In Smith v. Empl. Sec. Dep’t, 55 Wn. App. 800, 801-802, 780 P.2d 1335 (1989), the Court considered the issue of whether a claimant quit or was terminated from employment. The Court held that the liberal construction provision did not require doubts to be resolved in favor of the claimant because “[b]enefits are intended only for those who become unemployed through no fault of their own.”

Here, the liberal construction provision does not require the award of benefits to Spain. It is undisputed that Spain does not meet the good cause requirements of RCW 50.20.050(2)(b), which this Court has held is an exhaustive list. Spain’s arguments are without merit.

B. The Employment Security Act Prohibits the Award of Attorney Fees for Work Performed at the Administrative Level and Also to the Extent Unreasonable

Spain’s Respondent’s Brief commits substantial discussion to the argument that she is entitled to attorney fees. Respondent’s Brief at 25-39. Although RAP 18.1(b) allows a party to dedicate a paragraph in the brief to the request for attorney fees, Spain has included argument on the reasonableness of her attorney fees.⁶ This argument is premature. The

⁶ Respondent’s Brief at 33 states that a cost bill is attached. None was attached to the served copy.

issue of attorney fees has not been finally decided by the Superior Court⁷ and Spain has not prevailed in this appeal. Since the Court at this point is only reviewing the validity of the agency's final order, the reasonableness of Spain'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, 519-520, 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).

⁷ After the appeal was filed with this Court, the Thurston County Superior Court issued a letter awarding Spain attorney fees. However, the Superior Court has not entered a final order on the attorney fees issue. Should the Department prevail on appeal, Spain would not be entitled to attorney fees for work performed at the Superior Court or Court of Appeals levels. Broschart v. Empl. Sec. Dep't, 123 Wn. App. 257, 273, 95 P.3d 356 (2004).

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. Ancheta v. Daly, 77 Wn.2d 255, 265, 461 P.2d 531 (1969).

1. The Employment Security Act Requires Attorney Fees to be Reasonable

The Employment Security 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 265-266. 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 265-266. 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. As 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 266-267.

Despite the Supreme Court’s holding in Ancheta, Spain quotes Gibson v. Empl. Sec. Dep’t, 52 Wn. App. 211, 758 P.2d 547 (1988) and Vergele 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).

Recently, Division 3 of the Court of Appeals issued an order amending its published decision. Originally, the Court granted attorney

fees for work performed at both the administrative and superior court levels:

After the ESD commissioner has filed a new decision, the matter should be sent to the superior court for determination of fees for the administrative and superior court levels.

Delagrave v. Empl. Sec. Dep't, No. 22714-6, slip op. (Wn. App. Div. 3, May 10, 2005).

After the Department's motion for reconsideration, the Court amended its decision, removing an award of administrative level attorney fees:

Attorney fees and costs incurred by Mr. Delagrave in the superior court appeal shall be awarded by that court as may be appropriate and consistent with this opinion on remand.

Delagrave v. Empl. Sec. Dep't, 127 Wn. App. 596, 613, 111 P.3d 879 (2005).

Spain asserts it is illogical to allow attorney fees for judicial-level work and not for administrative-level work. Respondent's Brief at 36. 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 at 90, 385.

In addition, there are many logical reasons for the Legislature to limit attorney fees to work performed at the court level. First, the work done at the administrative level is mostly before the 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'nrs, 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 Spain 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, Spain would not be permitted to recover attorney fees in an amount that is unreasonable. Here, Spain 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.⁸

II. CONCLUSION

It is undisputed that Spain does not meet the good cause requirements of RCW 50.20.050(2)(b), which this Court has held is an exhaustive list. The Commissioner correctly determined that Spain voluntarily quit her job without good cause and, thus, was not eligible to receive unemployment benefits. The Department respectfully asks that this Court reverse the Superior Court decision and affirm the Commissioner's Decision denying Spain unemployment benefits.

RESPECTFULLY SUBMITTED this 17th day of January, 2006.



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⁸ 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 for both the Superior Court and Court of Appeals proceedings. RAP 7.2(i).

Attachment A

Sec. 4. Section 73, chapter 35, Laws of 1945 as last amended by section 21, chapter 2, Laws 1970 ex. sess. and RCW 50.20.050 are each amended to read as follows:

(1) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter until he or she has obtained work and earned wages of not less than his or her suspended weekly benefit amount in each of five calendar weeks (~~(: PROVIDED, That disqualification under this section shall not extend beyond the tenth calendar week following the week in which such individual left work)~~).

(2) An individual shall not be considered to have left work voluntarily without good cause when:

(a) He or she has left work to accept a bona fide job offer; or

(b) The separation was because of the illness or disability of the claimant or a member of the claimant's immediate family if the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment.

(3) In determining whether an individual has left work voluntarily without good cause, the commissioner shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the individual at the time he or she accepted the employment, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment unless the related circumstances has so changed as to the amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unconscionable hardship on the individual were he or she required to continue in the employment.

(4) Subsections (1) and (3) of this section shall not apply to an individual whose marital status or domestic responsibilities cause him or her to leave employment. Such an individual shall not be eligible for unemployment insurance benefits until he or she has requalified, either by obtaining work and earning wages of not less than the suspended weekly benefit amount in each of five calendar weeks or by reporting in person to the department during ten different calendar weeks and certifying on each occasion that he or she is ready; able, and willing to immediately accept any suitable work which may be offered; is actively seeking work pursuant to customary trade practices, and is utilizing such employment counseling and placement services as are available through the department.

