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NO. 88772-1

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SUPREME COURT OF THE STATE OF WASHINGTON

ROBERT CAMPBELL,

Petitioner,

v.

STATE OF WASHINGTON
DEPARTMENT OF EMPLOYMENT
SECURITY,

Respondent.

**DEPARTMENT'S ANSWER TO PETITION FOR
DISCRETIONARY REVIEW**

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 ORIGINAL

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I. INTRODUCTION

Robert Campbell quit his full time, high school teaching job seven months before a temporary, four-month move to Finland for his wife's Fulbright grant. The Commissioner of the Employment Security Department concluded Campbell was ineligible for unemployment benefits because he did not have good cause to voluntarily quit under the Employment Security Act's "quit to follow" one's spouse provision. RCW 50.20.050(2)(b)(iii). Specifically, he did not work as long as was reasonable prior to the move. RCW 50.20.050(2)(b)(iii)(B). The court of appeals properly affirmed this decision.

The court of appeals correctly applied the plain language of the statute and declined to unreasonably expand the "quit to follow" provision or unfairly create an exception applying only to teachers. The decision does not conflict with other decisions of the court of appeals or the Washington Supreme Court, and there is no need for further appellate guidance on this issue. Review is unwarranted.

II. COUNTERSTATEMENT OF THE ISSUES

A person who voluntarily quits his job is not eligible for unemployment benefits unless he quits with good cause. Under RCW 50.20.050(2)(b)(iii), a person has good cause to quit if he quits to relocate for the employment of a spouse outside the labor market. Where

RCW 50.20.050(2)(b)(iii)(B) requires the person to have “remained employed as long as was reasonable prior to the move” in order to qualify for benefits, did the court of appeals properly conclude that Campbell quit his job prematurely when he quit approximately seven months before his scheduled move?

III. COUNTERSTATEMENT OF FACTS

Campbell was employed as a high school Spanish and history teacher by the University Place School District beginning in September 2004. Administrative Record (“AR”) 11-12, 48. In April 2010, he informed his employer that his wife had received a Fulbright grant to teach and do research in Finland for four months beginning in February 2011. AR 13, 17, 19. He requested a leave of absence for the second semester of the 2010–2011 school year so that he could accompany his wife and three-year-old daughter to Finland, but his employer denied the request. AR 14. He then requested a leave of absence for the entire 2010–2011 school year, which the employer also denied. AR 14-15. The employer denied his leave requests to protect the instructional program because they were unsure they would be able to find a qualified teacher to fill his position for such a limited absence. AR 16, 49. Rather than working until his family was scheduled to leave for Finland in February 2011, Campbell quit his job effective June 21, 2010, at the end of the 2009–2010 school year,

seven months before his wife was scheduled to leave. He then applied for unemployment compensation. AR 12, 15, 48.

The Department denied Campbell's request for benefits, finding he did not have good cause to quit his job, and Campbell appealed the decision and requested an administrative hearing. AR 33-39. Following the hearing, an administrative law judge (ALJ) affirmed the denial of benefits. The ALJ found Campbell did not satisfy the "quit to follow" one's spouse provision of the voluntary quit statute because the statute contemplates following a spouse for permanent employment, not a temporary, four-month grant. AR 52-54. Campbell petitioned the Commissioner of the Department for review of the ALJ's order. AR 60-62. The Commissioner affirmed and modified the ALJ's order, stating that the evidence did not establish the Fulbright grant equated with "employment" as defined by the Employment Security Act. AR 66-67. The Commissioner additionally concluded that because Campbell quit his job seven months before the family was scheduled to leave for Finland, he quit his job prematurely and without statutory good cause. AR 67. Accordingly, he was not eligible for unemployment benefits. *Id.*

Campbell appealed the Commissioner's decision to superior court. CP 4-9. Sitting in an appellate capacity, the superior court reversed the Commissioner's decision, finding Campbell satisfied both prongs of the

“quit to follow” statute, RCW 50.20.050(2)(b)(iii): that he left work to relocate for the employment of his spouse outside the existing labor market area and remained employed as long as was reasonable prior to the move. CP 34-37.

The Department appealed the superior court’s decision to the court of appeals. CP 38-43. In a published decision, the court of appeals reversed the superior court and affirmed the Commissioner’s decision denying benefits. *Campbell v. Dep’t of Emp’t Sec.*, No. 42631-5-II (Wash. Ct. App. Mar. 26, 2013). The court of appeals interpreted the Act’s requirement that a claimant remain employed “as long as reasonable prior to the move” to mean that the decision to quit must be reasonable in relation to the time of the move. *Campbell*, slip. op. at 6. Because Campbell “offered no evidence establishing he required seven months to prepare for the temporary four-month trip to Finland,” his explanation for his decision to quit at the end of the previous school year fell short of the Act’s requirement to demonstrate good cause. *Id.* at 7.

