

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON

2013 DEC -4 PM 4:00

No. 88772 - 1

THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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ROBERT CAMPBELL,

Petitioner,

v.

EMPLOYMENT SECURITY DEPARTMENT,  
STATE OF WASHINGTON,

Respondent/Appellant below.

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SUPREME COURT  
STATE OF WASHINGTON  
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**PETITIONER'S SUPPLEMENTAL BRIEF**

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**ORIGINAL**

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**A. IDENTITY OF PETITIONER**

Robert Campbell is the petitioner here, though he was the respondent at the Court of Appeals. The Employment Security Department denied Mr. Campbell unemployment benefits. The Thurston County Superior Court reversed and granted benefits. The State appealed and the Court of Appeals, Division II, reversed the Superior Court.

**B. CITATION TO COURT OF APPEALS DECISION**

Appellant Robert Campbell seeks review of the decision by the Court of Appeals, Division II, filed March 26, 2013, entitled *Campbell v. ESD*, 174 Wn. App. 210, 297 P.3d 757 (2013).

**C. SUPPLEMENTAL BRIEFING**

The Commissioner's Office of the Washington Supreme Court has stated the issue in this case as follows<sup>1</sup>:

Whether, for purposes of qualifying for unemployment benefits under RCW 50.20.050(2)(b)(iii), a claimant who quit his teaching position seven months before his spouse was to begin an academic fellowship in a foreign country remained employed as long as reasonable prior to the move.

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<sup>1</sup> Mr. Campbell recognizes the Commissioner's disclaimer on the Court's website that the issue statements are not reviewed or approved by the Justices of this Court. But for the reasons stated in this brief, Mr. Campbell thought a response to the issue statement was the best choice.

This issue statement, unfortunately, reflects the State's version of the issue in its opening brief and it highlights irrelevant facts and omits critical, key facts from consideration. Therefore, this supplemental brief is written in response. The issue, more fully and fairly stated, is as follows:

Was it reasonable for Mr. Campbell, a teacher of Spanish, to quit his teaching position at the end of the school year, seven months prior to the following year's spring semester, so that he could move with his spouse and child for his spouse's work in Finland beginning the following spring semester

when he asked his employer for a leave of absence for the spring semester, and

when his employer denied the request, for the reason that it would be too difficult to replace him in the middle of the school year, and

when he was subsequently denied a requested full-year's leave of absence, and

when he thereafter thought the only ethical and professional choice left to him was to quit well in advance of the coming school year so that his employer could replace him?

The published opinion of the Court of Appeals under appeal here noted Mr. Campbell's ethical and professional considerations in his decision to quit, but nevertheless dismissed those considerations:

The explanation for his decision to resign at the end of the school year involved ethical and professional concerns for his employer. Campbell's decision to quit at the end of the school year had no relation to the timing of the temporary relocation to Finland. Therefore, Campbell failed to show that he remained employed as long as reasonable.

*Campbell v. ESD*, 174 Wn. App. 210, 218, 297 P.3d 757, 761 (2013).

In other words, while noting that Mr. Campbell gauged the “reasonableness” of his decision on ethical and professional considerations of his and his employer, the decision of the Court of Appeals indicates such considerations are of no account because quitting for such reasons “had no relation to the timing of the temporary relocation to Finland.” *Id.* Leaving aside that Mr. Campbell’s decision to quit when he did was indeed “in relation” to his wife’s relocation, this conclusion of the Court of Appeals is mistaken for other reasons.

First, there is nothing in the record to indicate the relocation was temporary. Conceivably one or both of the spouses could have found work teaching or researching in Europe.

Second, it is irrelevant – and not in the record - whether his wife’s job was temporary or not. The statute says nothing about the duration of the spouse’s new job being a factor, let alone a

determinative factor, regarding eligibility for benefits. Similarly, the Commissioner's statement of the issue that notes that the spouse's new employment was "an academic fellowship in a foreign country," is equally not relevant under the law. Teaching and researching in Finland was a job, and for "quit to follow" purposes, a job is a job. Whether the job is academic teaching, academic writing, academic research, or surgery, it does not matter. The nature of the new job of the spouse is irrelevant because neither statutes nor regulations make it a factor in determining eligibility, as demonstrated in Mr. Campbell's prior briefs in this case.