Attachment B

SEC. 8. Section 50.20.050, RCW, derived from section 73, chapter 35, Laws of 1945, as amended by section 12, chapter 215, Laws of 1951, is re-enacted and reads as follows:

Re-enactment.

An individual shall be disqualified for benefits for the calendar week in which he has left work voluntarily without good cause and for the five calendar weeks which immediately follow such week.

Disqualification for leaving work.

SEC. 9. Section 50.20.060, RCW, derived from section 74, chapter 35, Laws of 1945, as amended by section 13, chapter 215, Laws of 1951, is re-enacted and reads as follows:

Re-enactment.

An individual shall be disqualified for benefits for the calendar week in which he has been discharged or suspended for misconduct connected with his work and for the five calendar weeks which immediately follow such week.

Disqualification for discharge for misconduct.

SEC. 10. Section 50.20.070, RCW, derived from section 75, chapter 35, Laws of 1945, as amended by section 10, chapter 265, Laws of 1951, is re-enacted and reads as follows:

Re-enactment.

Irrespective of any other provisions of this title an individual shall be disqualified for benefits for any week with respect to which he has knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and has thereby obtained or attempted to obtain any benefits under the provisions of this title, and for an additional twenty-six weeks commencing with the first week for which he completes a claim for waiting period or benefits following the date of the delivery or mailing of the determination of disqualification under this section: *Provided*, That such disqualification shall not be applied after two years have elapsed from the date of the delivery or mailing of the determination of disqualification under this section, but all overpayments established by such deter-

Disqualification for false representation.

Attachment C

It is not required that there be a strike or lock-out at a plant before there can be a labor dispute which may cause a stoppage of work.—Id.

Where sawmill workers were employed by one company, and loggers who were employees of another company, but members of the same union, called a strike and refused to deliver logs, by reason of which the sawmill was required to shut down, there was a labor dispute within the meaning of subd. (e), disqualifying the sawmill employees, though they were willing to work and had no dispute with their employer.—Id.

Former act cited: 123 Wn. Dec. 1, 158 P.2d 319.

§ 9998-216. Suitable work factors. In determining whether or not any such work is suitable for an individual or whether or not an individual has left work voluntarily without good cause, the Commissioner shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, the distance of the available work from his residence, and such other factors as the Commissioner may deem pertinent, including state and national emergencies. [L. '45, ch. 35, § 78, p. 116, effective July 1, 1945.]

§ 9998-217. Suitable work exceptions. Notwithstanding any other provisions of this act, no work shall be deemed to be suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute; or
- (b) if the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or
- (c) if as a condition of being employed the individual would be required by the employing unit to join a company union or to resign from or refrain from joining any bona fide labor organization. [L. '45, ch. 35, § 79, p. 116, effective July 1, 1945.]

§ 9998-218. Amount of benefits. Subject to the other provisions of this act benefits shall be payable to any eligible individual during the benefit year in accordance with the weekly benefit amount and the maximum benefits potentially payable shown in the following schedule for such base year wages shown in the schedule as are applicable to such individual:

In re Groth,
Comm'r Dec. 343 (1957)

**Washington State
Employment Security Department
Precedential Decisions of Commissioner**



Home

Empl. Sec. Comm'r Dec. 343

◀ Term ▶

◀ **In re GROTH**, ▶ Petitioner, Empl. Sec. Comm'r Dec. 343 (1957)

Commissioner of the Employment Security Department
State of Washington

IN RE EARL W. GROTH PETITIONER

February 5, 1957

Case No.
343

Review No.
4138

Docket No.
A-31379

DECISION OF COMMISSIONER

EARL W. GROTH having duly petitioned the undersigned Commissioner to review a Decision of an Appeal Tribunal entered in this matter on the 18th day of January, 1957, and the Commissioner having carefully examined the entire record herein, thereby being fully advised in the premises, does hereby enter the following findings of fact.

The petitioner, aged 32, is an operator of construction equipment. He is a member of the Operating Engineers and is affiliated with Local 370 of Spokane, Washington. The petitioner commenced work for Cherf Brothers and Sandkey, Inc. at an hourly pay of \$2.85. Although receiving his pay from Cherf Brothers, the petitioner testified that he was working under the direct supervision of one Carl Hohner, a sub-contractor on the job. About 4:20 p.m. on October 27, 1956, the petitioner was in the process of pushing poles up a hill with a "cat". On his last trip up the hill, he noticed that his gas was getting low, as the "cat" would miss when going up the hill. After returning to the bottom of the hill, the petitioner observed Carl Hohner standing nearby. The petitioner asked Mr. Hohner whether he should attempt to push another pole up the hill or whether he should stop his work long enough to refill the gas tank. Mr. Hohner directed some obscene language towards the petitioner, advising him that he "should've watched it". The remark apparently was directed to the fact that the petitioner should have watched his gas consumption and had it refilled earlier in the day. The petitioner, feeling that he did not have to take such a remark, immediately terminated his employment. The petitioner testified that he had never before had a conversation with Mr. Hohner and was totally unaware of the fact that Mr. Hohner was disposed to use profane language. It was the petitioner's position that he was used to profanity and had had it

directed at him by others on prior occasions. However, as the petitioner stated, "it's not what they say, it's how they say it". The petitioner felt that Mr. Hohner, in directing the remark which he did to the petitioner, sincerely meant what he said. Andrew B. Olson, the dispatcher of the petitioner's local, appeared and testified to the fact that the union was aware of Mr. Hohner's propensity for using profanity. It was the position of the union that Mr. Hohner's conduct was detrimental to establishing good employer-employee relations, and that other former employees had left the employ of Mr. Hohner for the same reasons as were present in this case.