Because the court found Campbell did not remain employed as long as was reasonable prior to the move, he did not satisfy both prongs of the “quit to follow” statute, so the court did not address whether Campbell established he quit for his wife’s “employment,” as that term is defined by the Act. *Id.* Campbell’s petition seeking review by this Court followed.

IV. REASONS WHY THE COURT SHOULD DENY REVIEW

Rule of Appellate Procedure 13.4(b) provides the exclusive means for accepting review of a court of appeals decision. Campbell argues this Court should accept review under RAP 13.4(b)(1) and (2), asserting the court of appeals decision conflicts with decisions of this Court and other divisions of the court of appeals.¹ However, he cites no case with which the court of appeals decision specifically conflicts. He merely argues generally that the court of appeals failed to liberally interpret the Employment Security Act (the Act) in such a way that would allow him unemployment benefits. But liberal interpretation of the Act does not mean that a benefits claimant should win in every instance. Because the court of appeals correctly interpreted the “quit to follow” provision to preclude benefits for a claimant who quits seven months in advance of a temporary move and appropriately reviewed the final agency decision rather than the superior court’s order, this Court should deny Campbell’s petition for further review.

¹ Although Campbell also cites RAP 13.4(b)(4), he offers no explanation why his petition involves an issue of substantial public interest that should be determined by this Court.

A. The Court of Appeals' Determination That Campbell Did Not Remain Employed As Long As Was Reasonable Prior to the Move Is Consistent With Washington Law

The preamble to the Employment Security Act provides that it “shall be liberally construed for the purpose of reducing *involuntary* unemployment and the suffering caused thereby to the minimum.” RCW 50.01.010 (emphasis added). Because unemployment benefits are available only to those who are involuntarily unemployed, if a person quits work, he must establish that he did so for “good cause.” RCW 50.20.050; *Courtney v. Emp't Sec. Dep't*, 171 Wn. App. 655, 660, 287 P.2d 596 (2012).

The voluntary quit statute, RCW 50.20.050(2)(b), sets forth the criteria for establishing good cause and places the burden on claimants to show that they meet the specific criteria in the statute. To qualify for benefits, claimants must meet one of the specifically enumerated, or per se, factors in RCW 50.20.050(2)(b)(i)-(xi). Here, Campbell argued that he had good cause to quit his job under the “quit to follow” section of the statute, even though he quit his full time job as a teacher seven months before his scheduled move to follow his wife to her temporary position in Finland. RCW 50.20.050(2)(b)(iii). Under that provision, the claimant must have “remained employed as long as was reasonable prior to the move.” RCW 50.20.050(2)(b)(iii)(B). The court of appeals properly

concluded that the Commissioner's decision was based on substantial evidence, was a proper application of the law, and was consistent with the Commissioner's precedent. *Campbell*, slip. op. at 3-4.

As the court of appeals noted, the legislature amended RCW 50.20.050(2)(b) in 2009, making clear that good cause to quit was limited to the reasons listed in the statute. *Campbell*, slip. op. at 5. Because the statutory amendments are so recent, there are no published court of appeals or supreme court decisions interpreting RCW 50.20.050(2)(b)(iii), the "quit to follow" provision. Accordingly, in addition to interpreting the plain language of the statute, the court of appeals looked to a Commissioner's precedential decision for guidance in determining when a claimant has worked "as long as reasonable prior to the move."² RCW 50.20.050(2)(b)(iii)(B); *Campbell*, slip. op. at 6-7.

In *In re Keith A. Bottcher*, No. 02-2010-39007, 2011 WL 8129801 (Wash. Emp't Sec. Dep't Comm'r Dec. No. 963, 2d Series Feb. 18, 2011), Bottcher's wife's employer relocated her from Washington to Ohio. The couple was unable to sell their home prior to Bottcher's wife's move, so Bottcher stayed in Washington and continued to work until he sold their home. The home finally sold, but a condition of the sale required Bottcher

² Under RCW 50.32.095, the Commissioner may designate certain Commissioner's decisions as precedent, which are binding on the agency and serve as persuasive authority for this Court. *Campbell*, slip. op. at 6 n.3.

to perform certain repairs. Bottcher resigned his employment on September 30 and then worked continuously on completing the home repairs until he moved to Ohio on December 5. The Commissioner determined that because Bottcher worked continuously on the necessary repairs from the date of the job separation until his move to join his spouse, he had worked “as long as was reasonable” prior to his move. *Bottcher*, 2011 WL 8129801.

