

80309-9

No. 57513-9

2006 DEC 27 11:07

KJ

COURT OF APPEALS, DIVISION I  
STATE OF WASHINGTON

---

KUSUM BATEY,

Petitioner,

v.

STATE OF WASHINGTON,  
EMPLOYMENT SECURITY DEPARTMENT,

Respondent

---

MOTION FOR DISCRETIONARY REVIEW

---

Deborah Maranville  
Attorney for Kusum Batey

University of Washington School of Law  
Unemployment Compensation Clinic  
William H. Gates Hall, Suite 265  
P.O. Box 85110  
Seattle, WA 98145-1110  
(206) 543-3434  
WSBA #6228

**A. IDENTITY OF PETITIONER**

Petitioner Kusum Batey asks this court to accept review of the decision, certified for direct review by the Snohomish County Superior Court, designated in Part B of this motion.

**B. DECISION**

Petitioner was denied eligibility for unemployment compensation benefits by the Commissioner of the Employment Security Department under amended RCW 50.20.050. A copy of the decision is in the Appendix at pages A-1 through A-4.

**C. ISSUE PRESENTED FOR REVIEW**

On the merits, this case presents a single issue of Washington State Constitutional law. Petitioner challenges the amendments to the unemployment compensation system enacted in 2003 as failing to meet the “subject-in-title” requirement set forth in Article II, Section 19 of the Washington State Constitution.

**D. STATEMENT OF THE CASE**

Ms. Batey was denied unemployment compensation benefits under amended RCW 50.20.050, the “voluntary quit” statute, following her voluntary decision to terminate her employment with the Snohomish County Center for Battered Women. Before the Commissioner of the Employment Security Department, Ms. Batey raised a constitutional

challenge to the provisions of the unemployment compensation system amended in 2003, including RCW 50.20.050. The Commissioner of the Employment Security Department ruled that she lacked the authority to rule on that challenge and issued a final decision denying Ms. Batey eligibility for unemployment benefits under RCW 50.20.050. Ms. Batey filed suit in Snohomish County Superior Court again raising the constitutional challenge. The Superior Court has certified the constitutional issue for direct review pursuant to RCW 34.05.518.

**E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

Direct review of a final decision of an administrative agency is authorized under RAP 6.3. In requesting direct review, the parties shall follow the procedures set forth in RAP 6.2 and submit a motion seeking an order for discretionary review.

The Snohomish County Superior Court has correctly determined that all four of the necessary criteria set forth under RCW 34.05.518 have been satisfied. Therefore, this court should accept direct review under RAP 6.3.

First, “a fundamental and urgent issue affecting the . . . public interest [is] involved which require[s] a prompt determination.” RCW 34.05.518(2)(a). Ms. Batey contends that the 2003 amendments to the unemployment compensation statute violate the “subject-in-title”

provision of the Article II, Section 19 of the Washington State Constitution. If she is correct, then all the numerous amendments enacted in 2003, except the provisions establishing "forty rate classes for determining employer contribution rates" as listed in the text of the title preceding the semi-colon, are unconstitutional.

Article II, Section 19 of the Washington State Constitution provides that "No bill shall embrace more than one subject, and that [subject] shall be expressed in . . . [its] title." In determining what constitutes the "title" for the purpose of constitutional analysis, courts look at the provision of the title that is described before the first semi-colon. Mere reference to the citation of the statute amended is insufficient. *E.g.* *State v. Thomas*, 103 Wash. App. 800, 808, 14 P.2d 854, 860 (2000); *Fray v. Spokane County*, 134 Wn.2d 637, 952 P.2d 601 (1998); *Patrice v. Murphy*, 136 Wn.2d 845, 851, 966 P.2d 1271 (1998). If the unaddressed subject is not "inextricably intertwined" with the subject addressed in the title, it may be stricken, thus preserving the constitutional portion of the Act. *Charron v. Miyahara*, 90 Wash. App. 324, 334, 950 P.2d 532, 538 (1998).

///

///

The title of the 2003 amendment to the unemployment compensation system reads:

AN ACT Relating to revising the unemployment compensation system through creating forty rate classes for determining employer contribution rates; amending RCW 50.01.010, 50.20.010, 50.20.050, 50.04.293, 50.20.060, 50.20.065, 50.20.240, 50.20.120, 50.20.100, 50.29.025, 50.04.355, 50.29.026, 50.29.062, 50.29.070, 50.12.220, 50.16.010, 50.16.015, 50.24.014, 50.20.190, 50.04.206, 50.20.140, 50.20.043, 50.20.160, 50.32.040, and 28B.50.030; reenacting and amending RCW 50.29.020; adding new sections to chapter 50.04 RCW; adding new sections to chapter 50.20 RCW; adding new sections to chapter 50.29 RCW; creating new sections; repealing RCW 50.20.015, 50.20.045, 50.20.125, and 50.29.045; providing an expiration date; and declaring an emergency.