Turning now to the conclusions to be drawn from the foregoing facts, there is no question but that the petitioner left his work voluntarily. It remains to be determined whether such leaving was with "good cause". The Appeal Examiner reached the decision that the petitioner did not have good cause for leaving his employment. The basis for the Appeal Examiner's decision rests upon the Examiner's opinion that the employer did not use profanity with an intent to offend the petitioner. Although it may be conceded, for the purposes of argument, that the intent of Mr. Hohner would be determinative of the basic issue presented herein, it must be noted that the record is devoid of any testimony upon which Mr. Hohner's intent could be determined. The employer, although receiving adequate notice of the issues involved, failed to provide this department with any information concerning the circumstances of the petitioner's job separation. Likewise, the employer failed to enter an appearance at the hearing or request a continuance thereof to provide for appearance at a later date. Inasmuch as the record contains only the sworn testimony of the petitioner, which testimony is corroborated by the testimony given by Mr. Olson of the union, it is the considered opinion of the Commissioner that the petitioner has established good cause for having left his employment voluntarily. The preponderance of the evidence establishes that the petitioner was subjected to intentional profanity by his immediate superior thereby giving rise to complete justification for leaving the job without further discussion with his employer. In accordance with these conclusions, now therefore IT IS HEREBY ORDERED that the Decision of the Appeal Tribunal entered in this matter on the 18th day of January, 1957, shall be SET ASIDE. Benefits shall be allowed the petitioner commencing with the calendar week ending November 10, 1956, providing he is otherwise eligible and qualified therefor. DATED at Olympia, Washington, February 5, 1957.

PETER R. GIOVINE
Commissioner
Employment Security Department
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◀ Term

◀ Doc 3 of 3

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In re Pischel,
Comm'r Dec. 2d 672 (1981)

**Washington State
Employment Security Department
Precedential Decisions of Commissioner**



Home

Empl. Sec. Comm'r Dec.2d 672

Term ▶

◀**In re PISCHEL**,▶ Petitioner, Empl. Sec. Comm'r Dec.2d 672 (1981)

Commissioner of the Employment Security Department
State of Washington

IN RE ERNEST P. PISCHEL PETITIONER

May 22, 1981

Case No.

672

Review No.

38559

Docket No.

1-00862

DECISION OF COMMISSIONER

ERNEST P. PISCHEL duly petitioned the Commissioner for a review of a Decision of an Appeal Tribunal entered in this matter on the 6th day of February, 1981, and the undersigned, having carefully reviewed the entire record, thereby being fully advised in the premises, does hereby enter the following.

FINDINGS OF FACT

I

The interested employer was duly notified of the time and place of the hearing, but failed to appear thereat; consequently, the Findings and Conclusions herein are based upon evidence adduced by or on behalf of petitioner.

II

Petitioner worked for the interested employer as a material take-off manager, non-union, from September 9, 1978, until November 12, 1980, at a wage of \$18,700 per year. His duty was to prepare lists of specifications and quantities of materials to be used by the plant manager in supplying construction projects. Petitioner and the plant manager were both under the supervision of the director of operations.

III

In September, 1980, the plant manager behaved in a belligerent and overbearing

manner toward petitioner, whereupon petitioner complained to the director of operations. The director promised to have a discussion with the plant manager about this, but so far as petitioner is aware the discussion never occurred. The plant manager continued to be belligerent and overbearing toward petitioner and petitioner's assistant when communicating with them in person and by telephone, often using profanity. On one occasion the plant manager made a show of belligerence in the presence of the director, who calmed him down for the moment. Sometime prior to October 11, 1980, petitioner told the director that he was considering quitting because of working conditions, including the problem of communications between petitioner's office and management. The director was about to take a trip at the time. He asked petitioner to write him a letter listing the unsatisfactory working conditions and to continue working until he, the director, returned, promising that he would take some action on the matter. Petitioner did as requested.

IV

On November 12, after one of the plant manager's assistants had criticized a materials list which petitioner had approved, the plant manager burst into petitioner's office, shouting profanity, and waving his finger and his fist at petitioner in a belligerent manner. Petitioner was upset, and told the plant manager that he must leave or he, petitioner, would quit. When the plant manager departed, petitioner sent a message to the director requesting a meeting, but the director was busy at a meeting. Petitioner went home to quiet his nerves, and on November 14, when his emotional state had improved, he telephoned the director and again requested a meeting, indicating that he was thinking of resigning as an alternative to the unsatisfactory working conditions. The director informed petitioner that he did not want to discuss the matter, and requested that petitioner send him a copy of the resignation. Petitioner resigned on November 15, 1980. From the foregoing Findings of Fact, the undersigned frames the following.

ISSUE

Did petitioner voluntarily leave this employment with "good cause" within the meaning of RCW 50.20.050?

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

CONCLUSIONS

The applicable provisions of statute and the Washington Administrative Code are set out in the Appeal Tribunal's Decision, the following excerpt from WAC 192-16-009 being of dispositive relevance here:

"Except as provided in WAC 192-16-011 and 192-16-013, in order for an individual to establish good cause within the meaning of RCW 50.20.050(1) for leaving work voluntarily it must be satisfactorily demonstrated:

(a) that he or she left work primarily because of a work connected factor(s); and
(b) that said work connected factor(s) was (were) of such a compelling nature as to cause a reasonably prudent person to leave his or her employment; and
(c) that he or she first exhausted all reasonable alternatives prior to termination: Provided, That the individual asserting 'good cause' may establish in certain instances that pursuant of the otherwise reasonable alternatives would have been a futile act, thereby excusing the failure to exhaust such reasonable alternatives."

