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SUPREME COURT OF THE STATE OF WASHINGTON

Filed
Washington State Supreme Court

Linda Darkenwald,

Petitioner,

v.

State of Washington, Employment Security Department,

Respondent.

JAN - 8 2015

Ronald R. Carpenter
Clerk

**BRIEF OF AMICI CURIAE NORTHWEST JUSTICE
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I. Identity and Interest of Amici Curiae

Amici Northwest Justice Project (NJP), Legal Voice and Washington Employment Lawyers Association (WELA) adopt the Statement of Interest of Amici Curiae fully set out in their Joint Motion to Participate as Amici Curiae filed herewith.

II. Introduction

Approximately 646,000 Washington workers hold part-time jobs.¹ Many of these workers would prefer to work full-time, and would happily accept an increase to full-time hours if given the opportunity. But most part-time workers (about 2/3) limit their hours because of disabilities, child care obligations, or other important reasons. For these workers, an increase to full-time may require them to neglect family responsibilities, endanger their health, or impose other significant burdens.

The Legislature recognized the distinct needs and circumstances of part-time workers in a 2003 amendment to the Employment Security Act. While most claimants are disqualified from unemployment benefits if they do not apply for or accept full-time work, that amendment—now codified at RCW 50.20.119—established a distinct class of part-time workers who remain eligible for benefits even if they only seek or accept work for up to seventeen hours per week. This law ensures that those workers, whose

¹ U.S. Department of Labor. *Geographic Profile of Employment and Unemployment, 2013*. Bulletin 2780. Washington, D.C., October 2014 (Table 16).

availability may be limited by health, family obligations, or other important considerations, are not denied the unemployment benefits available to workers free of such constraints.

In this case, a part-time worker was denied unemployment benefits when she refused to stay at a job after it was converted to full-time. This Court should reverse that ruling. It is contrary to both the text and purpose of RCW 50.20.119, and undermines the essential protections the Legislature intended to provide for part-time workers.

III. Statement of the Case

Linda Darkenwald worked as a dental hygienist for Dr. Gordon M. Yamaguchi from 1985 to 2010.² Due to a work-related neck and back injury, she worked only two days (14-17 hours) per week during the last four years.³ But in July 2010, Dr. Yamaguchi informed Ms. Darkenwald she would need to begin working three days per week.⁴ Continuing at two days per week was not an option, so she was forced to leave the job.⁵

² Administrative Record (AR) at 15.

³ AR at 20-21.

⁴ AR at 22.

⁵ AR at 22; note that Dr. Yamaguchi did offer Ms. Darkenwald the alternative of working as a substitute hygienist; Ms. Darkenwald also declined this position, which would likely have reduced her annual working hours by nearly half. AR 23-24.

IV. Argument

The Department, and later the Court of Appeals, incorrectly treated Ms. Darkenwald's failure to accept an increase to full-time hours as a "voluntary quit" subject to RCW 50.20.050.⁶ But under WAC 192-150-150, when a worker refuses to accept substantial changes in working conditions "the department will treat the separation as a layoff due to lack of work and adjudicate the refusal of new work under RCW 50.20.080." For a part-time worker, an increase to full-time hours is a substantial change in working conditions as a matter of law.⁷ This Court should reverse because, had Ms. Darkenwald's claim been analyzed under the proper statute—i.e., RCW 50.20.080 rather than 50.20.050—she would easily have qualified for unemployment benefits.

A. Unemployment benefits are intended to reduce suffering of workers unemployed through no fault of their own.

The Unemployment Compensation system is a federal-state partnership that was created by the Social Security Act of 1935.⁸ In summary, Congress appropriates funds to the U.S. Department of Labor, which apportions the funding to state agencies (such as Washington's

⁶ Pub. Op. at 12; reported as *Darkenwald v. Emp't Sec. Dep't*, 126 Wn. App. 157, 328 P.3d 988 (Div. 2, 2014).

⁷ See RCW 50.20.119(1).

⁸ See 42 U.S.C. § 501 et seq.

Employment Security Department) that administer the program.⁹ While each state designs its own program, states must conform to certain basic requirements set forth at the federal level.¹⁰

Washington's Employment Security Act provides benefits for workers who are "unemployed through no fault of their own."¹¹ This means a worker who is not at fault for her unemployment cannot be disqualified from benefits:¹² "[t]he disqualification provisions ... are based upon the fault principle and are predicated on the individual worker's action, in a sense his or her blameworthiness."