Ms. Batey's eligibility for unemployment compensation rests on the interpretation of RCW 50.20.050(2), the "voluntary quit" statute. Though the subject of voluntary quits is undoubtedly related to the broad topic of unemployment compensation, it is not "inextricably intertwined" with the narrow taxation topic addressed in the 2003 amendments' title. The 2003 amendment changing the voluntary quit statute is therefore unconstitutional.

The amendments not encompassed in the title include a new definition of "misconduct" in RCW 50.04.293. This definition determines when claimants are fired for misconduct and are therefore disqualified from eligibility for unemployment benefits under RCW 50.20.060. In

addition, the amendments include changes to the disqualification for voluntarily leaving work without good cause in RCW 50.20.050 that are at issue in Ms. Batey's case. In 2004 the Office of Administrative Hearings decided over 40,000 contested unemployment compensation hearings. See <http://www.oah.wa.gov/AboutOAH.htm>. "[W]hether the employee's actions are considered to be misconduct" and "[w]hether the person quit for good cause" are the two major issues that are decided in these cases. See <http://www.oah.wa.gov/ESDHrg.htm>. (Scroll down to "What are the issues at the Hearing.") Thus, many thousands of individuals will eventually be affected by the decision in this case as to whether the 2003 amendments are constitutional.

Second, Ms. Batey, the State of Washington, and the public interest would all be adversely affected by any unnecessary delay in obtaining a final decision on the issue presented. The state has an interest in avoiding delay in determining the constitutionality of the amendments in order to avoid an administrative nightmare, including the payment of back benefits to numerous claimants, if the amendments are held unconstitutional. Claimants for benefits, including Ms. Batey, have an interest in having their eligibility for unemployment compensation determined under a fair and constitutional system.

Third, an appeal from any decision entered by the Superior Court

on this issue is virtually certain. And finally, the constitutionality of the 2003 amendments has not previously been litigated. The final decision of the Court of Appeals would therefore be the only authoritative precedent on this matter.

**F. CONCLUSION**

Ms. Batey respectfully requests that this court grant discretionary review and hold that the 2003 amendments to the unemployment compensation system are unconstitutional under Article II, Section 19 of the Washington State Constitution.

Dated: December 23, 2005

Respectfully submitted,

A handwritten signature in cursive script that reads "Deborah Maranville". The signature is written in black ink and is positioned above the printed name.

Deborah Maranville

WSBA #6228

Attorney at Law



STATE OF WASHINGTON  
EMPLOYMENT SECURITY DEPARTMENT

PO Box 9046 • Olympia, WA 98507-9046

September 9, 2005

Kusum L. Batey  
19818 - 13th Place West  
Lynnwood, WA 98036-7164

Review No. 2005-2525

If you are a party aggrieved by the attached Commissioner's decision, your attention is directed to RCW 34.05.510 through RCW 34.05.598, which provide that further appeal may be taken to the superior court within thirty days from the date of mailing as shown on the attached decision. If no such appeal is filed, the attached decision will become final.

If you choose to file a judicial appeal, you must both:

- a. File your appeal directly with the superior court of the county of your residence or Thurston County. See RCW 34.05.514. (The Department does not furnish appeal forms.) AND
- b. Serve a copy by mail or personal service within the 30-day appeal period on this Department, the Office of the Attorney General and all parties of record.

The copy you serve on the Department must be served on or mailed to the Commissioner, Employment Security Department, Attention: Agency Records Center Manager, 212 Maple Park, Post Office Box 9046, Olympia, WA 98507-9046. To properly serve by mail, the copy of the petition must be received by the Employment Security Department on or before the 30th day of the appeal period. See RCW 34.05.542(4) and WAC 192-04-210. The copy you serve on the Office of the Attorney General must be served on or mailed to the Office of the Attorney General, Licensing/Employment Security Division, 1125 Washington Street SE, Post Office Box 40110, Olympia, WA 98504-0110.

Sincerely yours,

*Teresa M. Morris*  
Review Judge  
Commissioner's Review Office

TMM:apn

cc: Snohomish County Center for Battered Women  
Post Office Box 7  
Everett, WA 98206-0007

University of Washington Law School  
Unemployment Compensation Clinic  
Post Office Box 85110  
Seattle, WA 98145-1110



CERTIFICATE OF SERVICE

I certify that I mailed a copy of this decision to the within named interested parties at their respective addresses, postage prepaid, on September 9, 2005,

B. Deuchter

Representative, Commissioner's Review Office,  
Employment Security Department

UIO: 770  
BYE: 01/21/2006

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

Review No. 2005-2525

In re:

KUSUM L. BATEY  
SSA No. 239-73-9304

Docket No. 02-2005-07995

DECISION OF COMMISSIONER

On August 12, 2005, KUSUM L. BATEY by Deborah Maranville, Attorney at Law of the University of Washington Law School, Unemployment Compensation Clinic, petitioned the Commissioner for review of a decision of the Office of Administrative Hearings issued on July 14, 2005. Pursuant to chapter 192-04 WAC this matter has been delegated by the Commissioner to the Commissioner's Review Office. Having reviewed the entire record, and having given due regard to the findings of the administrative law judge pursuant to RCW 34.05.464(4), the undersigned adopts the Office of Administrative Hearings' findings of fact and conclusions of law.