WAC 192-16-011 and WAC 192-16-013 refer, respectively, to circumstances where an individual has left work to accept a bona fide offer of work elsewhere, and where an individual has left work because of illness or disability in his or her immediate

family.

It is fairly obvious that a belligerent and abusive fellow worker is a "work connected factor" within the meaning of the above excerpted code. The Commissioner has long held that indecent or abusive language directed at an individual by the employer or a supervisor may be the basis of "good cause" for that individual to quit the work. In re Groth, Comm. Dec. 343 (1957); In re Neuschwander, Comm. Dec. 507 (1962); In re Simpson, Comm. Dec. 513 (1962). There appears no rational basis for a distinction, in respect to "good cause" between an instance where the employer or a supervisor has so abused the claimant and an instance where, as here, the supervisor has knowingly permitted a fellow worker to so abuse the claimant. In both instances, the above is a working condition "work connected factor" which would not and should not be tolerated by a person of reasonable prudence; and working condition from which a reasonably prudent person would feel compelled to extricate himself or herself. The evidence herein establishes that on at least three occasions prior to quitting his job, petitioner contacted his supervisor seeking a way to end the belligerence and verbal abuse he suffered at the hands of his fellow worker; that the supervisor had authority over both petitioner and the belligerent fellow worker; and that the supervisor made no reasonable effort to exercise his authority in order to change that intolerable working condition. The undersigned concludes from these circumstances that petitioner voluntarily quit subject employment because of a work connected factor which was compelling in nature, and only after exhausting all reasonable alternatives to quitting; wherefore good cause for quitting has been established. Now, therefore,

IT IS HEREBY ORDERED that the Decision of the Appeal Tribunal entered in this matter on the 6th day of February, 1981, shall be SET ASIDE. Petitioner is not subject to disqualification under RCW 50.20.050(1) and benefits are accordingly allowed provided he is otherwise qualified and eligible therefor.
DATED at Olympia, Washington, MAY 22, 1981.

Robert E. Jackson
Commissioner's Delegate
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 Term

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In re Simpson,
Comm'r Dec. 513 (1962)

**Washington State
Employment Security Department
Precedential Decisions of Commissioner**



Home

Empl. Sec. Comm'r Dec. 513

◀ Term ▶

◀ **In re SIMPSON** ▶, Empl. Sec. Comm'r Dec. 513 (1962)

Commissioner of the Employment Security Department
State of Washington

IN RE JOHN W. SIMPSON PETITIONER

September 7, 1962

Case No.

513

Review No.

6053

Docket No.

A-47199

DECISION OF COMMISSIONER

JOHN W. SIMPSON, duly petitioned the undersigned Commissioner to review a Decision of an Appeal Tribunal entered in this matter on the 23rd day of August, 1962. Having now completed a thorough examination of the record and files herein, thereby being fully advised in the premises, the Commissioner hereby adopts the Findings of Fact of the Appeal Tribunal which, for purposes of clarity, are hereinafter set forth in their entirety:

FINDINGS OF FACT

"Appellant is a member of the Operating Engineers Union, Local 370, of Spokane. He was dispatched by his union to Carl Carbon, a contractor, to work as a crusher operator on a job near Pullman, Washington. He was employed at union scale from June 13, 1962, through July 3, 1962, when he terminated his employment voluntarily.

"The reason the appellant quit his job resulted from an incident during the night shift on July 2, 1962. He described this incident to an interviewer in the Spokane employment office on July 20, 1962, and signed the following statement as a summation of his reason for quitting his job:

"I quit the job at Carl Carbon because he, the superintendent, gave me an order that was unreasonable. We were replacing some belts on some machinery; the superintendent's 15-year old son was attempting to do the job and there was only room for one person to work.

"The superintendent told me to get my finger out of my ass and get the belt on, not to stand there and let a 15-year old kid do it.

"I then quit because it wasn't my place to tell the 15-year old to get out of the way and furthermore, I did not care to be sworn at."

"The appellant states that he had no supervisory responsibilities over the superintendent's son, who was working on another job on this project. He had returned to the machine after getting a tool when he found the superintendent's son under the machine, taking up the only space available to effect a repair. The superintendent was standing along side the machine when the appellant found the boy was attempting to repair the belt. It was his belief that it was not his responsibility to get the boy out of the machine and, consequently, he waited for the superintendent to give the orders. Instead he received the comment outlined in his statement. As it was nearing the close of the shift, he said nothing at all about the incident that night, but told the superintendent the next day this would be his last shift. He gave no reason for his leaving, and did not file a grievance with his union. He was paid wages of approximately \$43.00 for the two days ending July 3, 1962."

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

ISSUE

I

Did the petitioner voluntarily quit work without good cause, thereby properly incurring the disqualification provided under Section 73 of the Act?