B. Leaving a job because the working conditions substantially change is a refusal of "new work," not a "voluntary quit."

RCW 50.20.050(2), disqualifies a claimant who "le[aves] work voluntarily without good cause." The Court of Appeals assumed that Ms. Darkenwald was at fault for her unemployment, and thus disqualified from unemployment benefits, because—as Dr. Yamaguchi did not "discharge" her—she had *ipso facto* voluntarily quit her job (without good cause).¹³

⁹ See 42 U.S.C. § 501-502.

¹⁰ See 42 U.S.C. § 503.

¹¹ RCW 50.01.010.

¹² See RCW 50.20.050-080; see *Safeco Ins. Co. v. Meyering*, 102 Wn.2d 385, 392; 687 P.2d 195 (1984).

¹³ Pub. Op. at 12.

But Ms. Darkenwald did not spontaneously leave her job; rather, she refused an increase from part-time to full-time hours.¹⁴

A Department regulation provides that when an employee leaves a job rather than remain under changed working conditions, the Department will determine whether he “left work voluntarily or refused an offer of new work.”¹⁵ If there are no significant differences between the original job and the new job, a worker who declines the new position will be deemed to have voluntarily left work and is disqualified from benefits unless she has good cause for leaving that employment.¹⁶ But if the new position entails a “substantial change in working conditions,” then “the department will treat the separation as a layoff due to lack of work and adjudicate the refusal of new work under RCW 50.20.080.”¹⁷ In that circumstance, the worker is disqualified from benefits only if the position would have constituted “suitable work” under RCW 50.20.100.¹⁸

A “substantial change in working conditions” means a material change in almost any aspect of a job, including compensation, benefits, job security, training, advancement policies, unionization, grievance

¹⁴ AR at 22.

¹⁵ WAC 192-150-150(3).

¹⁶ See WAC 192-150-150(3)(a) (“If the changes in working conditions are not substantial, the department will consider you to have voluntarily quit work.”).

¹⁷ WAC 192-150-150(3)(b).

¹⁸ See RCW 50.20.080 (claimant disqualified if he fails “without good cause, either to apply for available, suitable work ... or to accept suitable work when offered”).

procedures, rules, physical conditions, or—as pertinent in this case, shifts of employment.¹⁹ Increasing a part-time worker’s hours to more than 17 per week is a material change as a matter of law, because a worker who accepts that increase would no longer be entitled to the protection that the Legislature provided for part-time status under RCW 50.20.119.²⁰ The increase in Ms. Darkenwald’s shifts from two to three per week (a 50% increase in work time) was thus substantial, and should have been treated as an offer for “new work.”²¹

C. Treating a “substantial change in working conditions” as an involuntary separation is appropriate under federal law.

The Department adopted WAC 192-150-150 to implement federal unemployment compensation program requirements.²² Specifically, the Federal Unemployment Tax Act prohibits state unemployment programs from denying benefits to “otherwise eligible individual[s] for refusing to accept new work” under certain adverse conditions.²³ In interpreting this provision, the U.S. Department of Labor defined “new work” to include “an offer by an individual’s present employer” for continued employment

¹⁹ See WAC 192-150-150(4).

²⁰ See RCW 50.20.119(2); see also WAC 192-170-070 (part time eligible workers).

²¹ See WAC 192-150-150(2) (“[N]ew work’ includes an offer by your present employer of: (a) Different duties ... or (b) Different terms or conditions of employment from those in the existing contract or agreement.”).

²² See WAC 192-150-150(1).