The claimant, in her petition, argues that the decision should be reversed because the 2003 amendments to RCW 50.20.050 are unconstitutional, and thus the administrative law judge based his findings on the incorrect legal standard. The claimant also recognizes that the Commissioner does not have the authority to declare a statute unconstitutional and requests review by the Commissioner's Review Office merely as a formality in order to exhaust her administrative remedies.

In response to the claimant's arguments on petition, we agree that we do not have the authority, as an administrative body, to determine the constitutionality of the law we administer as only the courts have that power. Bare v. Gorton, 84 Wn.2d 380, 526 P.2d 379(1974). However, as required by law, we fully consider the entire record for purposes of making a ruling thereon in accordance with applicable law. RCW 34.05.464; RCW 50.32.080. Additionally, we assume that the claimant is not arguing when she states that the administrative law judge based his findings on the incorrect legal standard that the findings

are not supported by the record, but rather that the claimant is objecting to the application of the law to those findings; in other words, the claimant's argument, on petition, concerning the incorrect legal standard and the constitutional issue goes to the conclusions of law rather than to the accuracy of the findings.

Having considered the full record, we nevertheless affirm the decision of the Office of Administrative Hearings.

The record does not substantiate that the employer violated WAC 388-61A-0145, or that the employer moved away from advocacy based counseling. Thus, the claimant's work was not changed to work that offended her sincere moral beliefs or religious convictions. The examples given by the claimant to substantiate her claim that her moral and ethical beliefs were violated mostly had to do with the work of others, or her disagreement with reasonable management decisions.

The record also does not credibly support that with the arrival of her new supervisor in August 2004, the claimant was improperly and illegally disallowed overtime pay or compensatory time off, although that may have occurred with her prior supervisor with whom she had no problems. Further, overtime was required to be pre-approved, and there was no evidence the claimant ever requested such prior approval to work overtime. Also, as noted by the administrative law judge, there was no evidence the claimant brought her concerns about overtime to management or gave management a reasonable time to correct the problems, or illegal activities, if such existed.

We additionally concur with the administrative law judge that the claimant did not show that her health problems necessitated her leaving her employment, or that she took reasonable precautions to preserve her employment if her health problems were affecting her ability to work, or that such efforts would have been futile.

In sum, none of the nondisqualifying provisions set forth in RCW 50.20.050(2)(b) fit the facts of this case.

Accordingly, the claimant was properly disqualified from receiving benefits pursuant to RCW 50.20.050(2). The findings of the administrative law judge are supported by the record, and he properly applied the applicable law to those findings.

Now, therefore,

IT IS HEREBY ORDERED that the decision of the Office of Administrative Hearings issued on July 14, 2005, is AFFIRMED. Claimant is disqualified pursuant to RCW 50.20.050(2)(a) beginning January 23, 2005, and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and

earned wages in that employment equal to seven times his or her weekly benefit amount. The claimant was able to, available for and actively seeking work during the weeks at issue as required by RCW 50.20.010(1)(c). *Employer:* If you pay taxes on your payroll and are a base year employer for this claimant, or become one in the future, your experience rating account will not be charged for any benefits paid on this claim or future claims based on wages you paid to this individual, unless this decision is set aside on appeal. See RCW 50.29.021.

DATED at Olympia, Washington, September 9, 2005.\*

*Teresa M. Morris*

---

Review Judge  
Commissioner's Review Office

\*Copies of this decision were mailed to all interested parties on this date.

#### RECONSIDERATION

Pursuant to RCW 34.05.470 and WAC 192-04-190 you have ten (10) days from the mailing and/or delivery date of this order/decision, whichever is earlier, to file a petition for reconsideration. No matter will be reconsidered unless it clearly appears from the face of the petition for reconsideration and the arguments in support thereof that (a) there is obvious material, clerical error in the decision/order or (b) the petitioner, through no fault of his or her own, has been denied a reasonable opportunity to present argument or respond to argument pursuant WAC 192-04-170. Any request for reconsideration shall be deemed to be denied if this office takes no action within twenty days from the date the petition for reconsideration is filed. A petition for reconsideration together with any argument in support thereof should be filed by mailing it directly to the Commissioner's Review Office, Employment Security Department, 212 Maple Park Drive, Post Office Box 9046, Olympia, Washington 98507-9046, and to all other parties of record and their representatives.

#### JUDICIAL APPEAL

See attached letter for judicial appeal rights.

The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.