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

CONCLUSION

I

Section 73 of the Act provides as follows:

"SEC.73. Disqualification for Voluntary Quit. An individual shall be disqualified for benefits for the calendar week in which he has "left work voluntarily without good cause and for the five calendar weeks which immediately follow such week." (RCW 50.20.050)

There is no question in the instant case concerning the fact that the petitioner voluntarily quit his former employment with Carl Carbon. The sole issue revolves around the question of whether or not he had "good cause" for so doing. Unrefuted testimony contained in this record establishes the fact that obscene language was directed to the petitioner by his immediate supervisor. There is a total absence of evidence which would indicate that the petitioner had, through his own action or inaction, invited his supervisor's caustic comment. While we are not in disagreement with the principles enunciated by the Appeal Tribunal, it is our opinion that the present record, taken as a whole, establishes the fact that the petitioner's moral standards were grievously offended by the supervisor's remarks. We find no evidence which would lead us to believe that the petitioner is possessed of a higher degree of sensitivity than one would expect of a normally prudent person faced with a similar outburst from his supervisor. We have previously held that an individual has good cause for voluntarily leaving his employment when exposed to scurrilous, profane, obscene, or abusive language (See *In re Groth*, Docket No. A-31379, Review No. 4183). It is our opinion that the petitioner had good cause for voluntarily leaving his work under the circumstances presented herein, notwithstanding his failure to comply with our general principle that, benefits will not be allowed in cases involving a voluntary quit because of a personal grievance with the employer, unless or until a grievance has been filed with the employer and/or labor organization having a working agreement in force

with the employing establishment. Accordingly,
IT IS HEREBY ORDERED that the Decision of the Appeal Tribunal entered in this matter on the 23rd day of August, 1962, shall be SET ASIDE. Benefits shall be allowed the petitioner commencing with the calendar week ending July 7, 1962, through the calendar week ending August 11, 1962, providing he is otherwise eligible and qualified therefor.

DATED at Olympia, Washington, September 7, 1962.

OTTO S. JOHNSON
Acting Commissioner
Employment Security Department
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 Term

 Doc 4 of 4

Cite List

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Starr v. Empl. Sec. Dep't

Westlaw.

123 P.3d 513

Page 1

123 P.3d 513

(Cite as: 123 P.3d 513)

Court of Appeals of Washington,
Division 2.
Dennis A. STARR, Appellant,
v.
WASHINGTON STATE DEPARTMENT OF
EMPLOYMENT SECURITY, Respondent.
No. 33003-2-II.
Nov. 22, 2005.

Background: Claimant appealed denial by Washington State Department Of Employment Security of unemployment compensation benefits after he voluntarily quit his job and traveled to Alaska to care for his daughters and grandchildren in dire circumstances. The Superior Court of Thurston County, Gary Tabor, J., affirmed, and claimant appealed.

Holding: The Court of Appeals, Hunt, J., held that as matter of first impression, "good cause" reasons for voluntarily quitting employment were limited to those listed in statute. Affirmed.

West Headnotes

[1] Unemployment Compensation ⚡109

392Tk109 Most Cited Cases

"Good cause" reasons for voluntarily quitting employment without being disqualified from receiving unemployment compensation benefits were limited to those enumerated in statute, and thus employee who voluntarily quit his job and traveled to Alaska to care for his daughters and grandchildren in dire circumstances was not eligible for benefits. West's RCWA 50.20.050(2)(a).

[2] Administrative Law and Procedure ⚡676

15Ak676 Most Cited Cases

In reviewing an administrative action, the Court of

Appeals applies the standards of the Administrative Procedure Act (APA) directly to the record before the agency.

[3] Unemployment Compensation ⚡500

392Tk500 Most Cited Cases

On review of an unemployment compensation decision, the appellate court reviews the findings and decision of the Commissioner, not the superior court decision or the underlying administrative law judge (ALJ) order.

[4] Unemployment Compensation ⚡478

392Tk478 Most Cited Cases

On review of an unemployment compensation decision, the Court of Appeals presumes the Commissioner's decision to be prima facie correct.

[5] Unemployment Compensation ⚡457

392Tk457 Most Cited Cases

The burden is on the party challenging the Commissioner's ruling on an unemployment compensation claim to show erroneous interpretation of law and substantial prejudice. West's RCWA 34.05.570(1)(d), (3)(d).

[6] Appeal and Error ⚡893(1)

30k893(1) Most Cited Cases

Construction of a statute is a question of law, which the Court of Appeals reviews de novo under the error of law standard.

[7] Statutes ⚡219(1)

361k219(1) Most Cited Cases

When a statute falls within an administrative agency's area of expertise, courts give substantial weight to that agency's construction of statutory language and legislative intent.

[8] Statutes ⚡219(1)

361k219(1) Most Cited Cases

Notwithstanding deference given to administrative

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123 P.3d 513

Page 2

123 P.3d 513

(Cite as: 123 P.3d 513)

agencies' interpretations of statutes within their expertise, courts retain the ultimate authority to interpret a statute.

[9] Statutes ↪181(1)

361k181(1) Most Cited Cases

The obligation of a reviewing court that is interpreting a statute is to give effect to the Legislature's intent.

[10] Statutes ↪188

361k188 Most Cited Cases

A court's review of a statute begins with the statute's plain language.

[11] Statutes ↪190

361k190 Most Cited Cases

When a statute is unambiguous, courts determine legislative intent from the statutory language alone.

[12] Statutes ↪195

361k195 Most Cited Cases

Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim *expressio unius est exclusio alterius*--specific inclusions exclude implication.

***514** Bruce L. Turcott, Jamie Neshera Jones, Office of the Attorney General, Olympia, WA, for Respondent.

Deborah Maranville, Seattle, WA, for Appellant.

HUNT, J.

¶ 1 Dennis Starr appeals denial of his claim for unemployment compensation benefits after ***515** he voluntarily quit his job and traveled to Alaska to care for his daughters and grandchildren in dire circumstances. He argues that (1) RCW 50.20.050(2)(b)(i)-(x)'s list of non-disqualifying reasons for voluntarily leaving employment is not exclusive; and (2) "good cause" for voluntarily quitting under RCW 50.20.050(2)(a) includes compelling personal reasons, such as his daughters' and grandchildren's circumstances.