²³ 26 U.S.C. § 3304(a)(5).

on different terms or conditions from those in his existing contract.²⁴ This text is substantially identical to that which the Department adopted in its own definition of “new work.”²⁵

The same Program Letter in which the U.S. Department of Labor announced that definition for “new work” goes on to explain that when a claimant objects on any ground to the suitability of wages, hours or other offered new conditions, that the state agency and hearing officers must make findings of fact and conclusions of law as to whether the change in working conditions amounts to an offer for new work.²⁶ This is precisely what WAC 192-150-150 requires. The U.S. Department of Labor issued another Program Letter in 1998 to remind states of these requirements.²⁷

Accordingly, the Department’s failure to treat Ms. Darkenwald’s separation from employment as an involuntary termination (of her part-time job) coupled with an offer for new work (as a full-time hygienist) was inconsistent with both the Department’s own regulation and with the

²⁴ See U.S. Dept. of Labor, Unemployment Ins. Program Letter (UIPL) No. 984 at p. 2 (1968) (“it is clear that an attempted change in the duties, terms, or conditions of the work, not authorized by the existing employment contract, is in effect a termination of the existing contract and the offer of a new contract.”).

http://workforcsecurity.doleta.gov/dmstree/uipl/uipl_pre75/uipl_984.htm.

²⁵ See WAC 192-150-150(2).

²⁶ See UIPL No. 984 at p. 3 (“it is clear that an attempted change in the duties, terms, or conditions of the work, not authorized by the existing employment contract, is in effect a termination of the existing contract and the offer of a new contract.”).

http://workforcsecurity.doleta.gov/dmstree/uipl/uipl_pre75/uipl_984.htm.

²⁷ See U.S. Dept. of Labor, Unemployment Ins. Program Letter No. 41-98 at p.3 (1998.) http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=1819.

federal requirements. Ms. Darkenwald would almost certainly have been eligible for benefits, had the Department followed these provisions.

D. Prior court decisions failed to analyze whether workers' decisions to leave jobs were truly voluntary because a flexible good cause standard made that inquiry less significant—but that standard has been narrowed.

Even in the absence of WAC 192-150-150, a rigorous analysis of whether a worker who has left a job under the claimant's circumstances should not be denied unemployment benefits. A line of Washington cases prior to 2009 held that workers who turned down offers for different work when their previous jobs ended had voluntarily left work, but then applied a flexible "good cause" standard under which those workers remained eligible for benefits.²⁸ In *Murphy*, for example, a claimant whose brick mason job had been eliminated was offered alternative work as a "carbon setter"—a job that entailed "standing on a narrow catwalk 6 to 12 inches above vats of molten steel at 1100° F to 1300° F, breaking the crust on the metal with a heavy crowbar."²⁹ When the claimant declined the carbon setter job as falling beyond his physical capabilities, the Court of Appeals ruled his job loss a voluntarily quit—but then went on to find he had good

²⁸ See, e.g., *Murphy v. Emp't Sec. Dept.*, 47 Wn. App. 252, 734 P.2d 924 (1987); see *Vergeyle v. Emp't Sec. Dept.*, 28 Wn. App. 399, 402; 623 P.2d 736 (1981), overruled on other grounds by *Davis v. Emp't Sec. Dept.*, 108 Wn.2d 272, 737 P.2d 1262 (1987) (holding that only work-related factors can constitute good cause).

²⁹ *Murphy*, 47 Wn. App. at 253.

cause for quitting because a reasonably prudent person in the same circumstances would also have quit.³⁰

Murphy was decided long before WAC 192-150-150 was adopted, and the court did not consider whether the claimant's resignation was truly "voluntary" before proceeding to the good cause step.³¹ But the good cause statute has since been changed and now requires that the reason for quitting be among eleven statutorily-listed grounds.³² While it is unlikely the *Murphy* claimant could have shown good cause under the current statute, per WAC 192-150-150 the claim would now be appropriately analyzed and likely granted under RCW 50.20.080: the elimination of the brick mason position would have been deemed a "layoff due to lack of work," and the carbon setter position an offer for new work.³³

In *Vergeyle*, another case that pre-dated WAC 192-150-150, the Court of Appeals declared that:

"the phrase 'due to leaving work voluntarily' has a plain, definite and sensible meaning, free of ambiguity; it expresses a clear legislative intent that to disqualify a claimant from benefits the evidence must establish that the claimant, by his or her own choice, intentionally, of his or her own free will, terminated the employment."³⁴

³⁰ See *Murphy* at 253, 259 ("The act does not require a claimant, whose particular services are no longer required by the employer, to accept whatever position the employer offers.").

³¹ See *Murphy* at 256.

³² See RCW 50.20.050(2)(b); see *Campbell v. Emp't Sec. Dept.*, 180 Wn.2d 566, 572; 326 P.3d 713 (2014).

³³ See WAC 192-150-150(3)(b).