Third, as a matter of public policy, it would be a sad day for jurisprudence to omit from consideration of what is "reasonable" for a litigant, that litigant's ethical considerations and perceived professional obligations. Mr. Campbell's ethical and professional obligations had everything to do with his decision to quit and everything to do with why it was "reasonable" to do so when he did under the unique circumstances of this case. To ignore those considerations and the other facts stated above, as the decision of the Court of Appeals does, completely misses the determinative core at issue in this case.

Finally, unemployment benefits are not reserved solely for the destitute. The unemployment system is an insurance system that provides benefits to people who are, as the Act's Preamble states, "unemployed through no fault of their own." RCW 50.01.010. That Preamble further states that unemployment benefits are intended to "lighten" unemployment's "burden which now so often falls with crushing force upon the unemployed worker **and his or her family.**" *Id.* (emphasis added).

It is worth re-stating that Mr. Campbell would not have had anything to do with the unemployment benefits system had he been granted a leave of absence. Mr. Campbell would not have received unemployment benefits while in Finland, whether he was on a leave of absence while there or not. This is true for two reasons: First, being there he would not be "able, available, and actively seeking work" in this country, as required by the statute for eligibility.

Second, had he been on a leave of absence while there he would also have been ineligible for benefits because people on leaves of absence are specifically excluded from eligibility under the statute. Further, this same prohibition would have prevented him from receiving benefits had he been granted a full-year's leave of absence.

Mr. Campbell did not seek unemployment benefits to “scam” the system. He sought unemployment benefits only when he was forced to do so by the employer’s decision to deny him a leave of absence, and by family, ethical, and professional considerations.

First, he was a caretaker for his daughter and would have been in that role while his wife worked in Finland.

Second, he did not feel ethically “right” about keeping his mouth shut until December and then suddenly quitting so that he could go with his wife and daughter to the location of his wife’s new work. This was especially true because the employer had told him he could not have a leave of absence because it would be difficult to replace him in the middle of the year.

Finally, for sound professional reasons he knew that suddenly quitting in the middle of the school year would likely doom his professional prospects for the future at least in his own school district, if not elsewhere.

For all these reasons, Mr. Campbell should have received unemployment benefits as the Superior Court here held and he asks this Court to reverse the decision of the Court of Appeals to the contrary.

Dated this 4<sup>th</sup> day of December 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'ML', is written over a horizontal line.

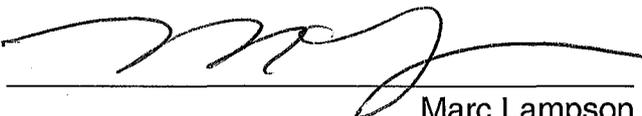
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**SUPREME COURT  
OF THE STATE OF WASHINGTON**

<p>ROBERT CAMPBELL,</p> <p style="text-align:right">Petitioner,</p> <p style="text-align:center">vs.</p> <p>STATE OF WASHINGTON DEPARTMENT OF EMPLOYMENT SECURITY,</p> <p style="text-align:right">Respondent.</p>	<p>Cause No. 88772 - 1</p> <p><b>CERTIFICATE OF SERVICE</b></p>
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Counsel for petitioner Robert Campbell certifies that on December 4, 2013, the original and a copy of the attached supplemental brief was filed in the Washington Supreme Court (by filing with Division I as permitted by court rule) and that a copy of the attached supplemental brief was personally served at the office of Leah Harris, Assistant Attorney General and Counsel for the Employment Security Department, at the Office of the Attorney General, Licensing & Administrative Law Division, 800 Fifth Avenue, Suite 2000, Seattle, WA 98104-3188.

Dated this 4<sup>th</sup> day of December 2013.



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