¶ 2 Holding that RCW 50.20.050(2)(b) provides an exclusive list of "good cause" reasons for voluntarily quitting employment without being disqualified from receiving unemployment benefits, we affirm dismissal of Starr's claim.

FACTS

I. STARR'S UNEMPLOYMENT

¶ 3 Beginning February 24, 2003, Dennis Starr worked five months as a full-time fuel salesman. On July 26, 2003, he left his employer a telephone message that he was going to Alaska to assist his daughters: One daughter had been arrested and incarcerated for murder; [FN1] the other had been in a serious car accident and was also incarcerated. Starr did not indicate when or whether he might return to his job. Starr's employer paid him through July 31 and recorded him as a "voluntary quit."

FN1. Police accused Starr's daughter, Denni, of murdering the father of her two children.

¶ 4 Starr and his wife stayed in Alaska to take custody of their daughter's children while their daughter was incarcerated and to assist with her legal problems. Starr did not return to work for his Washington employer.

II. PROCEDURE

¶ 5 In February 2004, while still in Alaska, Starr applied for unemployment compensation with the Washington State Employment Security Department (Department). On February 25, the Department denied Starr's claim because he "did not have *good cause* to quit work." Commissioner's Record (CR) at 35 (emphasis added).

¶ 6 After an administrative hearing, the administrative law judge (ALJ) concluded that (1) "good cause" for voluntarily leaving employment is limited to the enumerated provisions of RCW 50.20.050(2)(b); and (2) "[e]ven though [Starr] had very compelling reasons to quit his job, these reasons were personal in nature, not work related and did not otherwise fall under any qualifying 'good cause' category." CR at 60. Starr petitioned for review.

123 P.3d 513

Page 3

123 P.3d 513

(Cite as: 123 P.3d 513)

¶ 7 On review, the Department's Commissioner affirmed the ALJ's decision, and adopted the ALJ's findings of fact [FN2] and conclusions of law, with one exception: The Commissioner modified the ALJ's conclusion of law five "to show that the revisions to RCW 50.20.050 ... do not require that a claimant's voluntary separation from employment be work-related to constitute good cause pursuant to RCW 50.20.050(2)(a). See, for example, RCW 50.20.050(2)(b)(i), (ii), (iii), and (iv)." CR at 71-72. Starr sought judicial review in superior court.

FN2. The Commissioner adopted the ALJ's findings, to which Starr does not assign error. Thus, these findings are verities on appeal. *Davis v. Dep't of Labor & Indus.*, 94 Wash.2d 119, 123, 615 P.2d 1279 (1980).

¶ 8 Sitting in its appellate capacity, the superior court affirmed the Commissioner's decision denying Starr unemployment benefits.

¶ 9 Starr appeals.

ANALYSIS

[1] ¶ 10 This appeal presents a single issue of first impression: Under RCW 50.20.050(2)(a), can non-enumerated compelling personal reasons constitute good cause for voluntarily quitting a job or is good cause limited to the factors enumerated in RCW 50.20.050(2)(b)(i)-(x)? We hold that good cause is limited to the factors enumerated in RCW 50.20.050(2)(b)(i)-(x).

I. STANDARD OF REVIEW

[2][3][4] ¶ 11 In reviewing an administrative action, we apply the standards of the Administrative Procedure Act (APA) directly to the *516 record before the agency. [FN3] *Tapper v. Employment Sec.*, 122 Wash.2d 397, 402, 858 P.2d 494 (1993). We presume the commissioner's decision to be "prima facie correct." *Employees of Intalco Aluminum Corp. v. Employment Sec. Dep't*, 128 Wash.App. 121, 126, 114 P.3d 675 (2005).

FN3. "The appellate court reviews the

findings and decision of the commissioner, not the superior court decision or the underlying ALJ order." *Employees of Intalco Aluminum Corp. v. Employment Sec. Dep't*, 128 Wash.App. 121, 126, 114 P.3d 675 (2005).

[5] ¶ 12 We grant relief from an agency order in an adjudicative proceeding if the agency erroneously interpreted or applied the law, RCW 34.05.570(3)(d), and the person seeking judicial relief has been substantially prejudiced. RCW 34.05.070(1)(d). The burden is on the party challenging the Commissioner's ruling to satisfy these two prerequisites. *Employees of Intalco Aluminum Corp.*, 128 Wash.App. at 126, 114 P.3d 675.

[6][7] ¶ 13 Construction of a statute is a question of law, which we review de novo under the error of law standard. *Pasco v. Public Employment Relations Comm'n*, 119 Wash.2d 504, 507, 833 P.2d 381 (1992). When the statute falls within an agency's area of expertise, we give substantial weight to that agency's construction of statutory language and legislative intent. *Hensel v. Dep't of Fisheries*, 82 Wash.App. 521, 525-26, 919 P.2d 102 (1996).

[8][9][10][11] ¶ 14 Nonetheless, the courts retain the ultimate authority to interpret a statute. *Franklin County Sheriff's Office v. Sellers*, 97 Wash.2d 317, 325-26, 646 P.2d 113 (1982), cert. denied, 459 U.S. 1106, 103 S.Ct. 730, 74 L.Ed.2d 954 (1983). A reviewing court's obligation is to give effect to the Legislature's intent. *Lacey Nursing Ctr., Inc. v. Dep't of Revenue*, 128 Wash.2d 40, 53, 905 P.2d 338 (1995). Our review begins with the statute's plain language. *Lacey Nursing Ctr.*, 128 Wash.2d at 53, 905 P.2d 338. When, as here, a statute is unambiguous, we determine legislative intent from the statutory language alone. *Waste Mgmt. of Seattle v. Util. & Transp. Comm.*, 123 Wash.2d 621, 629, 869 P.2d 1034 (1994).