³⁴ *Vergeyle*, 28 Wn. App. at 402.

This has long remained the standard on which to determine a “voluntary quit;” this Court adopted the *Vergeyle* standard in *Safeco Insurance Co. v. Meyering*, holding that a “voluntary termination requires a showing that an employee intentionally terminated her own employment.”³⁵

Despite articulating this standard, however, the *Vergeyle* court went on to find a worker’s separation to have constituted a voluntary quit even though it was arguably coerced by the employer’s actions—then ruled the claimant had good cause and thus was not disqualified from benefits.³⁶ As in *Murphy*, where the claimant becoming unemployed rather than work as a carbon setter is difficult to reconcile with notions of choice and free will, the *Vergeyle* court did not closely evaluate whether the claimant’s decision to leave her job was truly “voluntary.”³⁷ Instead, the decisive factor was that the worker was not discharged: she chose to resign, rather than bear the hardship necessary to keep her job.³⁸

Since *Vergeyle*, additional cases continued to build on the voluntary quit/discharge dichotomy. In *Korte*, the Court of Appeals held

³⁵ *Safeco Ins. Co. v. Meyering*, 102 Wn.2d 385, 393; 687 P.2d 195 (1984).

³⁶ See *Vergeyle* at 400-404 (worker left job upon employer’s eleventh-hour failure to approve her request for leave to accompany her husband on a cross-country automobile trip; the employer had led the worker to believe her request would be approved (by hiring a substitute), and postponing the trip would have caused hardship “[b]ecause of her husband’s heart condition, the only feasible method of travel was by car [and] all lodging accommodations had to be in close proximity to health care facilities.”).

³⁷ See *Vergeyle* at 402.

³⁸ See *Vergeyle* at 402.

that a worker voluntarily quit when she resigned, rather than accept what she contended were “substantial changes” in her employment contract.³⁹ In *Grier*, a worker voluntarily quit when her full-time job was reduced to part-time.⁴⁰ And in *Terry*, a worker was found to have voluntarily quit when she retired after her job was eliminated, rather than transfer to a different job within the company.⁴¹ In each of these cases, whether the claimant ultimately qualified for benefits turned on whether he or she had good cause for leaving—which, again, was then determined under a much more flexible standard than currently exists.⁴² But with the good cause statute now providing virtually no flexibility, the Department must fulfill its duty under WAC 192-150-150 to consider whether such claimants actually left their jobs voluntarily or refused offers of new suitable work.⁴³

This case presents the first occasion this Court will have had to examine or refine the voluntary quit standard that emerged from *Murphy*, *Safeco*, and *Vergeyle* since WAC 192-150-150 was promulgated, and since RCW 50.20.050 was revised to limit the bases on which employees could claim “good cause.” To ensure the purposes of the Employment Security Act are best carried out, the Court should clarify that a worker

³⁹ See *Korte v. Emp't Sec. Dept.*, 47 Wn. App. 296, 298; 734 P.2d 939 (1987).

⁴⁰ See *Grier v. Emp't Sec. Dept.*, 43 Wn. App. 92, 95; 715 P.2d 534 (1986).

⁴¹ See *Terry v. Emp't Sec. Dept.*, 82 Wn. App. 745, 750; 919 P.2d 111(1996).

⁴² See *Korte* at 301; see *Grier* at 96; see *Terry* at 751.

⁴³ See WAC 192.150-150; see also *Campbell*, 180 Wn.2d at 572.

whose job is eliminated does not “voluntarily leave work” if she refuses to accept a significantly different job with the same employer.

Indeed, the present case has much in common with *Murphy*—in that Ms. Darkenwald left her job only when forced to choose between leaving or accepting a much different job in Dr. Yamaguchi’s office.⁴⁴ Like *Murphy*, remaining at the original job was not a possibility for Ms. Darkenwald because her employer eliminated that position, and the new job was one she could not physically perform.⁴⁵ Also like *Murphy*, Ms. Darkenwald was not to blame for her unemployment, and thus not the type of worker to whom the Legislature intended to deny benefits.⁴⁶ But unless the Court of Appeals is reversed, and the Department directed to apply the WAC 192-150-150 analysis in this case and others of this kind, Ms. Darkenwald and countless other similarly-situated workers will unjustly forego their benefits.