In contrast, Campbell offered no evidence establishing that he required seven months to prepare for the temporary four-month trip to Finland. *Campbell*, slip. op. at 6. Campbell argues that when the school denied his requests for leaves of absence, he “felt he had no choice” but to quit at the end of the school year, seven months in advance of his scheduled move. Pet. for Discretionary Review at 13. However, the school district’s denial of Campbell’s leave requests did not preclude him from working until his scheduled departure in February 2011. He offered no compelling reason why he could not have continued working for the school district until January or February 2011 rather than quitting in June 2010. As the court of appeals noted, “under the statute’s plain language, ‘reasonable’ does not equate to considerate, understandable, commendable, or ethical as Campbell suggests.” *Campbell*, slip. op. at 6. In fact, it is dubious to assert that quitting closer to the family’s departure

date would have been unethical. The school denied his leave requests because they would have been unable to find a leave replacement “for such a limited absence.” AR 49. Had Campbell continued working until it was necessary to quit for the move, the school then could have found a permanent replacement, as it presumably did when Campbell quit in June 2010.

Without citing any case with which the court of appeals decision specifically conflicts, Campbell argues that Division II of the court of appeals “stands alone among the divisions . . . in largely ignoring the liberal construction to be accorded the Employment Security Act, often not mentioning it at all.” Pet. for Discretionary Review at 9. He then cites a laundry list of cases from the three divisions in which the court has mentioned the Act’s preamble mandating “liberal construction” and notes that Division II has published the fewest cases. Pet. for Discretionary Review at 9-12. Of all of the cases Campbell lists, only four involved voluntary quits, and in none of those cases did the claimant quit to follow his or her spouse. *See Smith v. Emp’t Sec. Dep’t*, 55 Wn. App. 800, 780 P.2d 1335 (1989) (claimant did not have good cause to seek a job downgrade when he knew and intended for it to result in his discharge); *Cowles Pub. Co. v. Emp’t Sec. Dep’t*, 15 Wn. App. 590, 550 P.2d 712 (1976) (claimant did not have good cause to quit due to dissatisfaction

with wages and lack of promotional opportunities,); *Hussa v. Emp't Sec. Dep't*, 34 Wn. App 857, 664 P.2d 1286 (1983) (claimant had good cause to quit due to sexual harassment); *Nielsen v. Emp't Sec. Dep't*, 93 Wn. App. 21, 966 P.2d 399 (1998) (claimants were eligible for benefits after participating in voluntary layoff, but subsequently superseded by regulation). Moreover, many of the cases Campbell cites mention liberal construction without any application of the rule. Contrary to Campbell's assertion, the comparative frequency with which different judges cite the Act's preamble is not a conflict warranting review under RAP 13.4(b)(2).

In complaining about the frequency with which Division II cites the Act's preamble, Campbell neglects to mention that the Act is to be liberally construed "for the purpose of reducing *involuntary unemployment*." RCW 50.01.010 (emphasis added). Benefits are to be available only to those who are "unemployed through no fault of their own." *Id.* And the legislature has established an exclusive list of circumstances when it considers a claimant who has quit employment to be unemployed through no fault of his own. RCW 50.20.050(2)(b). Liberal construction "does not dispose of the requirement that a claimant must prove his claim by competent evidence." *Lightle v. Dep't of Labor and Industries*, 68 Wn.2d 507, 510, 413 Wn.2d 814 (1966). Because Campbell quit his job seven months prior to his scheduled move and

offered no reasonable explanation as to why he could not wait until closer to his scheduled move, the legislature has determined that he cannot be said to have been *involuntarily* unemployed through no fault of his own.

Additionally, the court of appeals properly interpreted the plain language of the Act. Only if the Act is ambiguous may the court employ a liberal construction for the benefit of the unemployed worker. *See Harris v. Dep't of Labor and Indus.*, 120 Wn.2d 461, 472 n.7, 843 P.2d 1056 (1993). The requirement that a person remain employed as long as reasonable prior to the move is not ambiguous, particularly when applied to the specific facts of this case. Because Campbell cannot credibly argue that he satisfied this prong of the quit to follow provision, the only alternative is to manufacture a conflict among the divisions of the court of appeals by resorting to the Act's preamble. But a statute's preamble should "not be resorted to to create a doubt or misunderstanding which otherwise does not exist." *Belgarde v. Brooks*, 19 Wn. App. 571, 575, 576 P.2d 447 (1978).

In arguing that the court of appeals erred by not liberally interpreting the statute, Campbell asks this Court to read so broadly the requirement that a claimant who "quits to follow" his spouse's employment must work as long as reasonable that he essentially asks the Court to create an exception that applies only to school teachers. But "a

statutory directive to give a statute liberal construction does not require [the court] to do so if doing so would result in a strained or unrealistic interpretation of the statutory language.” *Senate Republican Campaign Comm. v. Pub. Disclosure Comm'n of State of Wash*, 133 Wn.2d 229, 243, 943 P.2d 1358 (1997); *see also Gerean v. Martin-Joven*, 108 Wn.2d 963, 972, 33 P.3d 427 (2001) (“Liberal construction does not mean abandoning the statutory language entirely.”). And schools are not unique in requiring employees with particular skill sets, nor are they the only type of employer who must deal with the ramifications of an employee’s departure. A teacher who plans to take an extended family leave in the middle of a school year (for a new baby, for example) need not quit his or her job at the end of the previous school year. There is nothing in the record to establish that being a teacher precluded Campbell from waiting to quit in January or February 2011.