II. "Good Cause" Under RCW 50.20.050

¶ 15 Starr argues that RCW 50.20.050(2)(b) does

123 P.3d 513

Page 4

123 P.3d 513

(Cite as: 123 P.3d 513)

not establish an exclusive list of non-disqualifying circumstances. He argues instead that the Legislature intended to include other more general "compelling personal reasons" such that leaving his employment to care for his grandchildren in Alaska would not disqualify him from receiving unemployment compensation. We disagree.

¶ 16 RCW 50.20.050 is titled "Disqualification for leaving work voluntarily without good cause." By its plain language, subsection (1) applies to "claims that have an effective date before January 4, 2004." RCW 50.20.050(1). By its parallel plain language, subsection (2) applies to "claims that have an effective date on or after January 4, 2004." RCW 50.20.050(2). Because Starr filed for unemployment benefits after January 4, 2004, subsection (2) applies to his unemployment benefits claim. Holding that the language of RCW 50.20.050 is unambiguous, we look to other portions of the statute's plain language to determine its scope and the Legislature's intent for unemployment benefits coverage when a worker voluntarily leaves employment.

A. Plain Language

¶ 17 Subsection (2) of RCW 50.20.050 first provides, "An individual shall be disqualified from [unemployment] benefits beginning with the first day of the calendar week in which *he or she has left work voluntarily without good cause.* ..." RCW 50.20.050(2)(a). This subsection goes on to explain additional aspects of disqualifying circumstances, which do not pertain here.

¶ 18 Next, subsection (b) lists ten circumstances that will not disqualify a worker from receiving unemployment benefits, in pertinent part, as follows:

(b) An individual is *not disqualified from benefits* under (a) of this subsection when:

*517 (i) He or she has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;

(ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve his or her employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated his or her employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii) He or she: (A) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: (I) Is outside the existing labor market area; and (II) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and (B) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, ... or stalking ...

(v) The individual's usual compensation was reduced by twenty-five percent or more;

(vi) The individual's usual hours were reduced by twenty-five percent or more;

(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time; or

(x) The individual's usual work was changed to

123 P.3d 513

Page 5

123 P.3d 513

(Cite as: 123 P.3d 513)

work that violates the individual's religious convictions or sincere moral beliefs.

RCW 50.20.050(2)(b) (emphasis added). This subsection contains no additional open-ended circumstance of any type; and it clearly contains no general category entitled "compelling personal reasons," as Starr would have us read into the statute.

¶ 19 On the contrary, RCW 50.20.050(2)(b) lists the following circumstances, although not categorized as such, which could be deemed non-disqualifying "compelling personal circumstances" causing a claimant to quit work: (i) accepting another bona fide job offer; (ii) illness or disability of the claimant or a family member; (iii) the claimant's spouse was transferred by the military; (iv) domestic violence; and (v) conflict between the claimant's religious or moral beliefs and the work place. Nothing in this subsection or anywhere else in RCW 50.20.050 even hints that there could be other non-disqualifying circumstances.

B. Exclusive List

[12] ¶ 20 Nonetheless, Starr argues that RCW 50.20.050(2)(b) does not establish an exclusive list of non-disqualifying circumstances. [FN4] He argues instead that the Legislature intended to include other undefined "compelling personal reasons." [FN5] We disagree.

FN4. We note Starr does not argue that he qualifies under RCW 50.20.050(2)(b) subsections (ii), disability of a family member, or (iv), domestic violence.

FN5. Starr compares subsection (2) with subsection (1) of RCW 50.20.050. He points to RCW 50.20.050(1)(c), which provides, in pertinent part:

In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider *work-connected factors* such as the degree of risk involved to the individual's health, safety, and morals, the individual's

physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies.

(Emphasis added.) Starr then argues that, because the Legislature omitted this "work-connected" limitation when it added section (2) to RCW 50.20.050, "good cause" for voluntarily quitting work is no longer limited to work connected factors, and good cause now also includes "compelling personal reasons." We disagree.

As we explain above, RCW 50.20.050 is unambiguous; thus, there is no need to look to legislative history to determine legislative intent.

***518** Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim *expressio unius est exclusio alterius*--specific inclusions exclude implication.

Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1, 77 Wash.2d 94, 98, 459 P.2d 633 (1969). Thus, because the Legislature specified in section (2)(b) ten circumstances that will not disqualify an individual from unemployment benefits under section (2)(a), we infer that RCW 50.20.050(2)(b) comprises the Legislature's exclusive list of circumstances [FN6] that will not defeat a claim for unemployment compensation when a worker voluntarily quits employment.

FN6. This inference is further supported by language in other sections of the statute that, in contrast, explicitly provide *nonexclusive* lists. *See, for example*, RCW 50.04.294(1)--" 'Misconduct' includes, *but is not limited to*, the following conduct by a claimant." (Emphasis added).