Applying the WAC 192-150-150 analysis to scenarios in which a job is eliminated and the claimant turns down an alternative position better fulfills the *Vergeyle* court’s observation that to “leav[e] work voluntarily” unambiguously means to leave a job by “choice, intentionally, of [one’s]

⁴⁴ AR at 22; note that Amicus NJP does not discuss the third alternative Ms. Darkenwald was presented in this case (working as a substitute hygienist); that issue is adequately briefed by the parties and not relevant to the arguments set forth herein.

⁴⁵ See AR at 19-20; see *Murphy*, 47 Wn. App. at 259.

⁴⁶ See RCW 50.01.010; see *Safeco*, 102 Wn.2d at 392.

own free will.”⁴⁷ Deeming substantially *all quits* (i.e., non-discharges) as *voluntary quits*, does not resonate with the plain meaning of the term, and indeed renders the word “voluntary” effectively superfluous. Statutes should be interpreted “to give effect to all the language used so that no portion is rendered meaningless or unnecessary.”⁴⁸ By helping distinguish truly voluntary quits (i.e., those resulting from legitimate choice or free will) from other quits (e.g., those occurring under coercive circumstances, or without any legitimate alternative), the WAC 192-150-150 analysis gives fuller effect to the statutory language. This interpretation is also more consistent with the Legislature’s directive that the Act “shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.”⁴⁹

Courts in other states have held that a worker does not voluntarily leave employment when he is induced to quit by pressure or, otherwise not from “free choice” or “full consent.”⁵⁰ In Delaware, where a similar dichotomy between “discharge” and “voluntary quit” had arisen, the Delaware Supreme Court ruled that a “resignation induced under pressure

⁴⁷ See *Vergeyle* at 402.

⁴⁸ *Cornu-Labat v. Grant County Hosp. Dist.*, 177 Wn.2d 221, 231; 298 P.3d 741 (2013). This interpretation is also consistent with the federal law and USDOL Directives.

⁴⁹ RCW 50.01.010.

⁵⁰ See, e.g., *Anchor Motor Freight, Inc. v. Unemp. Ins. Appeal Bd.*, 325 A.2d 374 (Del.1974), discussing *Unemp. Ins. Comm’n v. Young*, 389 S.W.2d 451, 453 (Ky. 1965).

is tantamount to a discharge.”⁵¹ That court reached its conclusion after reviewing and following cases from several other jurisdictions, such as Kentucky and California.⁵² More recently, the Kentucky Supreme Court reaffirmed this principle in holding that an employee does not voluntarily leave employment when he is “driven away, versus simply choosing to leave for greater satisfaction.”⁵³ And the Mississippi Supreme Court held that a woman did not voluntarily quit her job as a cashier when she left the job site after her employer directed her to begin working as a cook.⁵⁴

E. Refusing an offer for full-time work does not disqualify a part-time worker because such work is not suitable.

Under RCW 50.20.080, a claimant is disqualified from benefits if she declines an offer for new work, provided the work is “suitable.”⁵⁵ Whether work is “suitable” depends on numerous factors, including “the degree of risk involved to the individual's health, safety, and morals, [and] the individual's physical fitness[.]”⁵⁶ If the claimant is a part-time worker,

⁵¹ *Anchor Motor Freight, Inc.* 374 A.2d at 376 (claimant was pressured to quit when her employer threatened to withhold paychecks and altered her work schedule). ,

⁵² See *Anchor Motor Freight, Inc.* at 376, citing *Young*, 389 S.W.2d at 453 and citing *Keithley v. Civil Service Bd.*, 11 Cal.App.3d 443, 89 Cal.Rptr. 809 (1970).

⁵³ *Brownlee v. Com.*, 287 S.W.3d 661, 665 (Ky. 2009).

⁵⁴ *Huckabee v. Mississippi Emp. Sec. Com'n*, 735 So.2d 390 (Miss. 1999) (As in the present case, Huckabee had left the jobsite after an ambiguous conversation with her manager that left the continuing status of her employment unclear—but from which the court found Huckabee had a “reasonable belief that she had been fired.”).

⁵⁵ See RCW 50.20.080 (“An individual is disqualified for benefits, if the commissioner finds that the individual has failed without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner, or to accept suitable work when offered the individual.”).