Campbell quit seven months in advance of his scheduled move, and the only reason he offered was that his employer did not grant his requests for a leave of absence. The court of appeals appropriately determined that Campbell did not remain employed as long as was reasonable prior to his temporary move to Finland. The decision does not conflict with any other supreme court or court of appeals decisions. Further review is unwarranted.

B. The Court of Appeals Appropriately Reviewed the Commissioner's Decision, Not the Superior Court's Order

Campbell incorrectly suggests that the court of appeals was required to defer to the "findings" of the superior court. Pet. for Discretionary Review at 16. The court of appeals correctly applied the standard of review to the agency's final decision rather than to the superior court's order. Review on this basis is not warranted.

Judicial review of the Commissioner's decision is governed by the Washington Administrative Procedure Act (APA) pursuant to RCW 34.05.510 and RCW 50.32.120. The superior court sits in an appellate capacity, and upon further appeal, the court of appeals sits in the same position as the superior court and applies the APA standards directly to the administrative record. *Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 402, 858 P.2d 494, 498 (1993); *Smith v. Emp't Sec. Dep't*, 155 Wn. App. 24, 32, 226 P.3d 263 (2010). Thus the superior court is not the "trial court," as Campbell suggests. Pet. for Discretionary Review at 16. The Commissioner was the trier of fact. The superior court did not make any factual findings, and its decision was not the subject of the court of appeals' review; only the Commissioner's decision was the subject of review.

Here, the court of appeals agreed with the Commissioner's interpretation that, under the circumstances, the length of time between Campbell's quit and move was not reasonable. Accordingly, the "trial court's" finding of reasonableness was *not* "disturbed on appeal." Pet. for Discretionary Review at 16-17 (quoting *Howard v. Royalty Specialty Underwriting, Inc.*, 121 Wn. App. 372, 380, 89 P.3d 265 (2004)). Because the court of appeals appropriately reviewed the Commissioner's decision and not the superior court's order, its decision presents no conflict with other published cases, and there are no issues of substantial public interest warranting further review. The Court should deny Campbell's petition.

V. CONCLUSION

Campbell's petition amounts to a complaint about the frequency with which Division Two of the court of appeals cites to the preamble of the Employment Security Act. Because Campbell did not demonstrate that he was *involuntarily* unemployed when he quit his job seven months in advance of a temporary move, the court of appeals correctly affirmed the Commissioner's decision finding him ineligible for unemployment benefits. The decision does not conflict with any supreme court or court of appeals decisions, and it does not present an issue of substantial public importance. Campbell's petition should be denied.

RESPECTFULLY SUBMITTED this 24th day of June, 2013.

ROBERT W. FERGUSON
Attorney General

A handwritten signature in cursive script that reads "Leah Harris".

LEAH HARRIS,
WSBA # 40815
Assistant Attorney General
Attorneys for Respondent

PROOF OF SERVICE

I, Roxanne Immel, hereby state and declare as follows:

1. That I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, and not a party to the above-titled action.

2. That on the 25th day of June 2013, I caused to be served by mailing a true and correct copy of **Department's Answer to Petition for Discretionary Review**, by ABC Legal messenger and e-mail to:

Marcus Lampson
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1904 Third Ave., Suite 604
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Email: marc@ulproject.org

Original e-filed by e-mail

supreme@courts.wa.gov

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON that the foregoing is true and correct.

DATED this 25th day of June 2013, in Seattle, Washington.


ROXANNE IMMEL, Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Immel, Roxanne (ATG)
Cc: marc@ulproject.org
Subject: RE: Robert Campbell v. Employment Security Department/State; No 88772-1 -- Department's Answer

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Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Immel, Roxanne (ATG) [mailto:RoxanneI@ATG.WA.GOV]
Sent: Tuesday, June 25, 2013 9:52 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: marc@ulproject.org
Subject: Robert Campbell v. Employment Security Department/State; No 88772-1 -- Department's Answer

Dear Clerk,

Attached for filing is the Answer to Petition for Discretionary Review by the Department of Employment Security in *Robert Campbell v. State of Washington Department Employment Security*, No. 88772-1.

<<DeptAnswer_Campbell.pdf>>

The attorney for the Petitioner is receiving this email as a courtesy, with a paper copy being delivery by ABC Legal messenger.

Sincerely,

Roxanne Immel

Legal Assistant for Masako Kanazawa, Jeremy Gelms, & Marya Colignon

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