C. Starr's Related Arguments

¶ 21 Relying extensively on *In re Bale*, 63 Wash.2d 83, 385 P.2d 545 (1963), Starr compares

123 P.3d 513

Page 6

123 P.3d 513

(Cite as: 123 P.3d 513)

the RCW 50.20.050 version in effect at the time *Bale* was decided to the version in effect when he filed his claim. In *Bale*, our Supreme Court noted that our Legislature removed from former RCW 50.20.050 the language that limited "good cause" (for quitting employment) to "reasons related to the work in question"; the Court held that, in so doing, the Legislature intended to remove the work connected limitation and instead to allow "good cause" to include "compelling personal reasons." 63 Wash.2d at 89-90, 385 P.2d 545. Contrary to Starr's argument, however, it does not follow that the Legislature intended the same result under the subsequently amended statutory scheme in section (2)(b), applicable here.

¶ 22 Rather, an alternative reasonable explanation for claims filed after January 4, 2004, under section (2)(a), is that the Legislature replaced section 1(c)'s "work connected" restriction with section (2)(b)'s exhaustive list of "good cause" circumstances, not all of which are work connected and some of which describe compelling personal reasons.

¶ 23 The Commissioner apparently relied on this interpretation of the statute when he revised the ALJ's conclusion of law number five to state that "the revisions to RCW 50.20.050 ... do not require that a claimant's voluntary separation from employment be work-related to constitute good cause pursuant to RCW 50.20.050(2)(a)." CR at 72. In so revising the ALJ's conclusion, the Commissioner cited RCW 50.20.050(2)(b)(i)-(iv), which provides several circumstances that are personal in nature, unrelated to work conditions.

¶ 24 Not only is it appropriate for us to defer to the Commissioner's reasonable interpretation of the statute, [FN7] *519 *Hensel*, 82 Wash.App. at 525-26, 919 P.2d 102, but also, as we point out earlier in this opinion, the statute's plain language supports this interpretation. Therefore, we hold that RCW 50.20.050(2)(b)(i)-(x) provides the exclusive list of good cause reasons for voluntarily quitting employment that will not disqualify a claimant from receiving unemployment compensation benefits.

FN7. The Department also points to

legislative history as evidence that the Legislature intended RCW 50.20.050(2)(b)(i)-(x) to be an exhaustive list of circumstances that would not disqualify a voluntarily quitting employee from receiving unemployment benefits. In light of our holding based on the statute's plain language, we need not consult legislative history. Nonetheless, because both parties rely heavily on legislative history, we note that it supports our holding.

The House Bill Report states: (1) "The reasons specified in the Act as *good cause* for leaving work voluntarily are *limited*"; and (2) "[t]he Commissioner's *discretion* to determine that *other work-related factors are good cause* for leaving work is *eliminated*." http://www.leg.wa.gov/pub/billinfo/2003-04/Senate/6075-6099/6097_hbr.pdf at 6 (last visited November 21, 2005) (emphasis added). The House Bill Report supports the Commissioner's determination that the Legislature intended to create an exhaustive list of circumstances constituting good cause for voluntarily quitting work.

Similarly, the Senate and Final Bill Report both state: "Effective January 4, 2004, an individual may receive benefits if he or she leaves work *for the following reasons*" (followed by nine enumerated circumstances). http://www.leg.wa.gov/pub/billinfo/2003-04/Senate/6075-6099/6097_sbr.pdf at 3 (last visited November 21, 2005); 2003 FINAL LEGISLATIVE REPORT, 58th Leg., 2nd Spec. Sess. at 293 (emphasis added). This language similarly supports the Commissioner's ruling that the Legislature intended to provide unemployment benefits only if an individual left work for certain specified reasons.

III. CONCLUSION

¶ 25 While Starr's situation and his personal sacrifices for his family are compelling, inclusion of

123 P.3d 513

Page 7

123 P.3d 513

(Cite as: 123 P.3d 513)

this type of personal circumstance as a nondisqualifying circumstance, for purposes of unemployment compensation benefits, is a decision for the Legislature, not the courts. At this time, however, the Legislature has expressly chosen to include only the ten nondisqualifying circumstances in RCW 50.20.050(2)(b)'s exclusive list. And, no matter how compelling, Starr's personal circumstances do not fit within any of these ten "good cause" reasons for voluntarily quitting employment without being disqualified from receiving unemployment compensation. Thus, we affirm the Commissioner's denial of Starr's claim, and we deny Starr's request for attorney fees.

We concur: HOUGHTON, J., and VAN DEREN, A.C.J.

123 P.3d 513

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STATE OF WASHINGTON

NO. 33705-3-II

**COURT OF APPEALS FOR DIVISION II
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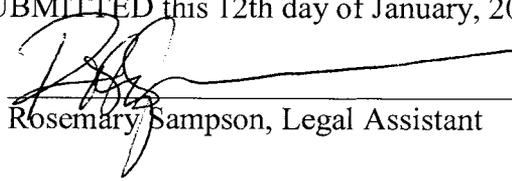
STATE OF WASHINGTON EMPLOYMENT SECURITY DEPARTMENT, Appellant, v. SARA D. SPAIN, Respondent.
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CERTIFICATE OF
SERVICE

On January 12, 2006, I served the attached **APPELLANT'S
REPLY BRIEF** by placing it in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system for mailing via U.S. Mail at the Office of the Attorney General at 1125 Washington Street SE, PO Box 40110, Olympia, Washington 98504-0110, for mailing via U.S. Mail addressed as follows:

Washington State Court of Appeals Division II Clerk of the Court 950 Broadway, Ste 300 Tacoma, Wa 98402-4427 <u>ORIGINAL + 1 COPY</u>	Marc Lampson Attorney for Respondent 1904 Third Avenue, Suite 604 Seattle, Washington 98101 <u>COPY</u>
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RESPECTFULLY SUBMITTED this 12th day of January, 2006.



Rosemary Sampson, Legal Assistant