⁵⁶ See RCW 50.20.100(1).

new work is not suitable unless the employment is limited to 17 or fewer hours per week.⁵⁷ In this case, the full-time hygienist position that Dr. Yamaguchi offered Ms. Darkenwald was unsuitable as a matter of law, as it would have required her to work more than 17 hours per week.⁵⁸

As the Legislature recognized by enacting RCW 50.20.119, many part-time workers fulfill dual roles both inside and outside the workplace, while other part-time workers are simply incapable—for reasons such as disability—of working full-time. Indeed, 69% percent of Washington’s part-time labor force does not seek full-time work.⁵⁹ RCW 50.20.119 reflects a legislative determination that these part-time workers need not neglect their child care duties, family obligations, health limitations, or other responsibilities in order to pursue full-time employment.⁶⁰

Women, who comprise two-thirds of the part-time workforce, would be disproportionately impacted if unable to maintain status as part-time workers.⁶¹ About one-quarter of part-time workers cannot work more hours because of child care or other family responsibilities—90% of

⁵⁷ See RCW 50.20.100(3).

⁵⁸ See WAC 192-170-070(1) (“If you are a part-time eligible worker as defined in RCW 50.20.119, you may limit your availability for work to 17 or fewer hours per week. You may refuse any job of 18 or more hours per week.”); see also RCW 50.20.119(1).

⁵⁹ See *supra* note 1 (Part time for noneconomic reasons).

⁶⁰ The remaining 31% work part-time only because they have not been able to secure full-time jobs (and would presumably accept full-time employment if offered). See *supra* note 1 (Part time for economic reasons).

⁶¹ See *supra* note 1, Table 16, p. 103.

these workers are women.⁶² People with disabilities, who already face significant obstacles to workforce participation, are another group that would be particularly affected by the inability to maintain part-time worker status. About 160,000 disabled individuals (28% of Washington's disability population) participate in the workforce,⁶³ 64% of whom work on a part-time basis.⁶⁴ Nationally, persons with disabilities are nearly twice as likely as non-disabled persons to work part-time.⁶⁵

Women and disabled workers also tend to be more vulnerable economically than the population as a whole. Most of Washington's disabled workers earn far less than the state's average income (\$56,000); nearly 60% of disabled workers earn below \$35,000 per year, and 30% earn less than \$15,000 per year.⁶⁶ Losing part-time wages causes significant financial hardships on these workers and their families.

⁶² See *supra* note 1, Table 23, p. 157, 159 (States: persons at work 1 to 34 hours, by sex, race, Hispanic or Latino ethnicity, usual full – or part-time status, and reason or working less than 35 hours, 2013 annual averages).

⁶³ Employment Status by Disability Status, Universe: Civilian noninstitutionalized population 18-64 years 2009-2013 American Community Survey 5-Year Estimates, C1820, In *U.S. Census Bureau American FactFinder*. 2014. (Washington State).

⁶⁴ See *supra* note 63, Work Experience by Disability Status, Universe: Civilian noninstitutionalized population 18 to 64 2009-2013 American Community Survey 5-Year Estimates, C1821, In *U.S. Census Bureau American FactFinder*. 2014. (Washington State, taking the “worked less than full-time, year around, with disability” population and the “Employed: with Disability” number from *supra* note 63).

⁶⁵ U.S. Census Bureau. *Disability among the Working Age Population: 2008 and 2009*. (American Community Survey Briefs). By Matthew W. Brault. Washington: U.S. Department of Commerce, September 2010. (p. 2).

⁶⁶ See Disability Employment 7C. Detailed Census Occupation by Disability Status, Employment Status, Earnings, and Sex, Subnational Geography, Universe: Civilian population 16 years and over DOL Disability Employment Tabulation 2008-2010 (3-year

Again, the primary purpose of the unemployment statute is to lighten the burden of involuntary unemployment “which now so often falls with crushing force upon the unemployed worker and his or her family.”⁶⁷ The statute “shall be liberally construed for the purpose of reducing involuntary unemployment and the suffering caused thereby to the minimum.”⁶⁸ Denying benefits to workers initially hired for a part-time jobs, whose jobs are then converted into full-time jobs they cannot accept, is fully at odds with these paramount objectives. Such a policy narrowly construes the rights and protections of part-time workers, and denies critical economic support to workers who are unemployed through no fault of their own. Preserving eligibility for part-time workers encourages individuals who cannot work full-time to participate in the workforce and protects their families when those part-time jobs end—including by being made into full-time jobs.

F. A worker whose job is eliminated does not voluntarily quit if she turns down alternative work that she is physically unable to perform.

Another criterion for suitable work is that it be within a claimant’s “physical and mental ability to perform.”⁶⁹ But the rules and evidentiary

ACS data), DOLDSB-ALL7-C, In *U.S. Census Bureau American FactFinder*. 2014. (Washington State).

⁶⁷ RCW 50.01.010.

⁶⁸ *Id.*

⁶⁹ RCW 50.20.100(1).

standards that workers who *voluntarily quit* jobs because of disabilities face are different from those faced by those who refuse new work as unsuitable—and applying the voluntary quit rules to claimants who turn down new work produces unfair and arbitrary results.

For instance, a worker who voluntarily quits a job because of an illness or disability must provide a physician’s statement to support any restrictions on the type or hours of work she may perform.⁷⁰ This rule allows an employer to offer accommodations that might prevent a disabled worker from having to quit her job. But an employer who eliminates a job altogether has no obligation to offer a disabled employee alternative work, so requiring a physician to document the disability in that circumstance is superfluous and an unnecessary burden.⁷¹

Here, because it erroneously characterized the separation as a voluntary quit, the Court of Appeals applied the wrong evidentiary rules to Ms. Darkenwald’s claim—this effectively precluded any meaningful consideration of the role her disability played in her unemployment. Without a physician’s statement to document her disability, she could not avoid disqualification (on the basis of disability) despite “unchallenged findings [that she] ‘has a permanent back and neck disability that becomes

⁷⁰ WAC 192-150-060(2).

⁷¹ See WAC 192-150-060(3)

more painful if she works too much.”⁷² The absence of medical evidence should not have prevented due consideration of whether Ms. Darkenwald could actually work three days per week. Had her claim been properly analyzed as a refusal of new work she could provide “any information demonstrating that the alternative work offered ... was not suitable.”⁷³

The Court of Appeals also found that Ms. Darkenwald failed to meet another good cause requirement applicable to voluntary quits—that the disability was her “primary” reason for leaving.⁷⁴ But a worker should hardly be disqualified from benefits for declining an offer for new work that she is physically unable to perform—and this remains true even if the worker may have had other reasons for turning that job down.

Here, even if Ms. Darkenwald’s disability might not have been her primary reason for remaining a part-time worker, that does not necessarily mean she could actually work three days per week. If she couldn’t, then the new work was not suitable—and her rejection of that work could not have disqualified her under RCW 50.20.080. By applying the wrong regulations, the Court of Appeals failed to consider the suitability of the alternative work offered—resulting in an unfair and incorrect outcome.

⁷² Pub. Op. at 13, 15; see also see AR 19-20 (evidence supporting Ms. Darkenwald’s claim that she could not work more than two days per week included a Labor & Industries finding and her own undisputed testimony).

⁷³ WAC 192-150-060(4) (“This may include, but is not limited to, information from your physician...”).

⁷⁴ See WAC 192-150-055(1)(a); see Pub. Op. at 13.

Other disabled workers stand to suffer similarly unjust results unless that ruling is corrected to require that a claimant who declines an offer for new work because of a health condition not be disqualified unless the new work would have been suitable.

V. Conclusion

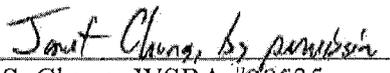
For the foregoing reasons, this Court should reverse the Court of Appeals and hold that Linda Darkenwald did not voluntarily leave work without good cause.

RESPECTFULLY SUBMITTED this 8th day of January, 2015.

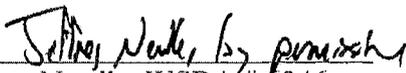
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Linda Darkenwald v. State of Washington, Employment Security Department

Supreme Court No.: 90544-4

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Dear Clerk:

Marie Nguyen filed the documents on behalf of attorney Eric Dunn: MarieN@nwjustice.org

The following documents are attached:

1. Joint Motion for Leave to File Brief Amici Curiae Northwest Justice Project and Legal Voice;
2. Brief of Amici Curiae Northwest Justice Project and Legal Voice; and
3. Declaration of Service.

Thank you.

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